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**Union Responses to Subcontracted Workers:**  
A Comparative Study of the English and Korean Health Sectors

by  
**Jeong-Hee Lee**

A thesis submitted in partial fulfilment of the requirements for the  
degree of Doctor of Philosophy

University of Warwick, Industrial Relations Research Unit

January 2014

THE UNIVERSITY OF  
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## **Declaration**

I declare that this thesis is the result of my own individual research. I have followed the Guide to Examinations for Higher Degrees by Research, established by the Graduate School at the University of Warwick. I confirm that the thesis has not been submitted for a degree at another university.

## **Abstract**

The research presented in this thesis is a study of union responses to subcontracted labour in England and Korea. Subcontracting leads to separation of employers, and places existing union structures and resources, and traditional collective bargaining systems under strain. A study of union representation in relation to subcontracted workers is important because it can address how unions deal with more complex employment relationships. This also helps explore which factors contribute to patterns of union responses.

This research conducted a comparative study of eight branches of the largest unions in the English and Korean health sectors with different institutional settings. This employed qualitative case studies using fifty-three semi-structured interviews, observation, and document analysis. Evidence showed that typical responses between the two varied, but there were also two outlying cases in Korea, showing similar responses to those in England. Differences in the institutional contexts of the source of restructuring, legal regulations, collective bargaining systems and union structures explained why English union branches adopted more inclusive strategies toward subcontracted workers than those in Korea. However, empirical evidence showed that union responses were also influenced by some non-institutional factors such as branch leadership, the attitude of the represented and effective working with allies in the community. Despite the importance of institutions in shaping union responses, they are not sufficient alone to explain variations in union responses and it is necessary to consider an integrated approach considering both institutional and non-institutional factors in a single analytical framework.

This study contributes to the field of comparative industrial relations research in three ways. First, it extends the scope of research on union responses to contingent workers by investigating responses to subcontracted workers. Second, it goes beyond classifying union responses by presenting their underlying dynamics. Third, it challenges existing ways of conducting comparative industrial relations studies predicated upon the staple proposition that ‘institutions matter’, highlighting the importance of an integrated approach.

## Abbreviations

AfC	Agenda for Change
CAQDAS	Computer Assisted Qualitative Data Analysis
GMB	Britain's General Union
CCT	Compulsory Competitive Tendering
COHSE	Confederation of Health Service Employees
BIS	Department for Business Innovation and Skills
DH	Department of Health
FKTU	Federation of Korean Trade Unions
ILO	International Labour Organization
JNC	Joint Negotiating Committee
KCTU	Korean Confederation of Trade Unions
KHA	Korean Hospital Association
KHMU	Korean Health and Medical Workers' Union
KHMEA	Korean Health and Medical Employers Association
MoEL	Ministry of Employment and Labor
MoHW	Ministry of Health and Welfare
NALGO	National and Local Government Officers Association
NHS	National Health Service
NHSPRB	NHS Pay Review Body
NUPE	National Union of Public Employees
NHSPRB	NHS Pay Review Body
OECD	Organisation for Economic Co-operation and Development
OPM	Office for Public Management
OME	Office of Manpower Economics
PFI	Private Finance Initiative
QCA	Qualitative Comparative Analysis
THAs	Temporary Help Agencies
TULRAA	Trade Union and Labor Relations Adjustment Act
TULRCA	Trade Union and Labour Relations (Consolidation) Act 1992
TUPE	Transfer of Undertakings (Protection of Employment) Regulations
TU Act	Trade Union and Labor Relations Adjustment Act
WERS	British Workplace Employee Relations Survey

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# **Chapter 1 Introduction**

The research presented in this thesis is a study of union responses to subcontracted labour in the English and Korean health sectors. In recent years union have faced the challenges stemming from declining union membership and increasing contingent workers. In particular, the emergence of subcontracted workers has provided unions with another challenge of triangular employment relationships as the organisational boundaries between companies have increasingly blurred. Little emphasis has been so far placed on this challenge facing unions. This study presents patterns in union responses and factors explaining a particular response by conducting a comparative study. The importance of an integrated approach between institutional and non-institutional factors in explaining union behaviour is highlighted. This chapter proceeds in four main stages. Firstly, background and aims of the study are explained. Secondly, research themes of the study are illustrated, followed by demonstrating scope of the study. Lastly, the structure of the thesis is presented.

## **1.1. Background and aims of the study**

A notable labour market trend in recent years has been an appreciable increase in different forms of contingent labour in developed countries (Eun *et al.*, 2008; Heery, 2004; Osterman, 1999). Coping with changes in labour markets, unions have been faced with the need to develop new strategies to deal with new environments (Katz *et al.*, 2003; MacKenzie, 2000). Existing evidence shows that unions have made an effort to offset numerical declines in traditional union membership through recruiting contingent workers into the organisations and to prevent the undermining of terms

and conditions of existing members (Heery, 2004; Pernicka, 2005). This link between unions and contingent work relates to the debate on the revitalisation of unions and the need to adjust forms of representation to a changing workforce (Heery, 2003: 279-283).

What differentiates unions from most other organisations is their 'representative logic' (Hyman, 2001: 211). Unions are in general considered as agencies whose main role is to represent members' or, more broadly, workers' interests (Hyman, 1997b; Simms and Charlwood, 2010). However, it has been widely asserted that trade unions' capacity of representation is in crisis, reflecting the fall in membership rates and that their limited membership domain has centred more on existing permanent workers than other emerging groups of workers (Cerviño, 2000: 4). Compared to regular jobs, contingent work is generally associated with relatively low wages, employment insecurity, exclusion from social protection, and other precarious working conditions (Cerviño, 2000: 5-6). Accordingly trade unions need to develop new strategies to reconcile the seemingly different interests of workers that unions seek to represent (Hyman, 1999).

Of various forms of contingent labour, this study pays attention to subcontracted workers. Subcontracting generally refers to the business practice where a client firm contracts out part of its services to a subcontractor (Cho, 2012b: 4). Subcontracted workers are those employed by subcontractors who allocate these workers to undertake part or all of a service offered by client firms that they have contracted with (Lee and Frenkel, 2004: 509; Watanabe, 1971: 54). With the growth of this group of workers (Eun *et al.*, 2012a; Wills, 2009), a study of subcontracted workers

in relation to union representation is important because it can show how unions deal with more complex employment relationships. This chapter explains the main features of this type of employment arrangement in detail, in order to demonstrate the importance and timeliness of this study as an example.

The first feature is the separation of employers. Subcontracted workers experience a dual relationship with two or more employers who either employ or use their services. Subcontractors provide intermediary functions in the labour market by supplying labour to client firms, which has caused the division of employers (Wills, 2009: 443). This feature distinguishes workers employed by subcontractors from those with a single employer. Under traditional employment arrangements, employees sell their labour power to their employer, while the employer takes responsibility for employees by providing decent wage and working conditions and social security, and by protecting employees from unfair dismissals.

This understanding has historically been based on the International Labour Organization (hereafter ILO) declaration (Declaration of Philadelphia) which states that 'labour is not a commodity' (ILO, 1944: Annex I (a)). This means that every practice that treats workers as commodities should be prohibited. It has been argued on this basis that economic contracts through subcontracting or labour procurement should be changed into employment contracts (Eun *et al.*, 2011). One of the fundamental principles on which the ILO is based is an employment relationship based on *two* parties, employer and employees. Following this principle, labour laws and labour practices have been developed across countries with the aim of preventing unfair contracts between the two parties who have unbalanced contractual



powers (Eun *et al.*, 2011). Despite the importance of the ILO principle, most developed countries have seen the spread of more complex employment arrangements as the number of the indirectly employed such as subcontracted workers and temporary help agency workers has increased.

The second feature of subcontracted labour as an example of more complex employment relationships is related to employment security. Subcontracted workers tend to have an open-ended employment contract with their contractual employer and normally work eight hours a day (Park *et al.*, 2009). These features may make these workers look like permanent workers but it is not the case. Subcontracted workers are likely to feel uncertain as to the continuity of their work since the contract depends mainly on a business contract between a subcontractor and a user company (Eun, 2012: 86-87). The temporary nature of the contract encourages the *temporary* status of these workers (Gumbrell-McCormick, 2011: 296).

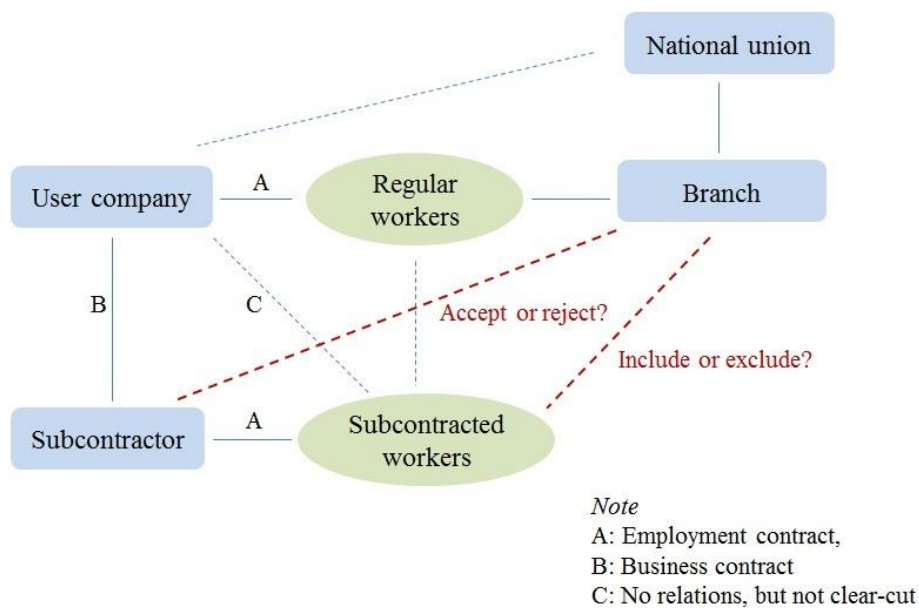
The third way in which subcontracted labour illustrates issues in more complex employment relationships is caused by the first and has significant implications for conditions, experience and politics of work (Wills, 2009: 444). These workers experience relatively inferior wage and conditions of employment as explained below and in Chapter 4 in further detail. Responsibility for these workers seems to be ambiguous. Subcontracting is an effective way for employers to shed responsibility and thereby subcontracted workers have ‘no industrial relations contact with their “real employer”’ (Wills, 2009: 444) (see further in Chapter 5). Furthermore, the emergence of subcontracting has fragmented existing workforce arrangements, resulting in a multi-tier workforce (Perrons, 2004).

This form of employment arrangement is involved in the ‘triangular’ or ‘tripartite’ (Davidov, 2004: 729) or ‘triadic’ (Olsen, 2006: 94) employment relationships, together with temporary help agencies. It clearly draws a distinction with the traditional employment relationship based on an employment contract under which a worker agrees to perform certain work for his or her employer (Lee and Frenkel, 2004; Wills, 2009). These features raise the question of how unions perceive this more complex form of employment arrangement subject to at least three parties involved in the supply and management of labour and that of how they deal with the issue of subcontracted workers. While issues of contingent workers directly employed present unions with the challenge of whether or not unions accept them as part of membership, those of subcontracted workers present unions with *additional* challenges. As seen in Figure 1.1 below, unions need to decide whether to include these workers employed by the third party, subcontractors and whether to accept subcontractors as counterparts in their collective bargaining unit (Heery, 2004). It includes the issue of whether or not unions confer legitimacy upon this type of employment arrangement in the labour market.

In this study union branches based on workplaces are taken as the unit of analysis, such branches are mainly organised by regular workers who have employment contracts with a company (Figure 1.1, upper A), which is a user company for subcontracted workers. Workers employed by a subcontractor (lower A) work at the workplace of the user company with whom a subcontractor has contracted to supply labour (B). Between a user company and subcontracted workers (C) there is no formal relationship theoretically. But the relationship may not be always clear-cut in practice (Kalleberg, 2000: 350; Olsen, 2006: 97) as there is a scope for a user

company to be involved in supervision, as discussed in Chapter 5 in considerable detail. In this context, it is important to investigate the ways in which the interests of emerging subcontracted workers have got represented in existing industrial relations institutions. This is the starting point of this study.

**Figure 1.1 Challenges to labour**



Prior to substantive discussion in the following chapters, there is a need to mention the difference between subcontracting and temporary help agencies. Despite the common feature of the triangular employment relationships in that both subcontracted and temporary agency workers are employed by means of employment intermediaries (Olsen, 2006: 97), these two types of employment arrangements differ. First, temporary help agency workers are supervised by managers of a user company at the workplace so the relationship between the two is clearer than that of subcontracted workers (Kalleberg, 2000; Kang, 2011; Olsen,

2006). Second, agency workers are more likely to work side-by-side with workers on permanent contracts for a relatively short duration, as contrasted to subcontracted workers who mainly carry out distinct functions with, to some extent, stable relationship with subcontractors (Davidov, 2004: 728; Gumbrell-McCormick, 2011: 299). This difference of labour process at workplace, or in other words the structure of work organisation, influences the ways in which workers' consciousness is formed (Burawoy, 1985), which is discussed in Chapter 5.

To summarise, the subcontracted work arrangement presents union branches with a new challenge: how to deal with a third party (subcontractors) and its employees (subcontracted workers). In this circumstance, union branches have to decide whether to accept subcontracted workers into their membership and subcontractors as counterparts in their bargaining unit (Heery, 2004: 435).

As such, the emergence of subcontracted labour gives an additional challenge to unions that traditionally have focused mainly on permanent workers who have a single employer and on collective bargaining with the employer to improve conditions for existing union members. The increase in the number of subcontracted workers adds urgency. Traditional models of union organisations and representational activities may not be adequate for dealing with this emerging workforce and for reconciling the seemingly different interests of workers on different employment contracts. Hence, studying how unions cope with more complex employment relationships may provide new perspectives of union representation.

## 1.2. Research themes of the study

This study contributes to the field of comparative industrial relations research in three ways. Firstly, the study extends the scope of research on union responses to contingent workers by investigating the ways in which unions have responded to subcontracted workers. This shows how unions have dealt with the triangular employment arrangement with three parties involved compared to the traditional one with only two parties. Research on union responses to contingent workers has tended to deal with this group as a whole (Cerviño, 2000; Heery, 2009; Heery and Abbott, 2000; Heery *et al.*, 2004a). Considering that contingent workers are not a homogeneous group (MacKenzie, 2000), dealing with contingent work as a whole may hinder us from understanding distinctive features of each contingent employment arrangement. Although there were some studies with a focus on a particular type of contingent work, for instance temporary agency work (Heery, 2004) and self-employed freelancers (Heery *et al.*, 2004b), little emphasis has been placed on analysing union responses to subcontracted workers.

Studies on subcontracting have focused on relatively inferior pay and terms and conditions of employment, for subcontracted workers (Allen and Henry, 1996; Cooke *et al.*, 2004), management preference for subcontracting (Eun, 2008), the economic and societal effect of using subcontracting (Davies, 2008; Eun, 2011a), or social relationships between workers on different employment contracts (Lee and Frenkel, 2004). The issue of how unions have represented these workers appears to be a gap in knowledge which this study has addressed. Examining union responses to subcontracted labour is of importance in that the traditional employment

relationship subject to two parties involved can be threatened by this form of triangular employment relationships with three parties (Broughton *et al.*, 2010): subcontractors, workers employed by them, and the client company where the work is performed.

Secondly, this study goes beyond mapping and evaluating union responses. To address the challenge of the increase in subcontracted labour, unions need to decide how and why they respond, adapt and develop new strategies. The ways in which unions behave is conditioned by ‘their own structures and ideologies, the national industrial relations system in which they operate, the economic situation and other factors’ (Gumbrell-McCormick, 2011: 297). Hence studies with a focus on classification of union behaviour have difficulty in developing an understanding of why unions respond in a particular way rather than another and what might explain the behaviour of unions in their responses to contingent workers. With a comparative research design between the English and Korean health care sectors, this study presents underlying dynamics of union responses to subcontracted workers. As Frege and Kelly (2003: 10) point out, comparative studies in industrial relations are being asked to look beyond explaining actors’ behaviour with a focus on quantitative indices or the classification of types, structure or identities of unions. This study enables us to understand which factors have reliable explanatory power to explain complex dynamics of union behaviour. The issue of which factors contribute to patterns of union responses leads to the next point.

Thirdly, this study challenges the existing ways of conducting comparative industrial relations study predicated upon the staple proposition that ‘institutions matter’. By

investigating union responses to subcontracted workers between countries with different institutional settings, England and Korea, this study provides support for a claim that institutional factors alone are not sufficient to examine the complex dynamics of union behaviour and then suggests the need to integrate institutional and non-institutional factors into a single analytical framework.

### **1.3. Scope of the study**

There are four notes to be made regarding the scope of the analysis presented here. Firstly, this study identified two contexts to reflect the research concern with different national and industrial settings but with unions facing a similar challenge, the increase in subcontracting. The health care sectors in England and Korea were selected for the study. The key features of health care systems such as the source of financing, the main body for health care delivery, and industrial relations institutions such as collective bargaining systems varied markedly in the two national settings, as explained in Chapter 4. Despite different institutional arrangements, both these settings have seen a rise in numbers of subcontracted workers.

It is also noteworthy that subcontracting is far more widespread than other forms of contingent working both in the UK (Wills, 2009: 443) and Korea (Eun, 2008: 126-127). Taking the UK case first, as many as 93 percent of two thousand UK-based workplaces had outsourced at least one service by 2002 (White *et al.*, 2004) and the 2004 British Workplace Employee Relations Survey (hereafter WERS) found that as many as 59 percent of workplaces subcontracted building service maintenance, which was followed by 52 percent cleaning, 34 percent training, 29 percent

transportation of goods and documents, 29 percent security, and by a quarter computing services (Kersley *et al.*, 2006). The latest available data, the 2011 WERS reported that employers had not changed their use of subcontractors from 2004 to 2011, despite the economic climate having changed (Wanrooy *et al.*, 2013). This trend was no exception in the health sector. As outlined in more detail in Chapter 4, since the Conservative government pushed contracting-out in earnest in 1983, there has been a steady decline in the number of staff in the infrastructure support category including cleaning, laundry, catering, and maintenance (Kersley *et al.*, 2006; NHS, 2006; Reville, 2005).

The Korean labour market has also witnessed a considerable number of subcontracted workers. The latest survey of companies with 300 or more employees, conducted by Ministry of Employment and Labor (MoEL, 2010) showed that 41.2 percent of surveyed companies (799 out of 1,939) subcontracted at least one service as of 2010. Among the total number of workers in the companies using subcontracting, subcontracted workers counted for 24.6 percent, which means that one in four workers in these companies were employed by subcontractors not their user companies. Subcontracting has been considered to be a practice often used in the manufacturing sector but it has become widespread in the hospital sector, as explained in more detail in Chapter 4.

Second, related to the first, given that this analysis is based on a comparative study of unions, it needs to start with establishing conceptual equivalence (Wailes *et al.*, 2011). Two main concepts to be clarified before moving on are the meaning of subcontracting and subcontracted workers, and union branch. The term



subcontracting in this analysis refers to the employment arrangement which a client firm performs its business, using workers employed by the third party that has contracted to supply labour with the former (Kang, 2007: 4). The workers involved in this form of business activities are called as subcontracted workers. Although the Transfer of Undertakings (Protection of Employment) Regulations (the TUPE regulations) defines a subcontractor (a subsequent contractor) as a person who carries out business activities previously carried out by a contractor on the client's behalf, this analysis uses the terms subcontracting, subcontractors and subcontracted workers because this type of employment arrangements tends to present a multi-layered structure. In Korean literature (among others, see Eun *et al.*, 2012a; Lee and Eun, 2011; Park *et al.*, 2010) the terms inside subcontracting and in-house (sub-) contracting were found, which reflects the fact that subcontracted workers are likely to work in the client's workplace with full time permanent workers employed by the client.

There is a need to consider whether the term union branch in both countries is equivalent. The union branch is considered as the bedrock of both unions, UNISON and KHMU which are mainly composed of members who have the same employer. Every member of UNISON belongs to a branch which is made up of people working for the same employer or sometimes working for the company which is used by the main employer (UNISON, 2011). In a similar manner, every branch of KHMU is based on a particular workplace (KHMU, 2011). Hence the term union branch is considered as the equivalent organisation in both unions (see Chapter 7 for further discussion of this point).

Thirdly, with regard to the UK, the analysis focuses primarily on union responses in England, rather than in the UK as a whole. The reason for this is that NHS services in England, Scotland, Wales, and Northern Ireland were managed separately, although funded centrally from national taxation (NHS, 2012a). There were important differences in the legislative and political context of procurement between the countries (UNISON, 2009: 1). The Scottish government, for instance, has announced an intention to exempt all cleaning, catering, and other soft facilities management service from being contracted-out in future, followed by the similar announcement in Wales and in particular, the majority of services in Northern Ireland have been retained in the NHS (UNISON, 2010a: 7). Although it is said that NHS systems in four countries remain similar in most respects and belong to a single, unified system despite some differences (NHS, 2012a), this analysis is confined to the English case for reasons discussed above. Throughout the thesis, the term ‘England’ or ‘English’ is used to indicate this, unless otherwise noted.

Lastly, with regard to the period of time covered in the analysis, this study explores the status quo and also traces back when particular changes took place such as the introduction of subcontracting, industrial action in pursuit of retaining services in-house or securing workers’ employment and their terms and conditions, legal struggles against misusing subcontracted workers, and other internal changes within the unions and their branches. This analysis pays attention to these events because they are considered to have far-reaching effects on forming union behaviour.

## 1.4. The structure of the thesis

This thesis is structured as follows. **Chapter 2** presents an overview of key debates and arguments relating to unions' responses to contingent workers. As previously mentioned in this introduction, existing literature has tended to deal with these workers in general despite increasing heterogeneity amongst them and to catalogue different types of responses rather than seeking underlying relationships contributing to a particular response. After reviewing the relevant literature three theoretical approaches are described to comparative industrial relations: market forces, institutions and actors' strategic choices and critically reviewed. Each of these offers ways to encompass the complexities and deeper dynamics of union responses.

This chapter argues that an integrated approach considering institutional and non-institutional factors in a single analytical framework is important for a comprehensive understanding of union behaviour in a comparative analysis. The analytical framework used in the study is then introduced and a brief overview of how union responses to subcontracted workers are analysed throughout the study is provided.

**Chapter 3** discusses the methodology employed in this study, explaining the process by which the fieldwork data was collected and analysed. Looking at epistemological issues and research methods, this chapter presents the ways in which the empirical study was designed and carried out as well as the process by which research questions were approached. It also addresses the reason this study adopts a

comparative analysis with a focus on union branches' behaviour as the unit of analysis and provides a rationale for the selection of research sites.

Before moving on to a discussion of the main issues in the following chapters, **Chapter 4** provides the background to the context of this study. It explores the distinct features of the health sectors in England and Korea with a focus on the relationship between financing and delivery systems, which allows for analysis of the impact of differences in institutional arrangements on union behaviour. The health sectors in both countries have faced similar challenges towards cost savings and flexibility that have allowed subcontracted workers to flourish in the context of changes in the labour market. This chapter then provides a brief explanation of the main actors in industrial relations in each country.

Based on the analytical framework and the epistemological and methodological position established in Chapters 2 and 3, the subsequent chapters discuss the findings of this research through the empirical study of union responses in both countries. The main questions of how unions have responded and which factors help explain similarities and differences in patterns of union responses are presented in each chapter structured in a thematic way: the source of restructuring, legal regulation, collective bargaining systems, and union governance. This structuring helps us understand that institutions matter in shaping union behaviour but institutions alone are not sufficient enough to explain it so that there is an urgent need to establish an approach that integrates both institutional and non-institutional factors in a single framework.

The extent to which both the source of restructuring and legal regulations have affected union responses is discussed in **Chapter 5**. These two factors are explored in a single chapter because they are all directly involved in the emergence of subcontracted workers and the initial conditions offered to them. This enables investigation into how the rise of these workers and their pay and terms and conditions affected the ways in which leaders and existing members of union branches have perceived their interests at the outset of the formation of a new employment relationship. Analysing the empirical data of union responses, this chapter argues as follows: first, centralised initiatives to restructure the utilisation of workforce are likely to provoke more centralised and more practical responses; second, legal regulations in favour of narrowing the wage gap and conditions of employment between workers on different employment contracts, and empowering collective rights for subcontracted workers tend to function as opportunities for unions to get more involved in organising and representing these workers. Here ‘practical’ refers to the branches’ attitude focusing more on potential benefits to subcontracted workers than an ideological battle represented often by political rhetoric. Furthermore, this chapter addresses the role of leaders and the possibility of working with allies in a community in making different responses within a given institutional setting by addressing two outliers in Korea.

**Chapter 6** focuses on the analysis of the level of, and the extent of, collective bargaining. This helps explain how differences in bargaining in the health sectors of the two countries have contributed to patterns in union responses. It also discusses the bargaining agenda, coverage and employer responsibilities in the analysis in order to investigate how relevant the bargaining agenda is to subcontracted workers

and who is responsible for implementing bargaining outcomes. This chapter found that more centralised bargaining structure in England has contributed to inclusive strategies used by union branches by accepting subcontracted workers into their constituencies, and hence improving their conditions of employment through negotiation with subcontractors and at sectoral level. The ‘disorganized centralization’ in the Korean health sector (Lee, 2011c: 768) made it difficult for union branches to implement more inclusive strategies towards subcontracted workers. Nevertheless, by presenting experiences of two outlier branches in Korea, this chapter argues that there is scope for unions to make a difference by representing subcontracted workers despite unfavourable institutional settings. Based on the analysis of empirical data, this chapter argues that the institutionalist approach is not sufficient to explain variations in the responses, despite its importance in explaining differences in patterns of union responses between countries.

The ways in which union structures have contributed to patterns of union responses are examined in **Chapter 7**. The issue of union structure is closely related to the question of how unions represent whose and which interests. This chapter examines two aspects of union structure: external structure in relation to the scope of boundary of membership; and internal structure related to its governance, *i.e.* representation and administration. It argues that differences in union responses, in part resulted from the degree of centralisation in the union’s external structure. In other words, more centralised union structures in England help union branches implement more inclusive policies and actions towards subcontracted workers in support of strong control by the national union. The structure of a union in turn has an influence on the process of the reconfiguration of union internal structure, *i.e.* union governance.

Union branches with members who are subcontracted workers are highly likely to get them involved in union decision making process and other activities, compared to those without such members. Hence, differences in union structure help explain variations in union responses to subcontracted workers between countries. However, as seen in the two outlying branches in Korea, despite differences in institutional settings, there were similarities and differences in union responses both between and within countries.

Drawing on the findings presented in the three previous chapters, **Chapter 8** returns to the literature reviewed in Chapter 2 to discuss how the results of this study add to existing debates, arguments and theories. This chapter shows three important contributions. First, this study expanded our understanding of union responses to triangular employment relationships with the three parties involved. While existing literature placed its emphasis on unions' links to contingent workers in general, this study presented the ways in which unions responded, faced with a new challenge of subcontracted workers. Second, this study addressed the explanatory power of factors addressed in industrial relations literature to explain the complex dynamics of union behaviour beyond mapping and evaluating union responses which have been addressed in existing literature. It shows the importance of four institutional factors in shaping union behaviour: the source of restructuring, legal regulation, collective bargaining systems, and union structure and also presents significant aspects of non-institutional factors such as the role of leaders, attitude and willingness to act of subcontracted workers, and effective working with allies in the community. Third, drawing on the findings, this study argues that a focus on institutions alone is not

sufficient in explaining variations and commonalities of union responses and suggests the importance of an integrated approach in a single analytical framework.

Finally, **Chapter 9** returns to the initial aim of this study and draws together the issues and findings, which were developed in previous chapters. It also suggests the broader implication of the study for further research.

Throughout this thesis, it challenges the existing ways of conducting comparative industrial relations studies predicated upon the staple proposition that ‘institutions matter’. By investigating union responses to subcontracted workers between the English and Korean health sectors, this study provides support for a claim that institutional factors alone are not sufficient to examine the complex dynamics of union behaviour and then suggests the need to integrate institutional and non-institutional factors into a single analytical framework.



## **Chapter 2 Locating the research**

This chapter is to review key debates and arguments in relation to union response to subcontracted workers and then to present an analytical framework for this study. As addressed in Chapter 1, contingent workers are not a uniform group and in particular, the emergence of subcontracted workers has provided unions with a new challenge of triangular employment relationships at a time of declining union density and influence. Little emphasis has been placed on specifying heterogeneity amongst contingent workers in relation to union responses and identifying underlying causal relationships accounting for a particular union response.

This chapter introduces an analytical framework that draws on previous studies regarding union strategic choice and comparative industrial relations studies (Blyton and Turnbull, 2004; Frege and Kelly, 2003; Poole, 1986; Undy *et al.*, 1996). It also challenges analyses that rely solely on an institutionalist approach. It argues that this perspective does not allow us to go beneath the surface to examine underlying structures and processes through which union strategies are formulated. It considers the ways in which non-institutional factors need to be integrated with an institutionalist approach and provides a way for this integrated framework to serve as a useful analytical tool to explore possible causes for similarities and differences in patterns of union responses between England and Korea.

This chapter has two main objectives. First, it reviews existing literature about union responses to contingent workers. Studies in this area are about how unions have responded to the challenges facing them, in particular to the rise of various forms of

contingent workers with weaker positions in the labour market than those of full-time and (implicitly) permanent workers. Based on the review of studies of union responses, this study adopts Heery's (2004) typology on union responses to agency work. This typology is of great use for analysing union responses to subcontracted workers on the grounds that it clearly reflects the distinctive feature of triangular employment relationships as also seen in agency work arrangements.

Second, this chapter explores literature which has sought to explain differences and similarities in patterns of union responses. By doing so, this study moves beyond classifying union responses. This chapter analyses how far the explanatory factors underlined in the literature help in explaining union behaviour and accounting for differences and similarities. Having reviewed strengths and weaknesses of a range of approaches to explain variations in industrial relations systems and actors' behaviour, this study considers the potential for an integrated approach as a way to overcome the limitations of each approach with a dual focus, on institutions and actors in turn. On this basis, it presents a framework for analysing union responses to subcontracted workers, situating such responses within their wider contexts and raises research questions on which little emphasis so far has been placed.

## **2.1 Trade unions and contingent workers**

This section begins with a discussion of what the literature shows about the link between unions and contingent labour, in three stages. It reviews studies on union strategies towards contingent workers and specifically on subcontracting, followed

by those on unions' relations in triangular employment relationships. The way in which the term 'interests representation' is used is also addressed.

### **2.1.1 Union strategies towards contingent workers**

In a series of recent articles, authors (Cerviño, 2000; Gumbrell-McCormick, 2011; Heery, 2004; Heery, 2009; Heery and Abbott, 2000; Heery *et al.*, 2004a; Heery *et al.*, 2004b) have elaborated union strategies towards contingent work. A notable example is the work of Heery and Abbott (2000) that suggests a five-fold typology of union responses to the dual challenges of insecurity to regular and contingent workers. It ranges from *exclusion* from both union constituency and labour market to *organising and servicing* contingent workers whether through *partnership* with employers or *dialogue* with government. Heery and colleagues (Heery *et al.*, 2004a) identify four union responses to non-standard work, depending on the degree of acceptance of these workers' specific needs: from *exclusion* through *subordination*, to *inclusion* and *engagement*. As seen in their works mentioned, existing literature identifies a historical sequence of union responses characterised as 'resist, control and include' by Heery *et al.* (2004a) or 'exclusion, partial inclusion and total inclusion' by Cerviño (2000). Similarly, Gumbrell-McCormick (2011: 297) notes that unions' reactions have changed from opposing contingent work by avoiding or excluding contingent workers to accepting their precariousness and thereby recognising the need to represent their interests.

On one hand these studies help explain variations and changes in union responses, but on the other hand they raise a question of in what circumstances unions can

adopt a particular response among others. In order to answer the question, there is a need to move beyond classification of union strategies towards contingent workers, as in the above-mentioned studies. Despite the importance of classification and mapping of different union responses, existing literature does not seek to explain why and under what circumstances a union chooses a particular strategy toward contingent workers and what the factors contributing to patterns of union responses are. One of the main contributions of the study presented in this thesis is to identify those explanations in two comparative settings.

There are studies showing the importance of the role of trade unions with members on mainly permanent contracts in organising and representing contingent workers (Cho, 2008a; Cho, 2008b; Jung, 2003; Kang, 2004). Those written mainly by Korean scholars are focused on particular events – usually industrial actions – rather than unions’ daily activities. This reflects distinct features of the Korean labour movement. In Korea contingent workers have tended to take industrial action *soon after* organising themselves with or without support from existing unions. This is because the workers may have been given unexpected notice of severance – in many if not most cases, unlawful or legally controversial – or under prolonged severe working conditions. These studies share a common argument that whether trade unions band together with these contingent workers is the key to success in enforcing their rights. Despite the importance of solidarity between workers, as Cho (2012a) argues, relatively few studies explain why and under what circumstances unions whose members are mainly regular workers choose a particular strategy and analyse the underlying causal mechanism of that strategy. In studies on the dynamics of trade unions’ activities associated with industrial action initiated by contingent workers,

Cho (2010; 2012) argues that the attitude and consciousness of regular workers are central to solidarity between workers on different employment contracts. He points out that the material interests of regular workers have led unions to face a dilemma in forging relationships of solidarity. This is because regular workers do not support union activities to improve conditions of employment for contingent workers at the expense of their invested rights to relatively superior pay, terms, and conditions, and employment security (Cho, 2012a: 65). Although these give insight into underlying causes of union strategies, they are limited by a focus on union internal politics rather than other external institutional factors.

Another feature of existing literature is that studies have tended to deal with contingent work *in general*. As MacKenzie (2008: 6) notes, contingent workers are not a uniform group. Contingent employment comprises various contract types such as temporary agency workers, fixed-term contractors, part-timers, subcontracted workers and the self-employed and there are different levels of labour market power within these groupings (Kunda *et al.*, 2002). Accordingly, the challenges facing unions in representing contingent workers might differ depending on the type of contingent work arrangement (Gallagher and Sverke, 2005: 196; Malo, 2006). The variation in contract types also affects union responses because workers' attitudes to unions and the working environment might have various impacts on unions depending on the nature of the contingent work. There are a few studies (Heery, 2004; Heery *et al.*, 2004b) that have explicitly addressed the issue of how unions responded to a particular type of contingent workers, agency workers and freelancers. However, the link between unions and subcontracted employment has not yet been well studied.

### **2.1.2 Studies on subcontracting**

This section addresses existing literature on subcontracting. Studies in this area can be roughly divided into three categories. First is an analysis of the use of subcontracting itself. Studies in this current have mainly focused on management perspectives as follows: the effectiveness of the use of subcontracting in terms of cost and service quality (Davies, 2008); economic and social effects of using subcontracting (Eun, 2011a; Lee, 2011b); and management motivation for using outside contractors (Abraham and Taylor, 1996; Eun, 2008; Harrison and Kelly, 1993; Purcell and Purcell, 1998). There are studies on the distinct features of subcontracting in terms of definition and employment contracts (Eun *et al.*, 2011; Kang, 2007; Sohn, 2004) and legal aspects with a focus on the ambiguity about who is the legitimate employer (Davidov, 2004; Kang, 2007; Park *et al.*, 2009). Furthermore, researchers have studied the state of subcontracted workers represented by low pay, precarious employment and inferior working conditions (Allen and Henry, 1996; Cooke *et al.*, 2004). These studies enable understanding of unique characteristics of the new form of employment arrangement of subcontracting, which underpins the importance of deepening the understanding of their relation to unions.

Second is the issue of industrial relations with regard to subcontracted workers. There are studies on union involvement (or intervention) in the process and outcomes of contracting-out with a focus on the function of collective negotiations (Doellgast, 2008) or the relationship between union density and contracting-out (Hayakawa and Simard, 2001). There are some studies with a particular focus on labour movement initiated mainly by subcontracted workers themselves (Cho,

2012a; Cho, 2008b; Eun *et al.*, 2007; Shin, 2005). This also reflects a distinct feature in Korea where mobilisation amongst subcontracted workers has often taken place. Although the level of unionisation among subcontracted workers remains low, this form of labour movement has been paid much attention on the grounds that once these workers begin to voice their complaints or to demand their rights, their collective action often appears to be extreme forms such as sit-in protests and hunger strikes. These workers have tended to be forced to adopt these extreme forms of protest because it is so hard to negotiate with the real employer and to get legal protection due to their employment contract. Hence these studies mainly explore the subcontracted workers' labour movement with a focus on mobilisation, external resources such as unions with permanent workers, or repression from the real employer.

The third category of study found is an analysis of the social relations between subcontracted and regular employees who are working at the same place, through the lens of moral exclusion (Lee and Frenkel, 2004). In this research, the term moral exclusion is used to characterise subcontracted-regular worker relations consisting of discrimination and domination. In a similar vein, some authors argue that the emerging segmentation of the labour force has hindered the formation of working class consciousness and integration among workers with different employment status (Cho, 2012a; Kalleberg, 2000; Malo, 2006; Pernicka, 2005).

To summarise, it was found that existing literature on subcontracting had mainly dealt with this issue in terms of the features of employment arrangement, labour movement centred on subcontracted workers, or the social relationship between

workers with different employment contracts. Union strategies towards subcontracted workers had not previously been studied.

### 2.1.3 Unions and triangular employment relationships

Faced with triangular employment relationships, unions need to consider not only the different status and terms and conditions of subcontracted workers but also of the third party (subcontractors) in deciding their responses. Heery’s typology (2004) clearly shows possible options unions can consider. He identifies four types of union responses to agency work, each of which is characterised by a combined policy concerning agency workers, whether or not unions seek to represent agency workers and whether or not unions accept the legitimacy of agency suppliers, as seen in Table 2.1 below.

**Table 2.1 Union responses to agency work**

		Agency suppliers	
		Rejection	Acceptance
Agency workers	Exclusion	Exclusion	Regulation
	Inclusion	Replacement	Engagement

Source: Heery (2004)

This study has used Heery’s typology to classify union responses to subcontracted labour, although it was originally designed for union responses to agency work. There are differences between subcontracted labour and agency work in terms of period of service, supervision, and structure of work organisation, as discussed further in Chapters 1 and 5. Nevertheless, when compared to the traditional employment arrangement with two parties involved, temporary agency and



subcontracting share the most important feature, the triangular employment relationships. In this regard, it is appropriate to apply the Heery's typology (2004) to the study of subcontracted workers. This typology addresses the distinctiveness of the triangular employment relationships.

Following Heery's typology of four possible responses to agency labour, *exclusion* means that unions reject the legitimacy of both agency suppliers and agency workers, while *engagement* means acceptance of both. In the case of *replacement*, unions combine a rejection of agency suppliers with inclusion of agency workers in order to raise both labour standards and labour quality by replacing private agencies with the public employment service. *Regulation*, in contrast, means that unions strive to regulate agency workers' terms and conditions through engagement with agency suppliers instead of representing agency workers directly. This is the typology that is used in this study to catalogue patterns of union responses to subcontracted workers.

#### **2.1.4 Interest representation**

Prior to reviewing factors explaining union strategies, the way in which the term 'interest representation' is used is briefly outlined here. As previously mentioned in Chapter 1, trade unions are organisations whose main role is to represent interests (Hyman, 1994: 120). This definition of unions gives rise to a question of *whose interests* they seek to represent. Regarding this, Hyman noted that:

Unions (and union movements) act on behalf of specific constituencies, with criteria of inclusion which of necessity are at the same time principles of

exclusion; and they focus on distinctive aspects of their constituents' individual and collective experiences. (Hyman, 1994: 120)

Here, the meaning of constituencies has a double sense: one is the actual union structure with an issue of which group of workers unions recruit; and the other is the extent of union representation, whether unions are concerned exclusively with their actual members or whether they encompass more diverse interests not only of non-members within their specific membership demarcation, but also for example of retired workers and the unemployed beyond their constituencies. This discussion is directly associated with the question of agenda unions seek to pursue. Given that interests may vary among the workforce, one union might seek to represent traditional core agenda of bread-and-butter, workplace rights, and career opportunities, whilst another might endeavour to expand representation to address the role of the state such as social wage, labour market policy, and broader issues in the community and environment.

Having examined the scope of union representation, there is a need to explore how interests are formed. The ways in which unions adopt strategies when faced with the emergence of subcontracted workers reflect the expectations of existing and potential members about how to get their interests represented within unions. Different groups of workers' interests may be diverse or even conflict because interests 'may be inherent in the work exchange' (Simms, 2007: 444). Following this stance, existing union members may oppose a union's inclusive strategy towards subcontracted workers. Members may consider that their vested interests are likely to be damaged by conflicting interests with the subcontracted workers and considering the limited organisational capacities available, existing members' interests may be sidelined

when representing subcontracted workers. Although there is no doubt that all the workers are in a weaker position against employers, existing members may want to maintain a relative superior position compared to subcontracted workers.

However, it would be impossible to say that interests are fixed (Simms, 2007: 444) because they are socially constructed (Hyman, 1997a; 1999). Offe and Wiesenhal (1985: 184) argue that ‘interests can only be met to the extent they are partly redefined’. By the same token, Hyman highlighted that:

It is a sociological truism that the elusive notion of interests has both objective and subjective dimensions, and that the relationship between the two is never fixed. Through their own internal processes of communication, discussion and debate – the ‘mobilization of bias’ – unions can help shape workers’ own definitions of their individual and collective interests. (Hyman 1994: 122)

Following this position, there is potential to reconcile likely conflicting interests of workers with different employment contracts. Hence the ways in which unions redefine interests contribute to complex patterns of union representation: whether emphasising and strengthening sectionalism or enhancing solidarity. In this process, the role of leaders – although members elect these leaders under democratic structures – is important.

## 2.2 Explaining union strategies

The literature seems to have focused more on classifying, mapping and assessing union responses and has tended to pay less attention to the factors which have contributed to such responses. Revealing external and internal factors affecting unions is important as it allows us to understand why unions faced with a similar challenge (the rise of subcontracted workers) have responded in similar or different ways between countries with different institutional settings. Such investigations make it possible to answer questions of whether different institutional or sectoral arrangements in which unions operate lead to differences in patterns of union responses; whether the challenge facing unions leads to similar responses despite institutional differences; if neither, which factors or which combination of factors make union responses different or similar. Before uncovering which factors contributed to patterns of union responses, there is a need to outline potential factors identified as underlying causes of union policies and actions. This section begins by reviewing literature concerning which factors have affected union responses and then, a framework for analysis is developed on this basis.

This section describes three approaches to explaining cross-national variations in process and outcomes of industrial relations in the area of comparative industrial relations study: the role of markets, the institutionalist approach and the approach focusing on actors (Bamber *et al.*, 2004; Kelly, 2011; Kelly and Frege, 2004; Lansbury *et al.*, 2003; Lee, 2009; Romo, 2005; Wailes *et al.*, 2003). Possibilities are explored for an integrated approach between the institutionalist and actor-centred approaches by analysing the strengths and weaknesses of all three approaches.

### **2.2.1 Simple globalisation approach**

One approach named ‘simple globalisation’ by Wailes and colleagues (2004: 57; 2011) emphasises the market forces associated with globalisation. The term ‘globalisation’ here refers to ‘changes in the international economy which are associated with increases in international trade in goods and services, greater flows of foreign direct investment (FDI) and the growth of international financial transactions’ (Bamber *et al.*, 2004: 47). The simple globalisation approach sees globalisation as weakening each country’s policy autonomy and paving the way for policy convergence. It is supported by three predominant developments in industrial relations, in particular throughout Western Europe: decentralisation of collective bargaining structures, decline of union membership and density, and declining coverage of collective bargaining (Kelly 2011: 59). This approach predicts a ‘race to the bottom’ in terms of employees’ wages and other labour standards across most economies as firms seek to drive labour costs ever lower and nationally-specific labour market regimes erode (Bamber *et al.*, 2004: 57; Kelly, 2011). The spread of subcontracting is also understood as a management technique affected by globalisation. Wills who names the current situation in labour market ‘subcontracted capitalism’ highlights that:

Increasing numbers of the world’s growing workforce, and particularly those connected to the global economy, face constant pressure on their wages and conditions of work. The nature of short-term contracts and increased competition means that contractors are forced to cut back on employees’ pay and standards of work. (Wills 2009: 444)

As such, the effect of globalisation has been understood as an irreversible trend. According to this approach, there is little room for national differences in industrial relations policies and practices due to the overwhelming power of globalisation (Ohmae, 1990), which is likely to strictly limit the strategic choices of industrial relations actors. As some (Campbell, 1996; Tilly, 1995) argue, globalisation also threatens the power of organised labour to counter the - mostly negative - effects of globalisation. Tilly (1995) points out that established labour rights are undermined by globalisation which means the nation state's capacity to guarantee these rights and unions' ability to develop counter-strategies is not strong enough. This may be because, as Campbell (1996) and Silver (2003) contend, the mobility of productive capital has been increasing much faster than that of the labour force in the context of increased economic interconnectedness, which is likely to weaken organised labour's market power.

#### *Critique of simple globalisation approach*

This emphasis is, in terms of comparative method, consistent with the universalist approach with its focus on revealing similarities and likelihood of convergence. It has been criticised for playing down specific contexts and drawing groundless inferences about causality (Hantrais, 1999: 94-96). There is a raft of evidence that displays the uneven impact of global market forces in terms of the level of average earnings growth and of income inequalities between countries (Ghose, 2003; Glyn, 2006; Dickens 2007). Applying the simple globalisation approach to a comparative study of union strategies, it may be assumed that union responses across the countries would be similar. This is because, faced with a challenge, unions may

respond in a similar – mostly passive – way, because of a form of organisational isomorphism in the context of increasing international economic activity. But several studies (Hall and Soskice, 2001b; Locke and Thelen, 1995) show that unions have responded in different ways reflecting the institutional context in which they operate and the resources available. This simple globalisation approach can easily neglect the importance of institutions and actors. It has been widely criticised because of a sense that there is no room for national governments and other actors in the labour market to manoeuvre. Garrett (1998), in line with arguments of Evans (1997) and Weiss (1998), contends that globalisation may encourage the nation state to play a certain role in order to maintain international competitiveness, for example in the labour market. This becomes increasingly evident in the diversity of industrial relations institutions: legal regulations, collective bargaining systems, and union structures. This study presents detailed studies pointing towards differences that persist, in some extent along with similarities.

### **2.2.2 Institutional approach**

An emphasis on the role of markets may explain convergence of patterns in industrial relations and effects on actors including unions, and in contrast the institutionalist approach is more effective for explaining divergence. This approach pays attention to the independent role of institutions, starting with the premise that differences in industrial relations institutions are likely to be enduring (Bamber *et al.*, 2004: 59) and suggests in contradiction to the simple globalisation approach that globalisation is unlikely to lead to a general convergence in national patterns of

industrial relations (Locke *et al.*, 1995). This section explores the explanatory power of the institutionalist approach, and describes the cognate critique.

Studies of changes in industrial relations have focused on the feature of national-level institutional arrangements in shaping a particular pattern. These explanations derive from the new institutionalist ‘Varieties of Capitalism’ (hereafter VoC) approach (Hall and Soskice, 2001b). Scholars in this group (*e.g.* Dore, 1986; Hall and Soskice, 2001a; Hollingsworth and Boyer, 1997; Weiss, 2003) argue that national institutions can make a difference, while putting less emphasis on the fact that markets and technologies influence the structures and performance of economic actors (Kelly and Frege, 2004: 182). The VoC approach is considered as the dominant approach in the field of comparative political economy (Kelly, 2011: 64), but is also criticised for being focused too heavily on institutions. It remains an open question whether actors’ strategies are only influenced by institutions. Further this approach has difficulty in accounting for the role that underlying interests play in shaping institutional structures and outcomes (Barry and Wilkinson, 2011: 7) and is, in particular, criticised for its lack of emphasis on trade unions as independent actors (Kelly and Frege, 2004: 183). This point is discussed in more detail later in this chapter. As Hall and Soskice (2001b: 6) explicitly note, ‘this is a firm-centered political economy that regards companies as the crucial actors in a capitalist economy’. But this study sees it as legitimate to focus on unions as key actors in industrial relations. In what follows this section outlines how institutionalism applies to the studies in industrial relations.



### *Institutionalism in IR study*

In the area of comparative industrial relation, the institutionalist approach is well developed. As Kelly (2011: 66) notes, it is a broadly accepted truism that ‘institutions matter’ despite the pressures associated with global market forces. This mainly focuses on the influence of distinct institutions defined ‘as the rules, norms and assumptions that shape economic activity, [and] structure the choices of organisational actors’ (Edwards *et al.*, 2007: 203). Many have identified variations in the structures, processes and outcomes of industrial relations at national level (*e.g.*, Crouch 1993; Hyman and Ferner 1994; Rubery and Grimshaw 2003), which is in line with the institutionalist approach (Kelly, 2011: 66).

This approach is rooted in the claim that faced with common economic challenges, different national institutions are likely to produce different patterns of industrial relations. Locke and Thelen note that:

[W]e demonstrate how various international trends are *not* in fact translated into common pressures in all national economies but rather are mediated by national institutional arrangements and refracted into *divergent* struggles over particular national practices (1995: 338, italics in original).

In a comparative study between Germany and the USA, Turner (1991) argues for the institutionalist approach by showing that the capacity and the extent of unions’ involvement in industrial restructuring were mainly determined by institutional arrangements. In a similar vein, Thelen (1993) addresses the question of how far the pressures for decentralised bargaining were accommodated within the existing

institutional settings, which also shows how institutions matter. Thelen shows that differences in the level of collective bargaining and rights for workers between Germany and Sweden largely contributed to different patterns of accommodation between the new challenge and the existing institutional settings. Locke and Kochan (1996: 365) point out that national-level institutional differences hinder industrial relations from converging across developed countries. By the same token, Katz and Darbishire (2000: 12-14) argue that variations in employment practices can be explained by differences in national-level institutions.

According to institutionalist accounts, policy outcomes vary markedly between countries faced with common pressures because they are refracted by differences in institutional arrangements in different ways (Thelen and Steinmo, 1992: 5-6). The institutionalist approach has not only been influential in explaining policy differences of unions but also in investigating changes in industrial relations (Wailes *et al.*, 2003: 619-620).

In the context of the institutionalist approach, the ways in which social actors such as employers and unions behave is strongly influenced by their national institutional arrangements (Allen, 2004; Pontusson, 1995). Clegg's (1976) emphasis on collective bargaining structures in explaining union behaviour is a good example of this approach. He argues that 'power within unions is centred on where collective bargaining is conducted and differences in collective bargaining can explain variations in union behaviour' (1976: 8). His argument is powerful, as institutions in industrial relations system are crucial in shaping the structures and behaviours of the actors (Frege and Kelly, 2003: 11).

The institutionalist approach is argued to address the limitations of the ‘simple globalisation’ approach (Bamber *et al.*, 2004; Bamber *et al.*, 2011) by emphasising the mediating role of institutions. This is because ‘market pressures affect labour relations institutions indirectly, in that they are processed and filtered by institutions’ (Traxler *et al.*, 2001: 289). The focus on the mediating role of institutions helps to explain patterns of persistent national differences and demonstrates that the relationship between globalisation and national employment relations is neither simple nor deterministic. The focus on institutions also points to key factors that play a decisive role in determining distinctive national patterns of industrial relations (Bamber *et al.* 2004: 60). A variety of national differences on industrial relations in the context of globalisation can be explained by an institutionalist approach and shows the importance of understanding each country’s specific context when conducting a comparative study (Bamber *et al.*, 2004; Locke and Thelen, 1995).

### *Critique of institutionalism*

The institutionalist approach is important in comparative industrial relations for emphasising the importance of the mediating role of institutions in explaining cross-national variations as well as pointing out the limitations of the simple globalisation approach. However, this approach has also attracted criticism (among others, see Frege and Kelly, 2003; Lee, 2009; Wailes *et al.*, 2003) for its lack of explanatory power to explain similarities between countries with different institutional configurations and of emphasis on social actors’ roles or their relative autonomy from institutions, and for the potential to lead to determinism.

First, despite its strengths for identifying a source of differences in the ways in which international trends have shaped national patterns of industrial relations, the institutionalist approach has struggled to explain common developments across countries (Pontusson, 1995). Hence Wailes and his colleagues (2003: 620) challenge this approach by questioning the possibility that differences between countries may be exaggerated and similarities downplayed.

Second, it is widely acknowledged that the institutionalist approach has difficulty explaining changes in national-level institutions themselves (Wailes *et al.*, 2003: 620). Scholars in the institutionalist domain tend to use institutions as an independent factor and to explore the ways way in which particular institutions such as collective bargaining systems or legal regulations have influence on industrial relations outcomes (Gorges, 2001; Remmer, 1997). However, critics argue that it would be difficult for the institutionalist approach to explain the degree of change in the institutions themselves regulating labour market and industrial relations as well as outcomes generated by these institutions (Hassel, 2006; Wailes *et al.*, 2011: 24; Wailes *et al.*, 2003: 620). In this regard, institutionalists are criticised for adopting a form of structural determinism (Hay and Wincott, 1998; Sokolovsky, 1998), which is related to the next point.

Third, the argument of Clegg (1976) has been criticised on the grounds that the direction of causality between collective bargaining and union behaviour is not clear and the institutional context alone cannot explain actors' strategies adequately, which creates a danger of being simplistic and deterministic in explaining unions'

behaviour (Bamber *et al.*, 2004; Frege and Kelly, 2003; Hyman, 1994; Shalev, 1980).

Howell (2007: 241) notes that:

The emphasis upon constraint can easily slide into a form of determinism, failing to recognize the dialectical relationship between structure and agency, the role of political actors in transforming institutions, and that institutions provide capacities and resources as well as imposing limits.

In a similar vein, Wailes and colleagues (2011: 24) strongly argue that comparative study of industrial relations 'should be based on a less deterministic view of the role of institutions'. Deeg and Jackson (2007: 159-161) argue that emphasis has been placed on a complex view of institutions as resources which actors use in achieving their goals. Collective bargaining as one of the major institutions in industrial relations may not only exert a constraining effect on union behaviour (Willman, 2004: 73) but also be influenced by union behaviour through the reciprocal interconnections between actors and institutions (Frege and Kelly, 2003: 12). Although the institutionalist approach provides a useful framework to explain the differences between countries faced with similar challenges, focusing on the mediating role of institutions, there are questions about whether this approach can explain similarities between countries (Bamber *et al.*, 2004: 60; Wailes *et al.*, 2003: 621).

Fourth, according to this approach, there remains little scope for social actors such as employers or trade unions to shape outcomes with their own aims since 'once an institutional order is established, social action is path dependent' (Wailes *et al.*, 2011: 24). However, Leisink *et al.* (1996: 2) argue that:

[W]hatever the constraints on trade union action [are], some scope for strategic action is always left. Union action may be largely a response to external pressures, yet this response may be innovative in terms of, for instance, the objectives that are set or the methods which are chosen to pursue them.

In a similar vein, Howell (2005) points out that despite the importance of the role of markets and institutions in generating constraints and opportunities for actors and shaping, to some extent, their actions, there is always room for actors to make their own strategies. The institutionalist approach tends to overlook the role of other (non-institutional) factors including actors in shaping economic and political outcomes due to its particular interests in institutions (Cammack, 1990). Not much attention has been paid to the analysis of non-institutional factors including actors' role, although these are potentially powerful (Kelly 2011: 68), as reviewed in the following section.

### **2.2.3 Non-institutional factors**

Having argued that institutional factors alone are insufficient to explain similarity and variation in union responses to subcontracted workers, it is the case that the institutionalist approach provides a useful framework to explain differences in union behaviour between countries faced with similar challenges. The institutionalist approach focuses on the mediating role of institutions, but it should not be ignored that union behaviour may influence the institutions. An example is the transformation of collective bargaining structure towards centralisation in Korea in particular in the metal, banking, and health sectors where the initiatives of unions made it possible, although the new bargaining structure has been relatively

disorganised at sectoral level (Lee, 2011c: 779-784). Hence, institutional factors *per se* are not sufficient to examine the deeper dynamics of union responses, although they are useful in explaining between country variation (Frege and Kelly, 2003: 12). As such, this study also pays attention to non-institutional factors.

In this group of studies, a notable example is the actors' strategic choices approach (Kochan *et al.*, 1984; 1986) whose key premise is that 'choice and discretion on the part of labor, management, and government affect the course and structure of industrial relations systems' (Kochan *et al.*, 1986: 14). Kochan and colleagues (1986) introduced the concept of 'strategic choice' to the industrial relations literature in the mid-1980s. Although Kochan and colleagues are not uninterested in environmental pressures as one of sources of changes in industrial relations systems, they insist that these pressures are not strict determinants of industrial relations outcomes. These researchers emphasise the importance of particular configurations of power relations among the actors involved. In a similar vein, Romo argues that institutional change is caused by the ways in which actors interact and 'new institutional equilibria reflect changes in their balance of power, strategies and forms of interaction' (2005: 8).

Kochan *et al.* (1986) argue that central to analysing changes in industrial relations systems is an understanding of which choices actors involved make within two major constraints of the structures and history. But their argument focuses more on the management side, as confirmed by the expression 'one of the strongest factors impinging on choice is management values toward unions' (Kochan *et al.*, 1986: 14). Despite the fact that it focuses itself heavily on firms, this section also pays attention

to actors' strategic choices in that differences in actor policies or industrial relations in studies of similar national cases reflect different patterns of actors' strategic choices (Kelly, 2011: 68). In other words, actors' policies and strategies are not just conditioned by external forces but there are some choices for actors themselves (Kelly, 2011: 69).

Regarding the issue of how actors generate their interests, Blazejewski (2009: 244) points to the importance of the integrated approach between actors' interests and situations. That study pays attention to the fact that whilst collective institutions are expected to be relatively stable, actors' interpretation of their institutional opportunities and constraints vary, depending on their positions – such as shop stewards, workers and works council members. Blazejewski then argues that differences in the ways actors make use of institutions can be explained with an analysis of micro-level differences in institutional meanings and practices (*ibid.*).

It may be that institutional factors are insufficient to examine the deeper dynamics of union strategic choices. For this reason, this study also considers union interests as one of the main factors in that underlying interests play an important role in shaping institutional structures and outcomes (Barry and Wilkinson, 2011: 7). Interest-based theorists pay attention to material interests shaping policy preferences, as policy interests might differ between skilled blue-collar and white-collar workers or between workers in trade-affected industries and those in the public sector (Rogowski, 1989; Swenson, 1991). Wailes and colleagues summarise the feature of comparison based on interest-based approach as follows:



Interest-based comparisons, therefore, proceed by disaggregating societal interests and identifying similarities and differences in the coalitions of interest that underpin policy patterns across countries. (Wailes *et al.*, 2003: 622)

This approach, however, has not been well developed in the main body of comparative industrial relations literature compared to the areas of national trade policy, economic policy, public-sector restructuring or changes in welfare provision across countries (Wailes *et al.*, 2003: 622). The reason may be the distinct feature of this approach where institutions and policies in industrial relations are regarded as what have resulted from compromises through political contestation between interest groups in a society (Gourevitch, 1986; Korpi, 1978). But there have been useful attempts to apply the interest-based approach to the study of industrial relations. A notable example is the work of Pontusson and Swenson (1996) on the decentralisation of Swedish collective bargaining during the 1980s. They argue that this phenomenon was in part caused by changes in preferences of the employers and workers between sectors in the context of the international economy, which might have undermined the fundamental principle behind the long lasting centralised bargaining system, the cross-class coalition of interests since the 1950s. Drawing on empirical evidence, they argue that a number of non-institutional factors may play roles in shaping the interests of actors in industrial relations (Pontusson and Swenson 1996: 247).

The interest-based approach is useful to ‘explain the non-institutional sources of policy preferences and the role that international economic changes may play in shaping these preferences – a major weakness in the new institutionalism’ (Wailes *et al.* 2003: 622), but this approach has also weaknesses. This approach has been

criticised by its tendency to pay relatively little attention to the impact that ideology and ideas may have on policy outcomes (Schonhardt-Bailey 1998: 302) and its tendency to ignore the link between preference change and policy outcomes and the role of institutions (Garrett and Lange, 1996: 49).

### **2.3 Potential for an integrated approach**

This chapter so far has considered strengths and weaknesses of a range of approaches to explain variations in industrial relations systems and actors' behaviour. Market forces, institutions and actors' strategic choices all influence changes in industrial relations systems and actors' behaviour. But it is hard to say which factors or which combination of factors might have the most power to explain a particular event. In this regard, Kelly (2011:71) notes that:

Nobody disputes that market forces are powerful, that institutions can both attenuate and amplify such forces and that actors usually have some strategic choices, however limited. Perhaps one of the major challenges facing comparative researchers is to think through how we can specify more precisely the conditions under which each of these sets of 'factors' is more or less effective.

There are researchers who use the integrated approach as a way to overcome the weaknesses and limitations of each approach with a dual focus on both institutions and actors. The deterministic features of the new institutionalism tend to make it difficult for researchers to understand active roles of actors in industrial relations. Unions are not merely passive agents and can make a difference by formulating relevant strategies (Malo, 2006: 508), reflecting institutional opportunities and

constraints prevailing in each country (Kelly and Frege 2004: 183-185). The integrated approach places emphasis on the interconnection between actors and institutions in the context of international economic change (Bamber *et al.*, 2004: 60).

There are a number of versions of this approach. Romo (2005) argues the importance of union strategies and interactions in the policy-making arena based on Scharpf's (1997) 'actor-centred institutional accounts'. Wailes *et al.* (2003) highlight the potential to improve explanatory power by synthesising institutionalist and interest-based approaches. The other strand suggested by Frege and Kelly (2003), drawing on social movement theory argues that four independent factors (social and economic change, institutional context, state and employer strategies, and union structures) play a decisive role in union strategic choices as 'framing processes' as the ways in which unions perceive changes in their external environments as threats or opportunities. Besides, Marino and Roosblad (2008: 627) point out that union responses are influenced not only by external circumstances, but also by factors more related to the unions themselves such as available resources. In a similar vein, Cerviño (2000) argues that factors internal and external to unions should be considered together.

The integrated approach stresses the importance of the interaction between interests and institutions in the context of international economic change (Bamber *et al.*, 2004; Frege and Kelly, 2003; Wailes *et al.*, 2003). Romo (2005) and Wailes *et al.* (2003) are representative of the studies which analyse changes in industrial relations and bargaining systems based on the integrated approach. Romo (2005) argues that changes in wage bargaining structures in Italy and Spain are better explained through

factors endogenous to national systems, in particular union strategies and interactions in the policy-making arena. Wailes *et al.* (2003) highlight the integrated approach of institutionalist and interest-based approaches on the grounds that it could be a way to overcome the limitations of each approach: the structural determinism of institutionalism, and the reductionism and instrumentalism of interest-based approaches. As a consequence, they argue that the integrated approach is useful to explain both differences and similarities between and within countries.

Frege and Kelly (2003) develop an analytical model for explaining union strategic choices based on the social movement literature (McAdam *et al.*, 2001: 17). Although they highlight the explanatory power of institutions in how unions respond to the current challenges, they emphasise the importance of ‘framing’ processes through which unions translate and act on changes and the role of leaders in the process of framing unions’ opportunities and threats and their choices of action (Frege and Kelly 2003: 14). Framing processes means the ways in which unions recognise and interpret social and economic changes and adopt particular strategies (*ibid.*). Given the fact that unions as key actors retain a degree of independence in their choices, even if subject to external influences (Frege and Kelly, 2003), they devise strategies on the basis of available power and resources and existing constraints (Marino, 2012; Regini, 1981; Turner, 2005). The model suggested by Frege and Kelly (2003) intends to explain unions’ strategies through framing processes based on interaction of the factors mentioned above.

Cerviño (2000) argues that union representation of contingent workers depends on how unions perceive the incentives and the costs and whether there exist appropriate

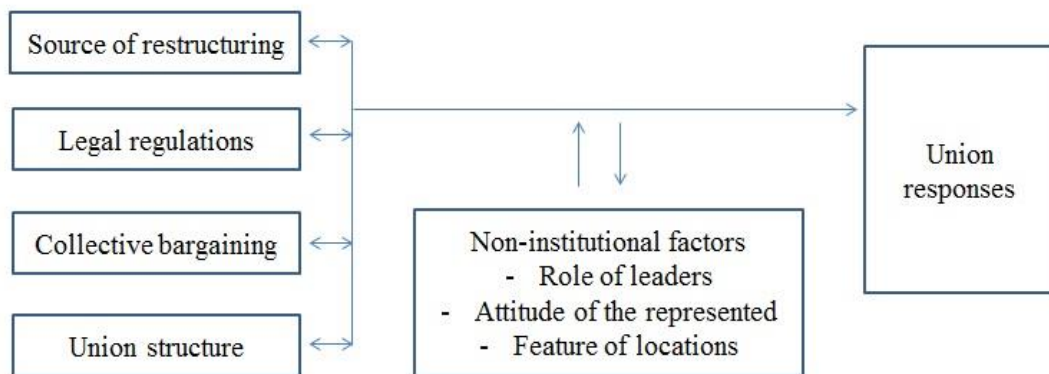
contexts to develop such a strategy. She points out that if the ideological and organisational incentives are greater than the costs, unions are more likely to represent these workers (Cerviño, 2000: 10-11). Although Cerviño highlights that factors internal and external to unions should be considered such as the organisational structure and employer strategies, coupled with incentives, her emphasis is worth noting because it puts weight on actors' interests in interaction with institutions. According to that researcher, union leaders, based largely on the principles of class oriented unionism, may have interests in representing contingent workers beyond protecting existing members. This ideological objective boosts incentives for unions to represent contingent workers, which is directly related to the extent to which contingent workers can exert influence on unions. Given that unions seek to their organisational growth by increasing the number of memberships and gaining more bargaining power, unions are likely to represent contingent workers if this strategy would serve to increase their power, or at least, prevent further decline (Cerviño, 2000: 11).

## **2.4 Analytical framework**

Building on the literature reviewed, this section provides an analytical framework of union responses to subcontracted labour, as seen in Figure 2.1, in order to answer the research questions addressed in the next section. As Kelly (2011) argues, asserting that a range of factors is likely to influence industrial relations and actors' behaviour is not to say very much. It is because 'nobody disputes that market forces are powerful, that institutions cannot attenuate and amplify such forces and that actors usually have some strategic choices, however limited' (Kelly, 2011: 71). The

analytical framework presented here is a set of factors identified in literature and explained in subsequent sections as driving forces that shape variations in union responses to subcontracted labour.

**Figure 2.1 An analytical framework of union responses**



This study, with a comparative research design, considers the positions of institutions surrounding unions when investigating the explanatory power of those institutions. General trends, such as the rise of subcontracting in this study, are not translated into a common pressure in all national economies but rather are mediated by national institutional arrangements and refracted into divergent struggles over particular national practices (Locke and Thelen, 1995: 338). But evidence of similarities and differences between most comparators would show that institutional factors alone are insufficient to examine the deeper dynamics of union strategic choices. If Wailes *et al.* (2003) show the potential of an integrated approach between the institutionalist and interest-based approaches by studying the *national* variations in industrial relations reform with comparing most *similar* cases, this study

accentuates the legitimacy of that approach with comparison of the *most different* cases at *union branch* level.

This section explains how this framework was derived and why factors in each box in Figure 2.1 were selected. This framework is to explain how union responses are formulated. Drawing on the literature review above, this study assumes that union responses are formulated through interaction between institutional and non-institutional factors. This is expected to help identify logical possibilities and explore which combination of factors necessary and sufficient to cause a given outcome (Edwards, 2005: 274). The next section explains part of the framework in turn.

#### **2.4.1 Institutional factors**

This framework consists of four institutional factors: the source of restructuring, legal regulations, collective bargaining systems, and union structure. It is important to mention here that institutional factors both independently and complementarily do influence union behaviour (Hamann and Kelly, 2008: 136). Independence and complementarity of factors are explained with the examples of union density and bargaining coverage. Unions with bargaining coverage which is almost equal or slightly above the union density are likely to have strong incentives to engage in organising in comparison to those with low density but high bargaining coverage. In a similar vein, this study expects that each factor or a combination of factors in each box may contribute to union responses.

### *Source of restructuring*

Given the fact that trade unions are ‘secondary organisations’, their existence and the ways they operate are primarily influenced by the organisations who employ the workers unions represent (Hyman, 1997a: 309). Exploring union responses is, to a large extent, an analysis of employers and other environmental factors such as the labour market, government policies, and legislative changes which might exert a significant influence on unions (*ibid.*). The source of restructuring here denotes who has driven the restructuring towards subcontracting. It also refers to employers’ strategies on labour utilisation. It is important to explore who had the initiative towards restructuring. The issue of whether central government as an employer in the public sector or whether an individual employer has driven restructuring to explore the scope of restructuring influence. In particular, the case of restructuring initiated by government is definitely associated with political leverage.

Poole (1986) emphasises that the power and strategies of employers, managements and the state are crucial and decisive in shaping union strategies. Based on the classic understanding of the union as a less powerful actor than other actors in the labour market, he focuses on a reactive role of the union in the industrial relations system. According to Poole’s analysis (1986: 73), militant employer strategies unwilling to secure trade union recognition often promote labour radicalism, and a powerful role of the state in the industrial relations system is highly likely to fashion a politically active labour movements. In a similar vein, Cerviño (2000: 13) asserts the importance of considering the willingness of employers to negotiate with unions about terms and conditions of contingent workers. She argues that if employers are



more disposed to negotiate with unions, it would be easier for unions to represent these workers.

### *Legal regulation*

Given that law and industrial relations are not separable (Davidov, 2004), it is worth investigating the extent to which legal regulations have functioned as either opportunities or constraints for unions' responses. Legal regulations here encompass those in the process of contracting-out, terms and conditions of subcontracted workers and their collective rights.

Legal provisions, as Booth and Francesconi (2003) point out, might weaken unions' efforts to recruit subcontracted workers as it is likely that such initiatives may discourage them from becoming union members. To take a familiar example, the minimum wage legislation might replace collectively bargained wages and EU directive provisions may play a role as a substitute for the employment protection that unions used to negotiate (Booth and Francesconi, 2003: 387). As discussed in Chapter 1, subcontracted workers in this study are those likely to fall into low-paid and low-skilled jobs whereby workers are likely to get paid at minimum wage or only slightly above it. Hence, whether or not the minimum wage legislation encourages unions' activities in representing these workers is important and relevant. In a similar vein, Baccaro *et al.* (2003) maintain that a strong institutional position may discourage unions to organise workers in low-paid jobs.

By contrast, a hypothesis could also be formulated that a union is more likely to represent subcontracted workers with less diverse interests from existing union members (Booth and Francesconi, 2003: 387). This is because a union can enhance its recruiting activity by monitoring compliance with the initiatives and thereby attract subcontracted workers without too much extra effort to forge common interests between employees on different employment contracts. The analysis of legal regulations allows us to understand as to whether they may act as a substitute for union activity.

### *Collective bargaining*

Collective bargaining plays a pivotal role in employment relations where used. It determines the terms and conditions of employment that regulate levels of pay, working time and other relevant working conditions (Marchington *et al.*, 2011: 49). Regarding the issue of contingent workers with far weaker labour market positions, however, there are pessimistic views on the role of collective bargaining and hence some authors argue that there is a need for unions to develop a new method other than collective bargaining (Heery, 2009; Kretsos, 2011; Wills, 2009; Wills and Simms, 2004). Despite the importance of this argument, it is still the case that the primary mechanism which unions have used to represent their members' interests in the two countries being studied is collective bargaining (Simms and Charlwood, 2010: 126), so it is worth exploring collective bargaining systems as the primary route to represent the interests of workers in order to investigate unions' strategies and behaviour in the context of emerging subcontracted labour. An analysis of collective bargaining systems serves to clarify competing arguments as to whether

different institutional arrangements lead to different union strategies or whether they reduce the extent of variation in union behaviour by the growth of flexibility in the labour market.

Clegg points out the role of collective bargaining in shaping union behaviour by arguing that ‘variations in union behaviour can be explained by differences in collective bargaining’ (1976: 8). Despite the critique of his argument for being deterministic and ambiguous about causality (Frege and Kelly, 2003; Shalev, 1980), the two dimensions of bargaining he suggests – the level and extent of bargaining – are of great use in analysing the effect of collective bargaining on union behaviour. As discussed in detail with evidence from case studies in Chapter 6, this study does not intend to argue that bargaining is the most decisive factor in shaping union behaviour as Clegg did. Nevertheless, this study adopts these two dimensions of bargaining in order to characterise different bargaining systems between the two countries.

Borrowing from Clegg (1976), collective bargaining has two dimensions: the level of and the extent of bargaining. The level of bargaining refers to where collective bargaining takes place and with whom – at the workplace with managers, or at the industry with employers’ representatives, or at the country with the government. The extent of bargaining refers to coverage of the bargaining – how many employees in a plant or an industry or a country are covered by it. The two dimensions are used in the study of Bosch *et al.* (2010) who use the term centralisation in order to differentiate the level of bargaining and the degree of inclusiveness in order to explain the extent of coverage of bargaining outcomes. This is an important part of

the study in this thesis because it helps clarify in what ways differences in bargaining in the health sector of the two countries have contributed to patterns in union responses. This study adds two issues to the analysis in order to investigate how relevant the bargaining agenda is to subcontracted workers and who ends up responsible for implementing bargaining outcomes: bargaining agenda and employer responsibilities.

#### *Union structure and governance*

Given the rise of subcontracted workers amid declining union density and increasing representation gap, as briefly mentioned in Chapter 1 and as explained in Chapter 4 in more detail, this changing workforce composition presents unions with significant challenges. Unions have to decide whether to represent interests of these workers by including them into unions' representational domains (Cerviño, 2000; Gumbrell-McCormick, 2011; Heery, 2004). Contrary to other contingent workers employed directly by a user company, the issue of subcontracted workers provides unions with an additional challenge, the need to expand representation *beyond* the workplace. For this reason, this study considers union structure as one of factors influencing union behaviour. Given the fact that union branches in UNISON and KHMU are mainly based on the workplace, this organisational structure may not be appropriate for representing subcontracted workers whose contractual employers differ from that of existing members. It is important to explore whether existing union structures function effectively or not for representing subcontracted workers.

As Gumbrell-McCormick (2011: 297) points out, union structure is one of the factors that condition how unions respond to the need to represent the interests of precarious workers including subcontracted workers. This helps us understand *whose interests* branches seek to represent. Union structure can be divided into two dimensions: external structure which refers to the scope of membership, the boundary of membership and patterns distinguishing one union from another; and internal structure which involves both governance and administration (Fiorito and Jarley, 2008: 189). The issue of union structure is closely related to the question of how unions represent *whose* and *which* interests. This is because, as Hyman (1999: 97) argues, unions are agencies whose main role is to represent members' or, in a broad term, workers' interests and need to decide whose and which interests and how to represent those.

Contradicting Clegg (1976: 8-11) who emphasises the role of bargaining in determining the level of membership and the degree of (de-)centralisation of union governance, this study categorises union structure as part of the institutional settings within which union strategies are formulated (Frege and Kelly 2004). It does not seem that a bargaining system plays a deterministic role in explaining changes in union behaviour. This is because a transformation of union structure may lead to changes in collective bargaining structure.

In terms of the vertical dimension, there is an argument that decentralisation of union organisation could have a positive impact on grassroots involvement by rank-and-file members, which could in turn increase membership density (Frege and Kelly, 2004: 35). This may result in either boosting union activities for subcontracted workers

based on increased organisational power and resources or discouraging them because unions may be more likely to focus on representing interests of existing members. In contrast, as Penninx and Roosblad (2000: 14) point out, unions centralised at national level might have a weak organisational power at the shop floor level, which can negatively affect their ability to protect interests of subcontracted workers within the immediate working environment. In this regard the importance of having an effective articulation between national and branch levels based on a strong organisation at both levels is highlighted (Kjellberg 1983; 2000).

#### **2.4.2 Non-institutional factors**

In the analysis of how each institutional factor mentioned above can affect union branch strategies, this study pays attention to the role of workers' representatives in terms of their ideological position and general approach to industrial relations, the attitude of existing members and subcontracted workers. Borrowing the idea of Frege and Kelly (2003), this process can be called a 'framing process'. This is because institutional arrangements indirectly affect each branch's behaviour through this form of internal process (Cerviño, 2000; Frege and Kelly, 2003; Marino, 2012). Faced with the opportunities and constraints of institutions, union leaders weigh the advantages and disadvantages of a particular strategy in terms of ideological objective and organisational growth (Cerviño, 2000). Cerviño adds that:

[I]ncentives, *per se*, do not explain trade union strategies toward atypical workers. The representation of these workers is possible when the incentives (ideological and organisational) are greater than the costs, and when appropriate contexts exist to develop such as strategy. (2000: 11-12)

As such, when analysing union responses we need to consider several non-institutional factors coupled with institutional factors: leaders' ideological orientation, organisational incentives expected, attitude of existing union members and subcontracted workers, and organisational resources other than a union such as through building coalitions with other groups in a community. Although these factors operate in a given institutional context, there is scope for a branch to respond in an innovative way rather than to accommodate to the constraints of existing institutions conservatively. This study considers potential non-institutional factors in shaping union responses: the role of leaders, willingness to act of the represented and locations where branches operate.

### *The role of leaders*

This study explores non-institutional factors in explaining union responses. The first factor is the role of leaders. Although leadership is one part of a process of organisation and representation, it is of great importance (Fairbrother *et al.*, 2007: 34). Formulating union policies, moulding union objectives and articulating and reconciling members' interests and concerns rely largely on leadership, though we need to have a care not to overemphasise their roles as semi-autonomous actors (Fairbrother *et al.*, 2007: 48-49).

With respect to leadership this study uses the work of Undy *et al.* (1996) rooted in the work of Child *et al.* (1973). Undy *et al.* suggest three dimensional rationalities in explaining union behaviour faced with legislative reform: leaders' political, democratic and administrative rationalities. Here, political rationality means the

ultimate purpose and primary means of unions, in other words, ‘unions ideological positions and their general approach to industrial relations’ (Undy *et al.*, 1996: 8). This is in line with the work of Bacon and Blyton (2004: 750) who argue that it is essential to understand the ideological orientations combined with the actions of unions. Democratic and administrative rationality refers to the notions of union democracy and related governmental systems, and the ways in which unions achieve efficient management (Undy *et al.*, 1996: 8).

This study also considers the two terms ‘agency’ and ‘articulation’ models of union behaviour laid out by Heery (2006). In the agency account, union officers’ different characteristics and preferences are crucial in driving their activities and action. He argues that ‘officers make choices in performing their role and ... these are shaped by their own values’ (2006: 464). This account heavily focuses on personal characteristics of union officers, as contrasted to the articulation account that emphasises the importance of linking officials at branch level to the wider union. In Heery’s analysis (2006) of paid union officials in the UK, he argues that both agency and articulation accounts need to be considered as factors facilitating union renewal. The importance of articulation is emphasised by Kelly and Heery (1989) who argue that ‘successful recruitment campaigns will depend not only on national leadership, but also on local organisation and its impact on worker perceptions of union effectiveness’ (1989: 210).



### *Willingness to act of the represented*

This study takes the willingness to act of existing and potential members into account. As Fairbrother *et al.* (2007: 43) argue, union leadership, together with a willing membership can take the initiative in facing a challenge. A willing membership, coupled with the attitude of potential members, can be interpreted as a main source of organisational growth and consolidation. With respect to the incentives, unions are likely to have greater interests in representing subcontracted workers if this is considered ‘to serve to boost unions’ power, or at least, prevent it from declining’ (Cerviño, 2000: 11). Central to this judgement is the consideration of possible scenarios including whether or not the number of subcontracted workers is large enough to help unions get more power; whether such workers support unions; whether these workers will challenge the role of existing unions by organising their own union separately; and whether the exclusion of these workers weaken the unions in both ideological and organisational aspects (*ibid.*).

Representing subcontracted workers is one way to reconcile potential conflicting interests with existing members. Central to this issue is the question of how union members perceive the rise of subcontracted workers and the issue of organising them into the same union branch. This is also related to the attitude of subcontracted workers with the question of why contingent workers join a union (MacKenzie, 2008). Furthermore, there is a need to consider that shared experiences between workers with different employment contracts as members in a union branch may enhance the ability of union branches’ ability to represent subcontracted workers.

## *Locations*

This study also considers the features of locations where the union branches studied were operating with attention to their possibility of influencing actors' behaviour and to build coalitions with other groups in a local community. Apart from some hospitals highly specialised in certain areas, main targets of hospitals would be the locals (Lee, 2007). This is one of the features of the health sector. Consumption activities of goods (health service) are mainly operated within a (broader) community, which is in a stark difference from other industries, for instance the car industry where geographical separation exists between production and consumption. Most hospitals are operated in an accessible geographical location for people who live nearby and thereby hospitals are sensitive about their reputation and image so as to attract potential patients (Lee, 2004). Despite the importance of local community in studying unions and labour movements, as Kim (2011) argues, literature mainly focus on workplace factors when considering 'the politics of production' (Burawoy, 1985). But there are some studies of labour process that emphasise that the local community should be considered as the unit of analysis, coupled with the workplace (Gough, 2003; Warde, 1992). As highlighted in Milkman's examination (2006) of union campaigns for organising low paid migrant workers in southern California, one of main factors of successful organising is how to build supportive community and political alliances. In a similar vein, Marchington *et al.* (2004) underline the importance to establish new communities of interest as an alternative sources of voice for union renewal. This emphasis on local community can also apply into studies of unions. In the study of factors contributing to organising subcontracted workers, Kim (2011) points out that local community is one of the places where

'politics of scale' (Swyngedouw, 2004: 26) are engaged. Taking the location where each branch is operating into account helps this study explore whether differences in locations have an effect in shaping union responses.

### **2.4.3 A note on the list of factors**

As mentioned above, this study mainly considers four institutional factors and three non-institutional factors. As institutional factors, the source of restructuring, legal regulations, collective bargaining systems, and union structure are primarily analysed. For non-institutional factors, this study pays much attention to the role of leaders, attitude and willingness to act of the represented, and features of locations where unions operate. Before moving forward on substantive discussion about how these factors contributed to a particular response of unions, it should be noted that it is hard to say that this list of factors addressed in this study is exhaustive. Rather, these factors were selected so as to develop plausible causal accounts of similarities and differences in patterns of union responses to subcontracted workers. As explained in further detail in Chapter 3, this is related to the fact that this study employed a *most different case comparison* (Lansbury *et al.*, 2003: 65) for method of comparison.

Given the research questions of this study about which factors contributed to similar and different union responses between and within countries, it is essential to identify key causal factors and mechanisms where these factors operate. Despite possibility of determinism, this study mainly considers four different institutional factors because it helps identify what have contributed to similar and different patterns in

union responses. Furthermore, this study adds non-institutional factors to enhance the accountability for a given outcome.

## **2.5 Research questions**

This chapter so far reviewed literature in three key areas: union responses to contingent workers, three ways to explain patterns of union behaviour, and the potential benefits of integration between institutional and non-institutional factors. This review raises a number of questions that demand further consideration.

Firstly, previous studies have mainly emphasised the classification of union strategies towards contingent workers but there are few that analyse why and under what circumstances trade unions choose a particular strategy. Some questions are identified: when and why have unions with members employed mostly on permanent contracts developed an intention to represent contingent workers? Are union responses similar under similar national or sectoral institutional arrangements? If so, does unions' behaviour between countries or industries with different institutions vary? If we find similar responses by unions with different institutional contexts, how can we explain this?

Secondly, the literature has tended to deal with union responses to contingent work in general. Given the fact that there is a variety of contract types with different levels of labour market power and different effects on trade unions, little emphasis has been placed on analysing how trade unions have responded to a particular group of contingent workers, in particular subcontracted workers. Previous studies on

subcontracting have largely focused on managements' interests, the state of subcontracted workers, unions' involvement in the process of contracting-out, industrial relations surrounding subcontracted workers and inter-organisational dynamics among workers with different employment contracts. Two main questions remain unclear: how have unions dealt with subcontracted workers who have different employers and mainly carry out distinct functions compared to temporary agency workers who are more likely to work side-by-side with workers on permanent contracts? And how have unions responded to the third party (subcontractor) which was not found in some other contingent employment arrangements subject to two parties involved such as fixed-term and part-time contracts?

The third set of question that remains to be addressed are related to the first. There are three broad theoretical approaches explaining changes in industrial relations systems and actors' behaviour. With the proposition that 'institutions matter' acknowledged as being the one of the most powerful approaches at present, a number of questions are raised: to what extent can institutions explain variations in union responses between countries? If we find differences between countries, can we attribute causal relationship to institutional differences? If we find similarities between countries with a difference in institutional settings, how can we explain it? Given the fact that each approach has strengths and weaknesses, is there any possibility to integrate different approaches into a single analytical framework? The ways in which this study addresses these questions are described in the following chapters.

## **Chapter 3 Methodology and research methods**

This chapter outlines and justifies the methodology and research methods. It starts with presenting the philosophical position employed in this study. That is followed by the research design, the rationale for selecting research sites, and the research methods used to gather the evidence to address the research questions posed. The method of data analysis and strengths and limitations of this analysis are illustrated.

### **3.1 Critical realist approach**

This section reviews key concepts and principles of critical realism and discusses the extent to which they can serve as a useful methodological position for the proposed research. By presenting the epistemological and methodological position of critical realism, the section also provides explanations about how this operated as an overarching analytical framework not only for the case analysis of each country, but also for comparative discussions of the similarities and differences between the two countries.

As illustrated in Chapter 2, the main purpose of this study is to analyse 1) how union branches have responded to subcontracted workers providing unions with a challenge of triangular employment relationships, 2) which factors have contributed to a particular type of responses, and 3) how to explain similarities and differences in patterns of responses in the English and Korean health sectors.

Given the complexity of scientific investigations it is important to show how to study social processes in a systematic way (Archer, 1995). This section presents *critical realism* as a philosophical underpinning to this study by examining how well it fits with the nature of and the objectives of this study. The research questions are closely related to the process of understanding the main concepts of critical realism: the importance of understanding structures and processes, of the generative mechanism between factors, of context-sensitive research and of the relation between agency and structure (Edwards, 2005). This study answers questions about *how* unions have responded to subcontracted labour in England and Korea, *why* and *in what circumstances* differences and similarities in patterns of union responses are found in the two countries and *which factors in what ways* have contributed to them. With respect to other philosophical currents, positivism with a focus on empirical regularities prevents from raising a question why things occur as they do, while relativism based on the fact that the world wholly socially constructed seems to ignore the causal influences of structures (Edwards, 2005: 268). This is the starting point for the philosophical understanding employed in this study. This section first explains the ontology of critical realism and then investigates its main features by comparing it to other philosophies of social science such as positivistic and relativistic approaches.

It is essential to reveal the ontological distinction between scientific laws and patterns of events (Bhaskar, 1975: 12). While the ontology in positivism and relativism is restricted to the fused domains of the empirical/experiences and the actual/events, critical realism adds another domain, the 'real/mechanisms' (Ackroyd and Fleetwood, 2000: 13; Bhaskar, 1975: 62). These three concepts constitute

overlapping domains of reality called ‘stratified ontology’ (Ackroyd and Fleetwood, 2000: 13). The reason why it is vital to stratify domains is that it is hard to explain natural/social phenomena by using empirical resources obtained in surface reality. Different mechanisms might interact with each other in stratified ways and one mechanism might restrict or distort other emerging mechanisms. It is important to investigate ‘which mechanism’ is needed to understand events occurring at the level of the empirical or actual, and the structures operating behind surface reality.

As Bhaskar (1975: 56) notes, ‘events must occur independently of the experiences. Structures and mechanisms then are real and distinct from the patterns of events that they generate’. In other words, this ontological position recognises that an external world exists independently of our knowledge and beliefs but is knowable and changeable (Benton and Craib, 2001: 120). As Edwards (2005: 268) highlights, critical realism argues that even if we cannot observe, there are real forces with ‘causal power’ and understanding the relevant mechanisms is the task of science. Unlike laboratory experiments, social systems are necessarily *open* and complex with human intervention (Sayer, 1992). Nonetheless, this does not mean that society is wholly produced by human design or discourse as ‘rules, norms and institutions develop with logics independent of the choices of individual actors’ (Edwards, 2005: 268). In this regard, Edwards (2005: 268) argues that:

[Critical realism] aims to move beyond the discovery of empirical regularities to understand the mechanisms that not only produce these regularities but also determine when they will occur and when they do not.



From the critical realistic point of view, all social practices rely on human agency and social structure. As Bhaskar (1989: 34) argues, all activities presuppose the prior existence of social forms and activity would not possess the means to agency without social structure. He outlines this central theme of critical realism as to the nature of social structure and the connection between society and people as 'Transformational Model of Social Activity', in which structures are discontinuous because agencies act over time. Archer (1995: 154), who underlines 'analytical dualism' which means a methodological division between agency and structure, argues that once the structure is changed, subsequent activities are conditioned and shaped differently. This helps show that agency and structure exist independently, though one interacts with one another.

The importance of the critical realist approach has become increasingly evident in the field of industrial relations studies. Turner *et al.* (1967) showed that key features of industrial relations such as strike levels varied both within a particular industry - the car industry in their study and between industries in the UK and those in other countries. This can be explained by differences in the embedded characteristics of particular industrial relations arrangements. The study of Edwards (1987) on the link between strikes and payment-by-results (PBR) systems demonstrates that despite theory that underlines that PBR is likely to promote strikes, this association is not found in some circumstances, which means that the 'causal power' of PBR systems may or may not be actualised depending on the conditions such as the size of workplaces and their industrial sector.

The critical realistic view gives a fundamental insight into this study which seeks to figure out the ways in which union responses were shaped and which factors under what circumstances have contributed to differences and similarities in patterns of responses. The purpose of this study is consistent with the assertion of Edwards that 'the feature operates only in the context of other factors' (2006: 13). In other words, union responses are shaped in the context of an interaction of factors such as legal regulation and collective bargaining, as shown in the analytical framework in Chapter 2. This is in line with Pawson and Tilley's formulation (1997: 60) that empirical regularity is a function of mechanism and context. As such this study understands regularities or configuration outcomes in a social world.

It is important to understand union responses as an outcome of interacting factors in a certain context. As Edwards (2005: 265) argues, 'IR institutions and processes are grasped in context'. Unionisation level, to take an example, has different meanings in context. In contrast to Korea where, for instance, 20 percent union density at the workplace might be described as a low level, the same density in England can be said to be a moderate or even high one. This is because whilst, in general, there is only one enterprise union (or an industrial union branch) at workplace or company level in Korea, the existence of multiple unions at a single workplace is more common in England.

As such, it is useful to employ the concept of critical realism for this study. Critical realism is a philosophy for understanding causes of events and it is pivotal to investigate behind surface reality to identify the generative mechanisms. These real causes are presented in the form of hypotheses and they are evaluated according to

their general plausibility in explaining the observable surface events (Charlwood, 2003: 41-42). As presented in Chapter 1, one of the main purposes of this study is to figure out why similarities and differences in patterns of union responses in England and Korea were found with different institutional settings and which factors contributed to these. The logic and practice of this research is in accordance with the critical realist approach identifying the underlying generative mechanism that produces manifest phenomena as observable contingent tendencies or patterns (Reed, 2000: 53). Also, contrary to relativistic approaches, critical realists view the simultaneous and dialectical existence of structures and agency mediated by social practices. Furthermore, critical realism recognises that causal powers are not exclusively the properties of either structure or agencies: they both as the 'real' can have causal powers, through being interdependent and interacting with one another, which affect the 'actual' (Fairclough, 2005). Critical realist reflections on the linkage between structure and agency give insight into methodology of this research. As laid out in Chapter 2, union responses are shaped through interacting with factors external and internal to unions.

### **3.2 Qualitative research**

Following this philosophical stance, this study employed a qualitative research strategy rooted in understanding the social processes which took place within organisations, particularly unions. Quantitative research methods such as surveys can be adopted to explore process issues, but the necessary crudeness of the survey method hinders researchers from obtaining more satisfactory results (Kelly, 1998: 16-17).

To explore how factors internal and external to unions have contributed to patterns of union behaviour in the two countries, this study took consideration of a number of factors of different levels and the relationships between them. The relationships between factors were not uni-directional but likely to be interactive and dynamic over time. This ambiguity of boundaries between factors may reflect more interactive and mutually interlocking relationships between them (Yin, 2003). These interactive, changing and multiple levels of processes and interrelations between factors cannot be easily quantified. Relationships between individual factors were understood only through analytical inference based on more informed and in-depth research method.

### **3.3 Research design**

This section outlines the research design employed in conducting this study. It used case study design and comparative study. In relation to the research questions posed, this section argues that case study design helped explore features of real-life events, and union responses to subcontracted workers. A ‘most different case’ comparison (Lansbury *et al.*, 2003: 65) was useful to compare union behaviour in the two different institutional settings.

#### **3.3.1 Case study**

Given the research questions with a focus on ‘how’ or ‘why’ questions, the study developed a case study design, as it allows us to explore characteristics of real-life

events, especially when the boundaries between phenomenon and context are not clearly evident and when there is little control over events (Yin, 2003). Case study methods concerned with the complexity and particular nature of the case in question (Stake 1995) is an appropriate approach for this study in that it would be useful to ‘understand or explain the phenomena by placing them in their wider context’ (Kitay and Callus, 1998: 103).

One of main criticisms of case study research centres on concerns external validity or generalisability. As Bryman (2004) argues, case study hinges on what might be called the exemplifying case. Cases are often chosen not because they are extreme or unusual in some way but because they are expected to provide a suitable context for certain research questions to be answered (Bryman, 2004: 51). The crucial question is not whether the findings can be generalised to a wider universe, but how well the researcher generates theory out of the findings (Yin, 2003). In particular, by using comparative design this study explored the distinguishing characteristics of two cases to act as a springboard for theoretical reflections about findings (Bryman, 2004: 55).

### **3.3.2 Comparative study**

The ways in which unions act is conditioned by the industrial relations institutions in which they operate, and by economic situations, coupled with their own structures and ideologies and other relevant factors (Gumbrell-McCormick, 2011: 297). Social systems are necessarily open and complex and, unlike some of the natural sciences, we cannot isolate these components and examine them under controlled conditions

(Sayer, 1992: 3, 19) so comparative study is useful to overcome these problems (Strauss, 1998) by investigating same issues in different contexts. In order to understand which factors or combination of factors play a role in shaping union behaviour, this study adopted a comparative study which helped investigate similarities and differences and in turn help us understand the dynamics of union behaviour. Comparative study as a method offers important potential for theoretical development by developing causal explanations of relevant phenomena and by formulating bold conceptions and drawing out synthetic and general frameworks from exploration conducted in a variety of national contexts (Shalev 1980; Bean 1987:3, 1994; Strauss 1998, Wailes *et al.* 2011: 5).

Among methods of comparison, this study employs a *most different case comparison* (Lansbury *et al.*, 2003: 65), which juxtaposes the national and sectoral settings of the countries studied that vary across a range of institutional factors and allows us identify key causal factors. As explained below, this study compares union behaviour in the health sector in two countries, England and Korea, with different institutional arrangements. This comparative research design enables us explain the questions posed in this study: (1) union responses to subcontracted labour; (2) the impact of different national context and the complexity of internal process in shaping and applying those responses; and (3) underlying causal relationships that help explain similarities and differences in patterns of responses. Given the research interests of this study, it would be challenging for a study based on one particular institutional setting for instance to clarify the explanatory power of institutions, hence the comparative study helps increase analytical leverage.

Many of the problems associated with comparative analysis relate to the difficulties of establishing conceptual equivalence when operationalising comparative research (Wailes *et al.*, 2011). Linden (1998) distinguishes between *phenomenal equivalence* - where identical measures are used for the same concept regardless of context - and *conceptual equivalence* - where different measures are used for the same concept to reflect differences in contexts. He argues that comparative analysis can only proceed effectively on the basis of conceptual equivalence (Linden, 1998: 5-6), which needs to be applied to this study as well.

In a similar vein, Locke and Thelen (1995) develop the method of ‘contextualised comparisons’. This, in contrast to the method of ‘matched comparisons’ which assumes that external forces have a similar influence on different economies, argues that external shocks can be experienced differently and also that the same issue has different meanings depending on context. In this regard they assert that under a certain circumstance, comparing oranges with apples will be more reasonable rather than apples with apples. Edwards (2005), using the term ‘contextualised comparison’, asserts the importance of context-sensitive research which makes two assertions: IR institutions and processes can only be understood in context; and systematic explanations hinge on specific features of industrial relations arrangements in a workplace, an industry or a country studied.

### **3.4 Research sites**

Before embarking on case study research, a researcher must decide the unit of analysis on which the case will be based and how many cases will be involved

(Kitay and Callus, 1998: 105). Specifying the boundaries of the unit of analysis does not artificially restrict the study, in that one of the purposes of case study research is to explore the relationship between a unit and its wider environment (*ibid.*). To investigate the research questions posed, this study took the union branch as the unit of analysis and studied eight union branches in the two largest unions in the English and Korean health sectors.

### **3.4.1 Unit of analysis**

Before moving on to the explanation of the analysis unit, it is worth noting that the two industrial unions were considered as possible units of analysis at an early stage of designing the research. Having identified general or industrial unions as an appropriate setting, exploratory interviews with National Officers of the largest unions in each country's health sector were conducted and different national and industrial contexts were reviewed, which helped to illuminate a need to change the unit of analysis to union branches for two reasons.

The first is because it would be almost impossible to analyse union behaviour towards subcontracted workers without exploring what has happened at workplace level through the activities of union branches. There might be considerable variation in outcomes within each country, as Doellgast (2008) argues in work on the analysis of six telecommunication companies in the USA and Germany. If general or industrial unions are selected as the unit of analysis, there might be a risk of overlooking variations at workplace level.



The second reason for changing the unit of analysis is that the approach applied to macro questions is often ‘highly deterministic, with prior conditions always being required to produce one outcome or another’ (Goldthorpe, 2000: 51, cited in Edwards 2003: 274). Hence the union branch has been taken as unit of analysis rather than a wider union in order that a less deterministic approach be possible and this is also supported by Edwards (2005: 275) who points out that ‘linking workplace experience to other levels of change is a key route forward’.

The distinctiveness of national employment regimes has been undermined by globalisation of markets and the diffusion of practices, as MacDuffie (1995) argues from plant-level studies. In a similar vein, Doellgast (2008: 284) underlines that ‘the distinctive features of national industrial relations institutions are becoming less useful as static factors that explain company-level variation in restructuring outcomes’. Further the trend towards company-specific industrial relations regimes reinforces the particularism of union practice (Hyman, 2001)

Katz and Darbishire (2000) argue that the proliferation of company-level bargaining has undermined the concept of a coherent national industrial relations system. In the study on collective negotiations over the outsourcing in the USA and Germany, Doellgast (2008) asserts that, despite differences in national employment relations institutions, the success of unions in limiting the scale and scope of outsourcing differs ‘within rather than between’ the two countries. Considering these arguments, two questions can be presented: whether we can argue that the causal relationship between national institutions and union branch strategies is less transparent in the wake of the decline of union density and bargaining coverage; and whether we can

claim that national institutions are less likely to matter in unions' strategic choices to respond to subcontracted labour? This study contributes to the debate on whether unions' strategic choices are still heavily rely on national institutions or are influenced more by the prevalence of heterogeneity at the regional or workplace level.

Given the fact that the extent of workforce diversity in a company is strongly influenced by an employer's strategy and management style, the study of union branches allows us to evaluate to what extent industrial relations and workforce arrangements at workplace level have an influence on union behaviour. In terms of reconciling common interests between workers on different contracts, the analysis of union branches enables us to explore the relationship between full time (implicitly) permanent workers, who are the majority of members, and subcontracted workers. The latter are likely to be excluded from the possibility of union representation since they are usually isolated from the mainstream workforce and confined to a discrete and separate set of tasks (Druker and Stanworth, 2004: 233-234). Union members as well as their leaders may not be willing to act in solidarity with subcontracted workers who can be considered as 'outsider' because of their employment contracts, especially if supporting the latter brings a loss of their own members. Growth of the indirectly employed including subcontracted workers has presented trade unions with a twofold challenge, as Heery (2004) point out, as to whether or not they include these workers as part of their constituencies, and whether unions accept subcontractors as their counterparts for collective bargaining. Since such decisions are taken a branch level, it became increasingly evident that union branch is the logical unit of study.

### 3.4.2 Selecting research sites

In identifying potential research sites this study identified two contexts with different national and sectoral settings but where unions faced the same challenge of the increase of subcontracting. The health sectors in England and Korea, chosen for the study were selected on following criteria.

At the national level, this study paid attention to three criteria: political systems, economic context, and industrial relations institutions. The English political system has been characterised by the abstentionist role of the state (even if it is argued that this characteristic has been changing), whilst the strong Korean state has orchestrated industrialisation processes. In contrast to England where a neo-liberal economic strategy has been implemented and has developed since 1979, Korea has been drawn into the neoliberal fold after the Asian crisis of 1997-98 (Harvey, 2005). Whilst there have been moves towards enterprise unionism which has led to a decentralised industrial relations system in England (Benson and Gospel, 2008; Willman and Bryson, 2007), the union movement in Korea, having had a long tradition of enterprise unionism, has begun to establish more centralised structures with restructuring along industry lines as part of revitalisation (Bae *et al.*, 2008). Furthermore, the identification of the health care sector allowed for comparison in terms of the characteristics of the health sector (sheltered in England vs. exposed in Korea), the features of health care provision (public vs. private), the primary agent of restructuring which has initiated the increase of subcontracted labour (government-led vs. management-driven), legal regulations affecting unions and subcontracted labour, collective bargaining systems (centralisation vs. disorganised centralisation),

union structure (both at industrial level but a relatively short history in Korea) and other relevant factors. Hence, the health sector in England and Korea provides a useful focus for examining union responses to subcontracted workers.

Branches of the two largest unions in the English and Korean health sectors were studied. The general public section union, UNISON and the Korean Health and Medical workers Union (hereafter KHMU). These two unions being studied had a similar organisational structure: national union, regions, and branches, as explained in Chapter 4 in greater detail. UNISON had 12 regions and 1,200 branches across the UK with seven service groups to represent groups of members working in the same sector (UNISON, 2013). For KHMU, across the country there were 11 regions and 165 branches (KHMU, 2012). Union densities and locations, with details of subcontracted services at those sites, are summarised in Table 3.1.

From amongst the branches, this study selected three in UNISON and five in KHMU. It is worth noting why the number of branches differed and why these eight branches were chosen. In the process of selecting research sites, this study made an effort to find branches representing typical responses of each country with Heery's typology (2004). As explained in Chapter 2, Heery suggests four types of union responses to agency work, another form of triangular employment relationships, each features a combined policy on agency workers and agency suppliers in a distinctive way. Applying this typology, union responses were characterised by the issue of whether union branches include subcontracted workers into their representational domains and whether they accept subcontractors as counterparts in their collective bargaining unit.

**Table 3.1 An overview of the case study sites**

	No. of Workers	Union density	Subcontracted services	Location	Heery's typology
E1	2,400	25%	Cleaning, catering	London	Engagement
E2	6,700	20%	Cleaning	Birmingham	Engagement
E3	3,400	30%	Catering, domestic, laundry	Birmingham	Engagement
K1	1,300	88%	Catering, cleaning, maintenance, security, reservations by phone, parking, etc.	Seoul	Regulation
K2	1,100	56%	Catering, cleaning, electricity, reception, parking, security	Seoul	Regulation
K3	1,000	80%	Catering, cleaning, electricity, maintenance, parking, reception	Seoul	Regulation
K4	600	13%	Catering, cleaning	Ulsan	Engagement
K5	1,400	60%	Catering, cleaning, electricity, nursing assistant, reception, parking, security	Gwangju	Engagement

**Note:** The number of workers and union density are counted only among full time permanent workers for two following reasons. First is to strike a balance between union branches either with or without memberships among subcontracted workers. Second is to focus on union branch faced with a challenge of emerging subcontracted workers.

**Source:** The annual report of each hospital and interviews

This study found that typical responses between the two countries differed in that branches of UNISON included subcontracted workers and subcontractors, while those of KHMU did not include these workers but tried to regulate their terms and conditions through bargaining with a user company. The former is classified as *engagement* and the latter as *regulation*, according to Heery's typology (2004). Interestingly, there were two outlying cases in KHMU illustrating *engagement* type, whilst no exceptional case was found in UNISON.

Taking the case of Korea first, in order to select research sites, this study interviewed five National Officers as key informants who were able to help direct this study to likely sites. They reported that there were two exceptional branches whose responses were different from other typical branches. On this basis, desk research analysing almost all branch rulebooks in KHMU (140 out of 165 branches) was conducted with a particular focus on provisions concerning membership. As a result, it found out that no branch other than the two outliers, Branches K4 and K5, included subcontracted workers explicitly in its rulebook. It was evident that workers employed by subcontractors could not join the branch which was operating in their workplace. As explained in Chapter 7, some rulebooks of branches had scope for interpretation because the membership provisions were stated that workers who *belonged to or provided their labour power to* a hospital could join a branch. This resulted from the amendment of rulebooks traditionally based on employment contracts following formation of the industry union, KHMU, whose membership encompassed any person working for, seeking a job in, or who had worked for health service (The KHMU rulebook, Rule 3.7.1). Nevertheless, there was little change in essence in the membership provision. As such, subcontracted workers did not fall into a branch's demarcation except in the two outlier branches. By contrast, the K4 branch allowed subcontracted workers to join the branch by stating in its rulebook that 'regardless of employment contract and status, all workers including full-time permanent, temporary, part-time, outsourced and other forms of precarious workers are allowed to be members of the branch if they are working for the hospital K4' (The branch K4 rulebook, Rule 2.6). In the case of the K5 branch, although it did not explicitly state eligibility for membership of subcontracted workers, it had an open membership provision and actively supported a separate union branch for

subcontracted workers (see in Chapter 7 for two types of inclusion presented by two outliers in Korea). As such, all branches of KHMU were categorised into one type of responses, except the only two outlier branches which were classified as *engagement*.

Interestingly, this study found no exceptional case in UNISON. Although this study did not undertake desk research as in Korea due to lack of data available, four National Officers in UNISON reported that the national rulebook did not allow each branch to exclude workers of private companies from its membership. An interviewee explicitly pointed out that despite differences in actual membership among subcontracted workers in each branch, writing the exclusion of these workers into its rules was an obvious breach of the national rulebook. An interviewee responsible for subcontracting issues at national union level said that ‘no subcontracted workers were organised outside the branch structure’. Hence, this study did not find exceptional case and classified the typical response of UNISON branches as *engagement*.

Three union branches representing *typical* response in each country were deliberately chosen in order to discriminate country effects from hospital ownership, size and location effects. As is widely recognised, there exists considerable heterogeneity or variation within a country. Lincoln and Kalleberg (1990) argue that in a cross-cultural study, where only one organisation in each country was studied, there is a danger that ‘any and all differences between companies - hence between countries - become fair game for explanations couched in cultural or societal terms’ (1990: 34). In this regard, they argue that differences between countries could much more

reliably be sorted out when a large number of diverse organisations in each country were selected. This choice can allow us to differentiate factors between hospital ownership, size, and location as well as country and thereby avoid the danger of misrepresenting effects, as is inherent in a comparative research design where only one organisation is studied in each country. If between-country variation is detected along with within-country uniformity in the pattern of union responses, for instance, it is possible to state that this is strongly influenced by national institutions.

After considering the size of hospital, number of workers, union density and accessibility, this study selected three branches (K1, K2 and K3) in Korea and three (E1, E2 and E3) in England as typical responses. Broadly speaking, the research sites finally selected are indicative of the sites within which most union branches operate. Furthermore Branches K4 and K5 were selected as outlying cases. Following the note of Bryman (2004: 51), these cases were selected because they are expected to provide a suitable context for particular research questions to be answered rather than because they are extreme or usual, but this study seeks to consider both of them so as to explore why variations in branch level within a single institutional setting were found.

### **3.5 Research methods**

In examining trade union responses to subcontracted labour, this study used four methods of data collection on the grounds that applying a multi-method approach is expected to minimise the weaknesses of each. As Edwards (2005: 275) points out, although interview-based case studies have been considered as a tried and tested



method, there are limitations: interview-based studies tend to depend on reports of the outcomes of interest rather than direct observation of behaviour. Hence, ‘in-depth qualitative research’ is needed to uncover ‘hidden’ processes and practices within organisational settings (Greene, 2003: 312).

The four main sources of evidence used in this research are discussed by Yin (2003: 86) who provides the following Table 3.2 summarising their strengths and weaknesses.

**Table 3.2 Source of evidence: strengths and weaknesses**

Source of evidence	Strengths	Weaknesses
Interviews	<ul style="list-style-type: none"> <li>· Targeted - focuses directly on case study topic</li> <li>· Insightful - provides perceived causal inferences</li> </ul>	<ul style="list-style-type: none"> <li>· Bias due to poorly constructed questions</li> <li>· Response bias</li> <li>· Inaccuracies due to poor recall</li> <li>· Reflexivity - the interviewee gives what interviewer wants to hear</li> </ul>
Direct observation	<ul style="list-style-type: none"> <li>· Reality - covers events in real time</li> <li>· Contextual - covers context of event</li> </ul>	<ul style="list-style-type: none"> <li>· Time consuming</li> <li>· Selectivity - unless broad coverage</li> </ul>
Documentation	<ul style="list-style-type: none"> <li>· Stable - can be reviewed repeatedly</li> <li>· Unobtrusive - not created as a result of the case study</li> <li>· Broad coverage - long span of time, many events and settings</li> </ul>	<ul style="list-style-type: none"> <li>· Retrievability - can be low</li> <li>· Biased selectively, if collection is incomplete</li> <li>· Reporting bias-reflects (unknown) bias of author</li> <li>· Access may be deliberately blocked</li> </ul>
Archival Records	<ul style="list-style-type: none"> <li>· [no editing for documentation above]</li> <li>· Precise and quantitative</li> </ul>	<ul style="list-style-type: none"> <li>· [no editing for documentation above]</li> <li>· Accessibility due to privacy reasons</li> </ul>

Source: Yin (2003: 86)

The main method of data collection was fifty-three semi-structured interviews with union officials and this study has also made use of direct observation supplemented by archival records and documentation. This section focuses on how data was collected for this study, followed by how it was transcribed, translated, and analysed, in the next section.

### **3.5.1 Semi-structured interviews**

The first method was qualitative research interviews, in particular semi-structured interviews. These allow researchers to ask new questions that follow up interviewees' replies and vary the order and the wording of questions (Bryman, 2004: 320). Considering the research concerns have a clear focus rather than a general notion, semi-structured interviews were used so that the more specific issues could be addressed (Bryman, 2004: 320). As seen in Table 3.3, interviews were conducted at three levels: national, regional, and branch. A total of fifty-three interviews were carried out, comprising thirteen officials at the union headquarters of UNISON and KHMU, seven officials of the corresponding regions at the two national unions, and thirty-three officials of eight branches selected. With the consent of the interviewees, all interviews were recorded on a digital recorder.

Semi-structured interviews were conducted on a one-to-one basis and each interview lasted for one to four hours, and some for two to three occurring. Prior to the full-scale studies, preliminary interviews were undertaken with five National Officers of KHMU, and four national and regional officials of UNISON. Interviews with National Officers were followed by case studies of the branches.

**Table 3.3 The composition of interviewees**

	UNISON	KHMU
National	8	5
Regional	4	3
Branch	E1 3	K1 4
	E2 3	K2 6
	E3 4	K3 3
		K4 4
		K5 6
Total	22	31

It is important to explain the need for interviews with regional officers in both unions. This study intended to clarify the role of regional offices in between the national union and its branches in dealing with the issue of subcontracted workers. However this study found that each regional office studied played a less decisive role in shaping union branch responses than the national unions in the two. Hence these interviews with regional officers were used as sources to better understand what has happened in the national unions and branches instead of using them as separate data to examine the role of regional offices.

All interviews of the Korean cases were carried out between December 2010 and March 2011, and between February and March 2012. Distance constraints meant interviews were conducted intensively during a relatively short period. The second phase of interviews was conducted in order to clarify comparable points between the two countries following the English case studies during 2011, and to justify the case selection in Korea. Interviews for the English cases were conducted for a longer period from April 2011 to May 2012 because time was required to understand the

English contexts in which industrial relations systems, public sector unionism, the history of subcontracting, have operated and to get access to the interviewees.

### **3.5.2 Observation and documentations**

This study also used direct non-participatory observation as one of data collection methods. The key aims of the observations were to cast light on the decision-making processes, membership participation, communication with current and potential members and other relevant issues at both national and local levels which were not easy to obtain solely from interviews. This study observed events as follows: the branches' annual general meetings of Branch E1 (Mar 2012) and Branch E2 (Mar 2012), UNISON Annual Conference for the Health Sector (Apr 2012), UNISON National Delegate Conference (Jun 2013), KHMU National Annual Conferences (Feb 2011 and Feb 2012), and a KHMU general executive meeting with an issue on indirect employment (Dec 2011). In addition, an organising campaign (Sep 2011) and an industrial action (Nov 2011) were observed at Branch E3. These observations provided opportunities to document union activities and behaviour without relying on peoples' willingness and ability to respond to questions. The events were recorded and analysed with Nvivo, as described in the next section. This study also used archival records to seek information about these kinds of meetings and conferences held in the past or which this study was not able to observe.

These data were supplemented with extensive documentary data. Sources of documentary data that were particularly relevant included annual reports on management performance, collective agreements, internal documents of hospitals

such as the number and wage of subcontracted workers by year, union annual reports, union newspapers, training materials for union members. In addition, interview research and documentary analysis was supplemented with general sources such as workforce statistics, newspaper articles, and reports, with respect to each hospital and union branch.

### **3.6 Data analysis**

This section reports how data collected were transcribed and analysed. Transcripts of interviews and observations was loaded into Nvivo and then coded. Nvivo is a qualitative data analysis software package. By coding text and breaking it down into categories, the use of Computer Assisted Qualitative Data Analysis (hereafter CAQDAS) can facilitate the process of data analysis and provide a quick and simple way of finding the frequency with which interviewees use certain words in what contexts (Bryman, 2004). Proponents of CAQDAS also argue that it provides reliable and rigorous qualitative data (Morison and Moir, 1998; Richards and Richards, 1994). For qualitative researchers who use case study methods, concepts and theories are usually inductively derived from the data that are collected (Bryman, 2004: 52, 284).

Prior to analysing data with Nvivo, all interviews were transcribed. There is a need to mention the Korean cases with methodological issues of language. With respect to data collected from Korea, all interviews and observations were transcribed in Korean and parts of the transcription considered most useful were translated into

English. This was because it was time consuming and inefficient to translate all the data into English. The transcriptions were loaded into Nvivo.

### **3.7 Practicalities and limitations of the research**

This section outlines some practical issues encountered in the process of researching, and the limitations of this research. Establishing conceptual equivalence in operating comparative research, and language issues when translating interviews conducted in Korean into English has a difficulty. It should also be noted that there is a lack of evidence from managers and subcontracted workers themselves, and in addition practical issues caused by unbalanced background understanding of research sites.

These difficulties are explained below.

#### **3.7.1 Conceptual equivalence and translation**

While analysing data, there is potential to misinterpret data collected from different countries. This is because, as Lanai (2010) points out, 'identical words in different languages may have different meanings, while corresponding terms may embrace wholly different realities'. As briefly mentioned in Chapter 1, the main concepts of this study are subcontracting and subcontracted workers. This study found that these were equivalent between the two countries in that the former referred to the business activity of using workers employed by a third party and the latter referred to workers who were allocated to a client's company with whom subcontractors had contracted to supply labour. Although there were differences in these workers' expected service period, and the degree of legal protection in wage and conditions of employment and

collective rights, these are issues to be discussed in substantial chapters not a problem of conceptual equivalence.

There were also an issue of translating data from Korean into English. This study found the term union branch was equivalent to the Korean word *jibu*, but the word which denoted union official varied in Korean including *nojo (or jibu) imwon*, *ganbu*, and *jidoja*, but these terms were translated as the equivalent term ‘union official’ in the UK. In fact, Section 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 (hereafter TULRCA 1992) defined an official as follows:

“[O]fficial” means—

- (a) an official of the union or of a branch or section of the union, or
- (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, and includes a person so elected or appointed who is an employee of the same employers as the members or one or more of the members whom he is to represent

Comparing the definition with that in Korean law, the conceptual equivalence becomes evident. Article 29 of the Trade Union and Labor Relations Adjustment Act (hereafter TULRAA) in Korea defined the representative of a trade union as follows:

[Someone with] the authority to bargain with employers or employers association, and to make collective agreements for the trade union and union members

In Article 24 of TULRAA, the term ‘full-time official’ described a worker who ‘may perform duties only for a trade union, without providing work specified in his/her employment contract, if stipulated in a collective bargaining agreement or consented

by employers'. Although this article aimed to prohibit the payment of full-time union officials, this study was able to confirm that the meaning of union officials is used as an equivalent term between the two countries.

### **3.7.2 A note on the omission of evidence from other parties**

Data collected for this study is mainly based on interviews with union officials, observations of union activities and documentation published by unions. It is the case that employers, existing (mostly regular workers) and potential (subcontracted workers) members and other related actors such as governments or political parties are also influential in shaping union behaviour but this analysis put more emphasis on unions by asking how unions have adopted a particular strategy through interpreting other actors' behaviour and external and internal circumstances rather than on analysing each actor's behaviour separately. In this regard, a key area of potential weakness of this study is the omission of evidence directly from managers and subcontracted workers. This came about for a number of reasons.

Firstly, given that the starting point of this study was union representation in the context of declining union membership and the emerging challenge of triangular employment relationships, negotiating access to the union was a primary objective. Access to the union allowed this study to develop research questions relating to how unions have responded to subcontracted workers, why they have chosen a particular strategy, and which factors have contributed to shaping those responses. Accessing the union branches, on the other hand, meant that getting access to management and subcontracted workers was a secondary objective of the study. Efforts were made to



contact managers in all workplaces where union branches studied were operating but no access for interviews with managers was possible in England although managers were interviewed in research sites in Korea. With respect to the accessibility of managers, there was an asymmetry of data collected between the two countries so that this study did not include data collected from interviews with managers in Korea. In addition, while data on the Korean case was collected with little difficulty due to the researcher's working experiences as a labour journalist for fourteen years, and personal links with unions, much more time and effort was required to get access to interviewees in England. Although this study gradually curtailed the time required by expanding the network for the research, this process took longer than expected. Furthermore, time was spent attending activities organised by English trade unions in order to get more familiar with the English context.

Secondly, this study did not include subcontracted workers as interviewees. At the initial stage of research design, this study had considered collecting data from these workers as a whole. This was expected to clarify how their employment contracts, the ways of working, and the relationship with regular workers at workplace have affected their attitudes towards unions, which had in turn contributed to union responses. However, subcontracted workers were not a homogeneous group, consisting of diverse features of workers in relation to aspects such as age, gender, ethnicity, nationality, contractual status and occupational positions. Lethbridge's study (2009: 115) for example showed that the majority of contracted-out workers in East London were women from black and minority ethnic groups. Their attitudes towards trade unions were expected to vary depending on their own status and interests, which required an independent study separated from this one. Some may

criticise the approach this study employed as being exclusively focused on *formal* representatives (*e.g.* Blazejewski, 2009: 244) with little focus on the perspectives of newly emerging and more likely precarious workforce.

As mentioned above, however, the aim of this study is to present the responses of unions with declining influence largely caused by membership decline when faced with emerging subcontracted workers providing unions with new challenges about how to deal with the third party and its employees. Instead of looking at each actor involved in the triangular employment relationships separately, this study focused on how union branches understood and interpreted these workers' interests and behaviour. This has also expected to help uncover underlying relationships such as conflicting interests between workers with different employment contracts and internal politics at workplace level. From the outset, this study concedes that it has better information concerning formal representatives and their behaviour than rank-and-file members or potential members among subcontracted workers, and the latter area requires further research.

### **3.7.3 Practicalities**

Additional efforts were made in order to better understand the English context. Given the researcher's long working experience in Korea, as mentioned earlier, it is the case that this study had a better understanding of the Korean industrial relations and labour movement in general which plays an important role as background knowledge in exploring Korean unions' policies and actions. This means that it relatively lacks an understanding of the English context. In order to fill in the

understanding gap between the two countries, seminars, rallies, and marches organised by English unions were attended, and informal interviews were conducted with union officials and participants of the events including officials of other UNISON branches and members of the Socialist Medical Association. Included are a TUC seminar entitled 'Is the tide turning on public services outsourcing?' (Nov 2012), a jointly hosted conference 'Outsourcing and Austerity: Civil Society and the Coalition' (Oct 2012), TUC march and rally for 'A Future that Works' (Oct 2012), 'Reclaiming the NHS' conference (June 2012), 'Save our NHS' rally (Mar 2012), Public sector workers march and rally as part of strike against pension reforms (Nov 2011), TUC march for the Alternative (Mar 2011), and other relevant events. While attending these events, a field journal was written which helped to keep a record of interesting speeches, relevant discussions, and informal interviews. The field journal has contributed to a rich understanding of what had happened in the NHS as a whole, what union officials thought about the changes, and how union branches have operated in this context. It was not possible to use all the information but some was useful to enhance its understanding.

### **3.8 Concluding summary**

This chapter presented the methodology and research methods for obtaining the data to address the research questions. Given that this study is interested in questions about 'why' and 'how' and 'actors' (unions') behaviour' in particular contexts where they operate, the critical realist approach helped answer them. Compared to the constructivist traditions which describe reality as being socially constructed (Guba and Lincoln, 1994), this approach helped understand social practices resulting from

actors and social structure. Union responses to subcontracted workers were seen as conditioned by industrial relations institutions in each country as well as by union internal politics based on leadership, willingness of the represented, and other relevant factors. In this regard, the critical realist approach allowed consideration of actors and structures at the same time so as to explore underlying causal explanations. This study employed a comparative study with eight union branches of the two largest unions in the English and Korean health sectors, UNISON and KHMU. This approach was useful to understand the dynamics of union behaviour by allowing the study to investigate same issues facing unions in different contexts. Data was collected through fifty-three semi-structured interviews, observations, documentation, and archival data, and analysed with the support of Nvivo. Before moving on to Chapters 5, 6, and 7, Chapter 4 outlines the features of the English and Korean health sectors in considerable detail to show why these two are an appropriate setting for this study.

## **Chapter 4 Institutional context**

The characteristic features of both national and sectoral institutions in England and Korea were briefly outlined in the previous chapter in order to illustrate why the health sectors of both countries are an appropriate focus for this study. This chapter presents background information on the health sectors in more detail before moving on to a comparative analysis of the union response to subcontracted labour in subsequent chapters. It focuses on explaining the features of health sector institutions in England and Korea, which in turn helps illustrate the similarities and differences in institutional arrangements. National and sectoral institutions shape management strategy in relation to subcontracting by moulding the governance regime of each hospital, either constraining or facilitating changes in workplace and industrial relations.

This chapter begins with an explanation of key features of the health sectors in the two countries in Section 4.1, followed by a description of the characteristics and recent changes within the labour market with a particular focus on the emergence of subcontracting in Section 4.2. Section 4.3 then provides an outline of industrial relations in this sector and a brief explanation of the main actors: trade unions, and employers and their associations.

### **4.1 The Health Care Sector**

This study found that the key features of the health care systems in England and Korea differed in terms of the source of finance and the main body for health care

delivery. The NHS, which dominated in the English health care provision, receives public funds from general taxation and is a publicly provided health service (Buchan, 2000: 319; Grimshaw and Carroll, 2008: 169). In contrast, Korea has witnessed a relatively high proportion of private health funding and the majority of hospitals, approximately 90 percent, are owned and run by private organisations such as companies or universities (Lee, 2007: 56). These differences are closely linked with the driving forces behind the restructuring of ownership, operational structure and workforce composition of hospitals for the purpose of reducing costs, improving labour flexibility, and increasing profitability, as discussed in Chapter 5. This section presents the key features of the health care systems of the two countries by means of the typology introduced by Organisation for Economic Co-operation and Development (hereafter OECD), highlighting recent pressure on hospitals to save costs by enhancing labour flexibility which has caused growth in the number of subcontracted workers.

#### **4.1.1 Key features of health sector**

The distinctive features of the health care systems in the two countries were well represented by the typology developed by OECD. Among various typologies, the three-model typology, based on a dichotomy between patient sovereignty and social equity (OECD, 1987: 24), is the most well-known and has been widely used since the late 1970s (Lee *et al.*, 2008: 108). This typology proposes three models: the National Health Service (NHS), Social Health Insurance (SHI), and Private Health Insurance (PHI). This also corresponds with the latest OECD typology focusing on the relationship between insurance/financing and delivery systems, and resulting in

three models: the public integrated (equivalent to NHS); public contract (SHI); and the private insurance-provider (PHI) models (Docteur and Oxley, 2003; Lee *et al.*, 2008: 108). This section explains the features of each health care system within the latest typology, illustrating how each system studied falls into its respective category.

According to the latest version (Docteur and Oxley, 2003: 9-11), the first type is the *public integrated model* which refers to a combination of public financing and public provision. Under this system, health care services are organised and operated in the same way as a government department, and are highly likely to cover the total population. The UK system before the reforms of the early 1990s is an example of this. Interestingly, it is likely to be subsequently reclassified as an example of the second model (*ibid.*). As explained in detail in Chapter 5, the UK has seen a number of reforms of its universal public health service from the mid-1980s with the introduction of ‘new public management’ techniques, represented by managerialisation and marketisation (Galetto *et al.*, 2012: 7; Kessler and Purcell, 1996). The second model is that of the *public-contract*, whereby private providers are directly involved in the delivery of health care by contracting with the public insurer (public payer), either a state agency or social security funds. In countries adopting this model, private hospitals and clinics are run on a non-profit basis: Korea is an example of this second model (Lee *et al.*, 2008: 108). Lastly, there is the *private insurance-provider* model which means that private (often for-profit) providers are combined with private insurance whose operators can selectively enter into contracts with competing providers.

As mentioned above, the UK health care provision, the NHS, is publicly funded

from taxation. According to OECD Health data (2012), 83.2 percent of health expenditure in the UK was funded by public sources in 2010, well above the average of 72.2 percent in OECD countries, although slightly down from 84.1 percent in 2009. In terms of ownership, the vast majority of hospitals in the UK were located in the public sector (Méhaut *et al.*, 2010: 321-322). In contrast, Korea witnessed a relatively high proportion of private health funding: 32 percent of total health expenditure in 2010 was accounted for by substantial out-of-pocket payments. Despite a steady increase in the share of public spending on health, from 36.2 percent of total health expenditure in 1996 to 58.2 percent in 2010, it remained well below the OECD average. In Korea, the majority of hospitals, approximately 90 percent, were owned and run by private organisations such as universities or companies (Lee, 2007: 56).

These differences are closely linked with the driving forces behind restructuring. As discussed in Chapter 5 in relation to union response, governments in England found it necessary to increase key market values such as efficiency and competitiveness in the health sector and thereby initiated health sector reform. In contrast, restructuring in Korea has tended to be driven by those market forces which are fuelled by globalisation ideology. It may also be that government policies for public hospitals, which accounted for around 10 percent of all hospitals in Korea, might have compelled other private hospitals to follow. Compared to England, however, private hospitals in Korea seem to be more likely to enjoy autonomy in their business, especially with regard to the workforce.



The different features between the two countries in terms of health care provision and financing seem to indicate that the different types of health care systems have led to different ways of restructuring. Hospitals in the USA epitomise this relationship since the reason they tend to take low-road strategies, represented by low pay, poor working conditions, and low mobility prospects, is rooted in their greater dependence on fragmented and competing sources of finance and a lack of funding for people not covered by the health insurance sector (Méhaut *et al.*, 2010: 360-362). It is the case, as Galetto *et al.* (2012: 4) argue, that differences in health service provision between organisations, coupled with differences in collective bargaining institutions have contributed to the distinctive features of the institutional arrangements governing employment regulation in the hospitals of the two countries.

#### **4.1.2 Pressures on the health sector**

The NHS is the world's largest publicly funded health service, following the principle of universal health services that were free at the point of use regardless of wealth and were funded through taxation (NHS, 2012a). In other words, spending on hospitals is highly politicised and needed to take competing demands into consideration, ranging from patient expectation to the politics of public sector expenditure. The policies adopted by English hospitals operating within the NHS 'must be sensitive to national health policy options and the health service budget in terms of their consequences for pay policy, outsourcing, and even concerns about the quality of care and the fight against hospital-acquired infections' (Méhaut *et al.*, 2010: 362). In this regard, Grimshaw and Carroll (2008: 169) note that:

[P]olitics, bureaucracy, transparency, and the United Kingdom-specific welfare state model all play important roles in shaping the context for patterns of work and employment.

The public sector has witnessed changes in spending and governance with implications for hospital workers depending on the political agenda. Successive Conservative governments during the late 1980s and the 1990s put pressure on the hospital sector not only via tight restrictions on spending but also through certain market reforms, represented by compulsory competitive tendering and the introduction of self-governing NHS trusts (Grimshaw and Carroll, 2008: 169). The election of the Labour government in 1997 also made a significant impact on the hospital sector, one which was associated with service quality and their political ambition, for instance, to reduce waiting lists (Grimshaw and Carroll, 2008: 170). These changes radically challenged how hospitals manage health care. While governments still operated health spending centrally, local hospital management took on responsibility for its execution and thereby, accountability for balancing the budget.

In terms of changes in financing, it is important to look at the Private Finance Initiative (hereafter PFI), a form of public-private partnership. Under PFI, introduced in the late 1990s across the public sector, private contractors have recouped money in return for investment in building new hospitals or refurbishing existing buildings (Grimshaw *et al.*, 2002). Compulsory competitive tendering (hereafter CCT) of ancillary services to private companies was a requirement of all PFI hospital contracts up until 2004. From 2005 onwards, 'private health care providers secured a role within the NHS (in England only) with the establishment of a growing number

of independent treatment centres' (Galetto *et al.*, 2012: 8). This partnership has led to vulnerability of employment, especially for those working in ancillary services such as cleaning, catering, portering, estates, and maintenance, as a result of transferring these workers to private sector companies offering less generous pensions and lower rates of pay compared to other employees.

Another change was to introduce a more autonomous status for NHS hospitals, that of Foundation Trust, in 2004 (Galetto *et al.*, 2012: 8). Foundation Trusts are still publicly owned but have greater autonomy in decision-making in terms of managing their workforce and organising health provision, and represented one form of decentralisation of public services (Newell, 2009). In Britain, 137 hospitals out of 290 had acquired Foundation Trust status by 2010 (Galetto *et al.*, 2012: 8). The hospitals where the three UNISON branches studied were based are all Foundation Trusts.

By contrast, privately owned hospitals represent the majority in the provision of health care in Korea, although the health industry is characterised as being for the public good (Lee, 2007: 56). Whilst around 90 percent of hospitals in the UK were public organisations, only 10 percent were classed as such in Korea and even in the case of public hospitals, they were operated via a self-financing business system and hence it is argued that they differed little from private hospitals with a focus on making a profit (Lee, 2007: 56). As a consequence, private hospitals have been established in urban areas where the demand for health care was higher than in rural areas, and focusing more on curing disease than the prevention of disease or improvement in health (Lee, 2007: 57). The fact that the functions of the different

hospitals were not clear was criticised for creating intense competition in the health sector (KIHASA, 2003: 67-71). There are three types of hospital: clinics as primary health care; hospitals as secondary care; and the general hospital as a tertiary hospital. The degree of care at each level differed theoretically but in practice there was little division in the market and therefore all hospitals have competed to attract patients (KIHASA, 2003: 68). As a result, the number of hospitals including general hospitals, dental hospitals, oriental medicine hospitals, mental hospitals, tuberculosis hospitals, and leprosy hospitals has increased rapidly from 21,000 in 1990 to 56,000 in 2010 (MoHW, 2011), and has led to intense competition.

## **4.2 The Labour Market in the Health Sector**

The health sector in England and Korea has witnessed a rise in subcontracting (Kim *et al.*, 2009; Wills, 2009). Contracting-out of some ancillary and support services occurred as management in the NHS explored various methods of saving on the payroll, among other reasons (Buchan, 2000: 320). The experience of the Korean health sector was broadly similar. One of the striking features of the labour market in the Korean health sector was that among contingent workers, indirect employment including subcontracting has increased more rapidly than direct employment and within indirect employment, a majority of staff were employed by outsourcing companies (Kim *et al.*, 2009: 15). This section explores the features of the labour market of the two countries, focusing on the rise in the number of subcontracted workers which in turn has posed a challenge to union representation.

### **4.2.1 Employment**

As life expectancy has risen and infant mortality has fallen in most developed countries, the role of the health service has become increasingly important and as a result, the number of workers in this sector has also increased (Lee, 2007: 49). The first part of this section looks at how the health sector of the two countries has witnessed an increase in the number of clinical and supporting staff.

According to a report of the NHS entitled NHS Workforce: Summary of staff in the NHS: Results from September 2011 Census (NHS, 2012b), 1.3 million staff were employed by the NHS in England in 2011. Taking into consideration the fact that this number did not count workers working for the NHS but employed by private companies, the total number of workers in the NHS is greater still. Looking at the total workforce in the health sector from 2001 to 2011, although a slight decrease in numbers has seen during 2006, 2007, and 2011, over the whole period an increase has seen (NHS, 2012b). Since 2001, the workforce employed in the NHS has been growing at an annual average of 2.0 percent and the total number increased by 241,000 during a ten-year period. Among the 1.3 million workforce, over half (685,000) were professionally qualified clinical staff including 144,000 doctors, 370,000 qualified nursing staff and some 170,000 qualified technical staff, supported by 448,000 staff in hospitals and general practitioner (GP) practices. The rest of the workforce was directly involved in day-to-day running of the organisation and its infrastructure, categorised as NHS infrastructure support, with 109,000 in a central function and 38,000 in a management role. This also included 72 000 hotel, property,

and estates staff working in clerical and administrative jobs and in areas such as laundry, catering, domestic services and gardens.

In 2010, the Korean health sector employed 444,000 workers which included doctors, dentists, oriental medical doctors, pharmacists, nurses, nursing aides, medical technicians, and other workers according to the Ministry of Health and Welfare (MoHW, 2011). The health sector in Korea, in common with England, has demonstrated an increase in the number of workers, having risen by 100,000 since 2005. However, this figure released by the government only represented the number of workers directly employed by hospitals as did in England. In terms of the composition of the workforce, the Korean health sector showed a dual and fragmented labour market following the economic crisis of 1997 which came as a shock to the labour market. During this period, many companies, including hospitals, created spin-offs or alternatively outsourced part of their business. The decrease in the number of good jobs at large firms was largely due to management's determination to carry out a programme of downsizing and outsourcing and, post economic recovery in 1999, companies tended to recruit contingent workers to fill what had previously been regular jobs (Eun, 2007; Lee, 2011a: 297).

#### **4.2.2 Subcontracting**

Subcontracting, as Eun (2008) and Wills (2009) argue, is commonplace and more widespread than other forms of contingent employment in most developed countries, and the labour market in the English and Korean health sectors have experienced similar situations.

Taking the English case first, it is noticeable that the number of professional qualified clinical staff has been increasing since 2001, while the number of staff employed by hotel, property and estates has not kept pace. In comparison with the average annual change of 2.0 percent between 2001 and 2011 (NHS, 2012b: 29), the change in the number of professional staff is 2.3 percent, while that of hotels, property and estates stood at only 0.2 percent. This trend was also evident in earlier data. The NHS report (2006) entitled *Staff in the NHS 2005* showed that, since 1997, the number of support staff directly employed by the NHS decreased by an average of 296 per year to 75,000 in 2005 as a result of more services being contracted-out. Despite the fluctuation in numbers, it has continued to decrease and stood at 72,000 in 2011, evidence that contracting-out was still an on-going process. The 2004 workplace employment relations survey also confirmed this trend. The majority of workplaces (86 percent) contracted-out at least one of 11 services including building maintenance, cleaning, training, security, payroll and so on, with little difference between the private (86 percent) and public (87 percent) sectors (Kersley *et al.*, 2006). As such, since the Conservative government pushed contracting-out in earnest in 1983, there has been a steady decline in the number of staff in the infrastructure support category including cleaners, laundry, catering and maintenance staff (Revell, 2005). In a study of the link between contract cleaning and infection control, Davies (2009: 20) argues that although the perceived shortcomings in the quality of service provided by the third party, private cleaning companies have caused widespread public disquiet, many hospitals, particularly those in England have continued to outsource cleaning service.

Data from the Korean health sector confirmed that contracting-out, which was considered as a practice most often used in the manufacturing sector, has become widespread in the hospital sector (Eun, 2011a). The latest survey of companies with 300 or more employees conducted by the Ministry of Employment and Labor (MoEL, 2010) showed that 82 percent of the hospitals surveyed (81 out of 99) had contracted-out at least one service as of 2010, such as cleaning, catering, laundry, linen, and caring services. Given that the proportion of companies using subcontracted workers in shipbuilding, steel, and car industries recorded 100 percent, 92.6 percent and 86.4 percent respectively, the incidence of using subcontractors in the health sector represented a similar level to that of the manufacturing sector (MoEL, 2010). Some hospitals have even contracted-out nursing assistant jobs classified as a part of clinical service and thereby the Korean health sector has witnessed a decrease in bottom level clinical service, which has led to a dual labour market (Eun, 2011b).

One of the striking features of the labour market in the Korean health sector was the fact that among contingent workers, indirect employment increased more rapidly than did direct employment. Between 2005 and 2009 there was little difference in the proportion of contingent workers across the whole workforce: whilst the proportion of those in direct employment decreased from 14.1 to 7.6 percent, that in indirect employment increased from 10.9 to 13.9 percent (Kim *et al.*, 2009: 15). Of those in indirect employment, the majority of workers (86.8 percent) were employed by outsourcing companies with the rest being employed by temporary agency companies. The difference between outsourced and temporary agency work in the Korean health sector is explained in more detail in Chapter 5 in relation to legal



regulations and practices. Official figures released by government only considered temporary agency work as part of contingent work, excepting outsourced staff, because they considered that subcontracted workers were directly employed on permanent contracts by subcontractors. In this regard, Kim and his colleagues argue that an overwhelming majority of indirect employment could be classified as a 'hidden workforce' (Kim *et al.*, 2009: 15). Kim and colleagues also suggest that staffing in the health sector can be divided into three categories: qualified permanent workers in clinical services; contingent workers directly employed in some area of clinical services; and those indirectly employed in non-clinical services. This argument is supported by the findings of their study of 50 branches of KHMU in 2009. This study shows that of the contingent workers directly employed in all jobs, the proportion relating to nursing staff (39.9 percent) is the greatest. In contrast, of those indirectly employed, the first, second, and third greatest percentages relate to cleaning (38.6 percent), catering (16.2 percent) and maintenance (10.5 percent) respectively.

#### **4.2.3 Working conditions of subcontracted workers**

Subcontracted workers whom this study deals with are mostly classified as the low paid. According to the study by Messing (1998: 180) which identifies a hierarchy of status in hospitals, those who cure (*e.g.* doctors and their assistants who may be nurses or technicians) are at the top, followed by those who care and heal (*e.g.* nurses, therapists, and attendants), and then those at the bottom hold responsibility for hygiene (*e.g.* cleaners, sterilisers, and launderers) and for health maintenance (*e.g.* food services). She points out that the 'invisibility' and low status of these workers at

the bottom level helps shape the perception of these services as peripheral to medical services (1998: 180). Davies (2009: 23) argues that ‘the low status of cleaners within hospitals is related to the low status of cleaning itself, and both have undoubtedly eased the path to the contracting-out of cleaning services’. Grimshaw and Rubery (2007: 58) also comment that for private contractors for these services:

Reliance on a primarily female workforce may be related to undervaluation of the whole activity. In some cases, the opportunity to link pay to a disadvantaged group and thereby keep wage costs at a low average level may be associated with the formation of a separate sector.

Not only were these workers classified as being in the bottom three of nine pay bands (UNISON, 2006: 8), but they were also excluded from the NHS pension. In the past, the NHS offered its employees generous pensions and competitive wages, even for relatively unskilled workers (Givan and Bach, 2007: 136) but those transferred have suffered from deteriorating pay and working conditions. Even for those covered by a two-tier workforce code, their pension schemes were designed differently from the NHS pension. The Treasury has recently announced a move which would come into effect late 2013 whereby ‘NHS staff transferred to the private sector in future can continue to pay into their government pension schemes’, but this policy is aimed at making it cheaper for private contractors to bid for government service contracts (CIPD 2013).

This low status of those employed in ancillary jobs is also evident in the Korean health sector. The hierarchical structure in Korean hospitals comprises three groups: the first group includes doctors, dentists and oriental medical doctors with a high

level of education of 18 years or more; the second refers to nurses, chemists, medical technicians with at least 14 years education; and the third includes nursing assistants, cleaners, caterers, electricians, telephone operators, those with less than 12 years education (Han *et al.*, 2006). Due to the diverse and disparate nature of the various qualifications, it is almost impossible to achieve any degree of social mobility, in other words, movement between groups (Lee, 2007: 85). Workers in the third group, the lowest level of the hierarchy, were mainly targeted for subcontracting by employers looking to cut costs and to improve labour flexibility. It was relatively easy for employers to replace those workers employed within the third group because the level of qualifications and experience required for these jobs was not high. Hence most subcontracting took place in the third group. A strong likelihood of their being replaced led to a deterioration in pay and working conditions for both those who were transferred and new comers.

According to an analysis using data from the Economically Active Population Survey (hereafter EAPS) 2013 published by Statistics Korea (KOSTAT), the average hourly wage of subcontracted workers in all industries – it was almost impossible to find data at national level which covered the health care sector exclusively – was less than half (44.7 percent) of that of regular workers as of March 2013 (Kim, 2013: 17). Subcontracted workers did not enjoy the same rights and entitlements as regular workers who shared the workplace with them, such as access to seniority pay increments and wage premiums. A large number of subcontracted workers were excluded from standard provision covering statutory welfare and labour. Such exclusion serves to cause their marginalization (Kim, 2010: 242). Only about 50-60 percent of them were covered by statutory welfare programmes including national

pensions, national health insurance and employment insurance, compared with 85-99 percent of regular workers. The proportion of subcontracted workers protected by legal labour standards, such as extra work premiums and severance pay was 30-60 percent, which was much lower than that of regular workers reaching 72-97 percent (Kim, 2013: 26).

As such, there seems to be little difference between the trend in terms of workforce composition towards outsourcing ancillary jobs in the English and Korean health sectors. There is very little doubt that this trend has fragmented existing workforce arrangements and resulted in a multi-tier workforce (Perrons, 2004). As Méhaut and his colleagues (2010: 339) point out, the employers' response to outsourcing is interpreted as a 'low-road' strategy, relating to deterioration in pay, career opportunities, and job security. In a similar vein, Eun (2008: 127-129) argues in her study of industrial relations strategy in Korean companies that the increase in subcontracting is a result of 'the Korean way to achieve low-road strategy' in that companies tend to pursue a low-road strategy characterised by low wages, low skill levels and low productivity (Clair and Reich, 1997; Kalleberg, 2001) by choosing to subcontract rather than employ directly.

This study found that, as Méhaut *et al.* (2010: 339) argue, hospitals in both countries, under enormous pressure to reduce labour costs, have tended to outsource workers, particularly those in ancillary jobs, to subcontractors usually offering less generous pay and working conditions.

## **4.3 Industrial Relations Actors**

Drawing on the earlier explanation of the sectoral characteristics and features of the labour market in the English and Korean health sectors, this section explores the main actors in industrial relations. Reflecting upon the two different contexts in which actors operate, it focuses on their representational function, structural features and their role in collective bargaining.

### **4.3.1 Trade unions**

As shown earlier, the NHS has a larger and more heterogeneous workforce than that of any other organisation in the public sector in England, which is reflected by a complex pattern of union representation (Newell, 2009). The number of trade unions representing workers in the health sector in the UK stood at sixteen as of 2013 (Interview, National Officer of UNISON). These unions were all involved in collective bargaining and most of them represented both public and private sector workers (Weber and Nevala, 2011: 17-19). The major unions in the health sector were divided into two main categories: general unions and professional bodies (Givan and Bach, 2007: 136).

The largest general union in this sector is UNISON, formed in 1993 and representing over 400,000 members working both in the NHS and private contractors delivering NHS services (UNISON, 2012c). Its members included nurses, midwives, health care assistants, paramedics, cleaners, porters, catering staff, medical secretaries, clerical and administrative staff, and scientific and technical staff. UNITE and GMB

were two other general unions with fewer health care workers than UNISON (Givan and Bach, 2007: 136). In contrast with the relatively heterogeneous membership of general unions, members represented by professional ‘special register bodies’ (Grimshaw *et al.*, 2007: 598) were more homogeneous since they were based on specific occupational groups with their own particular interests. The British Medical Association (BMA) and the Royal College of Nursing (RCN) representing 141,000 doctors and 410,000 nursing staff respectively were two representative professional unions, followed by smaller recognised professional unions of groups such as physiotherapists, radiographers and midwives (Certification Officer, 2011: 56; Givan and Bach, 2007: 136).

In England, workers are able to join more than one specific union. Nurses, for example, were able to join both UNISON as a general union and the RCN as their professional body. In practice, there were not many workers with dual membership because they had to bear the cost of the union dues of all unions they joined (Interview, Branches E1 and E3). Union density was well above average in the public sector in the UK and that in the health and social care sector in 2006 was 43 percent (Grimshaw *et al.*, 2007: 599-600). The NHS workforce was far from homogeneous and heavily unionised (Buchan, 2000: 319).

In contrast with the situation in England, the Korean health sector enjoyed a relatively simple structure. The number of unions was only two and the professional groups were not considered to be trade unions with the right of collective bargaining. Unions were split into two categories depending on their affiliated unions at national level. As of 2011, KHMU, an industry union, with 40,800 members belonged to the

Korean Confederation of Trade Unions (hereafter KCTU), while the National Medical Industry Workers' Federation of Korea, an association of enterprise unions, with 6,937 members was affiliated with the Federation of Korean Trade Unions (hereafter FKTU) (MoEL, 2012). Membership of these unions covered all those working in hospitals and medical clinics such as nurses, medical engineers, nursing aides, pharmacists, dieticians, administrative and technical staff. Unions did not exclude doctors, with the exception of those who were responsible for the management of a business, but few were members. Apart from unions, there were professional associations for doctors, nurses and some other technicians, but they were not granted trade union status and thereby unable to bargain collectively over pay and working conditions or go on strike, and were not protected by labour law.

The two unions being studied, UNISON and KHMU had similar organisational structures, comprising a three-tier structure of a national union, regions and finally branches usually based in the workplace. UNISON had 12 regions and 1,200 branches across the UK plus seven service groups representing groups of members working in the same sector, for example, health, local government and higher education (UNISON, 2013). For KHMU, with members mostly working for the health care sector, there were 11 regions and 165 branches across the country (KHMU, 2012).

As explained in Chapter 3, this study selected three branches (E1, E2 and E3) of UNISON's health sector and three branches (K1, K2 and K3) of KHMU in order to represent typical branch responses to subcontracted workers in the two unions respectively. It also looked two other branches (K4 and K5) of KHMU which

presented similar responses to those of the UNISON branches. The selected research sites enable us to understand not only the differences but also the similarities in patterns of union responses to subcontracted workers, as discussed in the following chapters.

### **4.3.2 Employer associations**

Turning to organisations which represented employers, this study found the English health sector to be relatively more stable than that of Korea. NHS Employers was the voice of employers in the NHS in England, representing employers on workforce issues in relation to pay and negotiations, recruitment and workforce planning, healthy and productive workplaces, and employment policy and practices (NHS Employers, 2013). It was part of the NHS Confederation which was the only body covering the full range of organisations who commissioned and provided NHS services, with over 92 percent membership across all types of NHS organisation (NHS Confederation, 2012).

In contrast, the term ‘employer organisations’ at sectoral level in Korea was not popular until enterprise unions were reorganised into the industrial union, KHMU, in 1998. Unions mainly negotiated with each hospital employer rather than an employer association. In the context of lack of occupational labour markets, the enterprise unionism enforced by the state was the predominant form of union structure (Park, 1992: 112). Long before the establishment of KHMU, there was one organisation, the Korean Hospital Association (hereafter KHA) which represented hospital employers, but it mainly focused on the improvement of hospital systems and



management through research, education, training and the lobbying of governments (KHA, 2012) rather than being involved in industrial relations issues. Rather, the KHA tended to refute its role as the employer association on the grounds that only 10 percent of member hospitals had union members who joined KHMU (Jun and Suh, 2008: 155). In addition, members of the KHA did not want to play a leading role in industrial relations. Especially members with no union involvement refused to accept the role of KHA as an employer association due to concerns over the possibility of the establishment of unions in their hospitals (Lee, 2007: 94). But, after lengthy discussion with KHMU in 2001, the KHA began to consult and negotiate with KHMU formally and informally and provided members with training in personnel management and some key issues on industrial relations such as sectoral collective bargaining, labour law and changes in statutory working hours (Jin and Suh, 2008: 155).

As a result, the employer organisation for the health sector, the Korean Health and Medical Employers Association (hereafter KHMEA) was launched in 2007 with 96 member hospitals (Lee, 2011c: 784), which was the second employer association in Korean industrial relations, after that established in the metal industry in 2006 (Eun 2007: 4-5). The recent launch of employer organisations as the sectoral unions' counterpart reflected the lack of a tradition of sectoral unionism. However, the KHMEA resolved to disband itself just two years after its establishment, arguing that it would be impossible to negotiate with KHMU which they considered unreasonable in its demands and unilateral in its attitude (Cho, 2009). However, it could be interpreted that there were complicated circumstances in terms of its representational quality and the process of reconciling each member's interests behind this matter,

caused by the size (big versus small and medium-size) and the ownership of hospitals (universities or companies) (Eun *et al.*, 2012b: 128-129). Therefore, there has been no employer association whose role is closely involved in industrial relations in the Korean health sector since 2009, whilst KHMU has tried to negotiate individually with each hospital where a branch is based.

#### **4.4 Concluding summary**

This chapter described the distinctive features of the health care sectors of England and Korea, explored the effect on these sectors of recent changes in the labour markets which witnessed an increase in the number of subcontracted workers, subsequently and summarised the main actors in industrial relations in both contexts. Both the source of financing and the health care delivery body differentiated the English system from that of Korea. While the NHS in England was originally publicly funded from taxation, providing health care to the public, recent years have witnessed a continuous move toward marketisation and privatisation. By contrast, the health sector in Korea demonstrates a higher degree of private health funding and the dominance of private organisations delivering health care. Despite differences in the system, both have undergone similar changes in the labour market. In both cases, in order to save costs and enhance flexibility, management has contracted-out some ancillary and support services, leading to deterioration in pay and working conditions for those undertaking the services transferred. The emergence of workers with inferior conditions and different employers from the regular workers poses a challenge to unions, particularly in terms of their representational function and abilities. In England, industrial relations in the health sector are the responsibility of

trade unions including professional bodies, NHS Employers, and the government. In the Korean case, despite reorganising enterprise unions into industrial unions, industrial relations are not well developed at sectoral level, therefore the industrial union, KHMU and the management teams of the hospitals where the KHMU's branches are organised are the key actors.

## Chapter 5 Emergence of subcontracted labour

This chapter explores union responses to subcontracted workers in relation to the ways in which the restructuring of organisations for saving costs and improving flexibility was generated. It also covers how legal regulations which apply to unions and subcontracted workers were enacted. Union responses in the English and Korean health sectors varied considerably. Faced with the rise of subcontracted workers, the three UNISON branches (E1, E2 and E3) studied in England adopted an inclusive approach by accepting these workers as branch members and representing them through negotiating with private contractors and/or hospitals. By contrast, the three KHMU branches (K1, K2 and K3) studied in Korea excluded these workers from their representational domain but to some extent, regulated their pay and terms and conditions of employment, through negotiating with and consulting hospitals. Heery's typology (2004) of union responses to agency labour was applied to the findings of this study, as described in Chapter 2. The responses of the UNISON branches were classified as engagement, while those of KHMU branches as regulation, as explained below.

This study presents a *typical* response of UNISON as *engagement* and that of KHMU as *regulation* respectively for the following reasons. As explained in Chapter 3, empirical evidence showed that there was no branch of UNISON which excluded these workers or rejected a negotiation with subcontractors. In a similar vein, data collected from desk research of branches' rulebooks and interviews with National Officers of KHMU highlighted that no branch included subcontracted workers into its constituency except the two outlying branches, K4 and K5. These two responded

in a different way from the typical approach in Korea, presenting a similar response to those of UNISON where engagement type of responses was typical.

This chapter addresses the questions of why typical unions' responses differed and of the underlying causes which help explain differences between the two countries. Furthermore, with attention to differences within a given institutional setting in Korea and similarities between countries, it assesses which factors contributed to these variations in union responses. The extent to which the trajectory of restructuring of organisations, and legal regulations applying to trade unions and subcontracted workers, influenced patterns of union responses is also explored.

To this end, the chapter explores how restructuring initiatives have affected unions' responses in the two countries: how subcontracted labour has emerged; how subcontracted workers have been managed at their workplaces; and how this has affected union branches' responses. Legal regulations applying to unions and subcontracted workers were also analysed because these are closely involved in how subcontracted workers emerged and were managed. This approach helps explain how union representation was formulated and implemented in the context of restructuring of organisations and legal regulations in a distinctive way in each institutional setting.

It is necessary to explain why this study puts *the source of restructuring* and *legal regulation* in a single chapter. These two factors are directly and closely associated with the process of using subcontracted labour at the workplace, changes in terms and conditions of subcontracted workers, and conditions of unions' activities such as

organising, bargaining, and industrial action. Such factors allow analysis of patterns of union responses affected by different features of employers in the health sector and of legal regulations applying to unions and subcontracted workers in each country.

The findings are as follows. First, restructuring led by government encouraged more centralised and more practical – focusing on potential benefits rather than ideological battles – union responses in England. In contrast, restructuring driven by employers in Korea caused fragmented responses depending on the size and the speed of restructuring at workplace level. Second, legal regulations that help reduce the gap in pay and working conditions between regular and subcontracted workers, and those regulations giving subcontracted workers collective rights, helped branches organise and represent these workers, as shown in the English case. In other words, it seems that the higher the level of legal protection for pay and working conditions of subcontracted workers was, the more actively unions have been involved in organising and representing them. Third, and most significantly, despite commonalities in institutional settings, union branches could make a different type of representation outside the mainstream of union responses, as addressed in Branches K4 and K5.

According to these findings, it seems that despite the importance of the source of restructuring and legal regulations in shaping union responses, those alone are not sufficient to explain both similarities and differences in union branches' responses to subcontracted workers. Whilst these two institutional factors are able to explain why typical responses in the two countries varied, they lack explanatory power to

describe differences within countries. Rather, these differences may be explained by three non-institutional factors: leadership, involvement of subcontracted workers, and effective work with allies in the community. This chapter hereby highlights the importance of considering both institutional and non-institutional factors in a single analytical framework.

This chapter is structured as follows. In Section 5.1, unions' policies and actions are examined in the light of which source the restructuring leading to emergence and rise of subcontracting initiated from. This chapter then explores union branches' understanding of why employers prefer using subcontracted labour in order to reveal the effect of the rise of subcontracted workers on union branches and their members, followed by an analysis of the extent to which legal regulations contributed to branch responses in Sections 5.2 and 5.3. Non-institutional factors are then explored in order to examine differences within a country, or similarities between countries in Section 5.4 with a focus on the two outlying cases in Korea. The last section summarises the conclusions drawn from these analyses.

## **5.1 The source of restructuring**

This section examines the question of whether the source of and the ways of restructuring of organisations which encouraged the use of subcontracting have served to differentiate unions' responses between the two countries. This issue is directly related to differences in the health care sectors in England and Korea, as discussed in Chapter 4. The distinctive characteristics of the main financing source

and the provision of health care service help explore how union branches' responses have been formulated in the difference institutional settings.

The NHS is a publicly funded health service with its budget in large part coming from general taxation, while Korean hospitals are financed by a mix of taxation and social insurance contributions. In England, although recent years have witnessed that some services became provided by the private companies, health services are still almost entirely delivered by public organisation within the NHS. In contrast the main body of health service provisions in Korea is private hospitals. Due to these different characteristics, the role of the state in the health care systems is characterised as 'provider' in England and as 'conductor' in Korea (Lee *et al.*, 2008: 110). The identification of these differences allows for comparison in terms of the main agent of restructuring of the health sector, the ways in which unions perceived the restructuring, and then how unions' policies and actions were developed in response to it.

Drawing on empirical evidence, this section argues that compared to those in Korea, the English union branches studied implemented strategies which were more centralised at national level and more pragmatic against the backdrop of radical changes toward externalisation of the workforce. To this end, this section explores how the different trajectory of restructuring of the health sector in England and in Korea contributed to union responses in the two, followed by an analysis of how unions shaped their responses based on their understanding of management initiatives and their implications.



### **5.1.1 Government-led versus management-driven**

In the reform of health sector employment arrangements, the issue of who initiated the reform is one which seems to have caused striking differences in the two countries. Here the process of restructuring and its impact on workers and unions, in English and Korean health sectors is contrasted.

#### *England*

After the 1979 election, the Conservative government introduced various types of market-style reforms. This marketisation strategy was, as Givan and Bach (2007: 135) describe, implemented through a range of practices that introduced competition and private sector service provision into the NHS. Among them, three changes were crucial for the spread of subcontracting as part of marketisation: the introduction of Compulsory Competitive Tendering (CCT); the establishment of self-governing hospital trusts; and the emergence of Private Finance Initiative (PFI).

It was not the first time the private sector had become involved with the health care services. Prior to the 1980s hospitals used private firms to supply support services but this was relatively small-scale and mostly in response to labour shortages in the 1960s, which was in a stark contrast to the mandatory regime from 1983 onwards (Givan and Bach, 2007: 137-138). Health authorities as the administrative organisations were instructed ‘to test the cost-effectiveness of their support services and to accept the lowest tender unless ‘compelling reasons’ dictated otherwise’ (Givan and Bach, 2007: 138). The Conservative government argued that contracting-

out ancillary services was a more efficient way of using limited resources (Davies, 2009: 20). In accordance with their 1983 election manifesto (Conservative Party, 1983), the Conservative government pushed health authorities to make the maximum savings possible by putting services such as laundry, catering, and cleaning to competitive tender, whilst also tightening up on management costs and exerting firmer control of staff numbers on the other.

Another challenge to the way hospitals managed health care was the establishment of hospital trusts. Some NHS hospitals were converted to trusts and from then on had the status of public corporations, with the ability to borrow independently for capital expenditure and to retain operating surpluses (Clayton and Pontusson, 1998: 93). An NHS trust, as a service provider, typically comprised a single large hospital or hospitals that competed against each other for government revenue (Givan and Bach, 2007: 140). The change meant that while decisions on spending were still highly centralised, responsibility for execution of spending plans and accountability for balancing the budget were placed on branch hospital management (Grimshaw and Carroll, 2008: 172).

The final element of the reforms carried out by the Conservative government was the Private Finance Initiative (PFI) which was a form of public-private partnership. Under the PFI system, a consortium of private sector firms provided the capital investment for a new hospital or the refurbishment of existing buildings and recouped the money through a charge on the services provided by the hospital (Grimshaw *et al.*, 2002: 485-489). What is most relevant to this analysis is that each PFI agreement involved ‘the outsourcing of support staff as part of the contract

tendering' (Givan and Bach, 2007: 141). The PFI scheme transferred large groups of workers employed in the NHS hospitals such as cleaning, catering, portering, estates, and maintenance to the private companies. Such workers thereby received less generous pensions and were paid at lower rates than the NHS employees they worked alongside (Grimshaw and Carroll, 2008: 172). These ancillary services were then sold by the private sector consortium back to the client NHS hospital (Grimshaw and Carroll, 2008: 172). To summarise, under the PFI system, a private consortium was contracted to finance, design, build, and operate public service facilities by outsourcing support staff, whereby the policy of competitive tendering was effectively superseded (Givan and Bach, 2007: 141).

This radical organisational reshaping of the health service was maintained under the New Labour governments following 1997 without significant changes (Bach, 2004; Colling, 2001; Geddes, 2001; Givan and Bach, 2007). As Bach (2004: 184-185) argues, the state has intervened to a great extent in restructuring the health service by implementing general management, establishing the internal market, and developing the audit culture. Public hospital employers were pressurised to accept the changes resulting from central government's demands for greater efficiency and the modernisation of service provision (Bach and Winchester, 2003) and hence hospital trusts were encouraged to adopt new managerial techniques focusing on value for money rather than public ethos (Bach, 2004).

This change was supported by the Conservative legacy that was the establishment of a cadre of managers that 'were able to convert government aspirations for a more 'business-like' NHS into concrete managerial initiatives' (Givan and Bach, 2007:

142). Despite the injection of marketised managerial initiatives and the transformation of the traditional role of the government as a ‘model employer’, the government still had a pivotal role in controlling the health service in that health care in England remained publicly-financed, even if some of the service were no longer publicly provided (Galetto *et al.*, 2012).

Although policymakers in the New Labour government focused more on pragmatic justifications for marketisation than ideological drive (Givan and Bach, 2007: 134), research conducted by the Office for Public Management (hereafter OPM) provides evidence that implementing outsourcing policy was primarily driven by political will rather than evidence-based practice (UNISON, 2008a: 6). Research by the OPM also showed that each hospital Trust was forced to increase tendering and use of the private sector, which was the only option offered to trusts that wished to make service changes (UNISON, 2008a: 6)

As such, the use of subcontracting was initiated by government in England through implementation of CCT and PFI as part of health care reforms. Although the final decisions about whether to contract-out, and which and how many services to outsource were left to each hospital’s management, such decisions seemed to have been forced by the governments’ initiatives.

### *Korea*

The spread of subcontracting in the Korean health sector tended to be driven more directly by the market than in England, although it was the case that the historical

features of government industrial policies and their effects on businesses have been related to this trend. According to Eun (2011b; 2012), one of the main reasons for management use of outsourcing in Korea was governments' developmental industry policies. The Korean government in the 1960-70s encouraged large companies with 300 or more employees not only to pave a way for a subcontracting system as a way of concentration of capital but to use subcontracted workers as a means of effective labour control (Eun, 2012: 89-90). At that time industry policies driven by the government focused on fostering large companies at the expense of economic subjugation of small- and medium-sized companies to large ones, and creating a vertical labour control system with multi-layered subcontracting. Eun (2012: 90) argues that since the Asian financial crisis of 1997-1998, the combination model of direct employment with outsourcing has changed into a new model whereby subcontracted workers are substituted for a part of the existing regular workforce through the use of outsourcing, after massive dismissal of regular workers.

Such government initiatives, combined with the discourse of competition and efficiency, set up the standardised Korean model which aimed to utilise both regular workers as insiders and subcontracted workers as outsiders. Although only around 10 percent of hospitals were run by government agencies, the government intended to influence the market by drawing up guidelines on utilisation of workforce in publicly-owned hospitals. The government issued a guideline in 2001 which limited the proportion of regular workers which could be hired by public hospitals (Yoon, 2008a: 67-68). The proportion of contingent workers in the hospitals owned and run by public organisations stood at 13.6 percent in 1999 surged to 17.9 percent in 2001 and 26.8 percent in 2004 in the wake of this guideline.

The government announced a new policy on subcontracting in the public sector in 2006, stating that ‘all public institutions are allowed to outsource services classified as peripheral ones’ (The Korean Government, 2006: 24). This policy also allowed them to outsource core services if there were ‘rational reasons’ such as the possibility of making a huge cost reduction to compete with the private sector (*ibid.*). This policy has been criticised not only by unionists but also by academics, arguing that the government’s outsourcing-friendly approach meant that many services were likely to be classified as peripheral, due to ambiguity over how core or peripheral services were defined (Yoon, 2008a: 68).

The government’s drive towards outsourcing encouraged businesses to contract-out more services across all sectors and this caused a stark division between internal and external labour markets in Korea. The health sector was no exception. As presented in Chapter 4, more than eight in ten hospitals (82 percent) have contracted-out at least one service as of 2010, far higher than the national average across sectors which stood at 54.6 percent (MoEL, 2010). Considering that subcontracting had been concentrated in the manufacturing sector up to that point, such figures confirmed that this practice had been extensively spreading into service sectors such as health care.

This form of labour market polarisation through the proliferation of subcontracting has been widespread throughout whole industries in Korea, and was encouraged by the trend of organisational isomorphism (Kim *et al.*, 2011). It was accelerated by the external shocks of the economic crisis, combined with actors’ strategic choices in labour market (Lee, 2011a: 299). After the Asian financial crisis of 1997-1998, the

Korean governments began to transform its approach from a developmental to a neoliberal state (Lim and Jang, 2006) and large firms with 300 or more employees started pursuing exploitative profit maximisation resulting in more inferior conditions in small subcontracting firms, which also led to an increase of contingent labour (Lee, 2011a: 299).

It is also noteworthy that this segmentation of the labour market was triggered by the weakness of trade unions' power. Union density and collective bargaining coverage had both decreased, as explained in Chapter 6. In addition, unions' activities had focused on representing the interest of existing regular workers based on enterprise consciousness.

### **5.1.2 Union branch responses**

Unions in general have opposed the introduction of precarious work arrangements such as subcontracting (Gumbrell-McCormick, 2011; Hayakawa and Simard, 2001; Olsen and Kalleberg, 2004; Perry, 1997). This is because they tend to consider that subcontracting implies a transfer from regular jobs with employment security and relatively high wages to precarious ones with insecurity of employment and lower wages (Hayakawa and Simard, 2001: 81). Furthermore, unions outline concerns about diffusion or loss of union membership and a negative impact on unions' influence (Perry, 1997: 532). Such changes undermine the material base for bargaining and organising whereby unions operate (Colling, 1995: 135).

Data collected from the branches of UNISON and KHMU studied support these. There were neither interviewees nor documents arguing that contracting-out was inevitable or necessary. Despite this common idea, union branches' responses to subcontracting in practice differed. The UNISON branches implemented more practical strategies against the backdrop of radical changes towards externalisation of workforce than those of KHMU. Here 'practical' refers to the branches' attitude of focusing more on potential benefits to subcontracted workers than on the ideological battle represented in political rhetoric.

Drawing on data from interviews and documents, this section presents findings about the extent of unions' responses, arguing that government-led restructuring in England towards externalisation of the workforce has triggered more pragmatic and centralised responses nationally, while the market-driven restructuring in Korea has contributed to more fragmented responses at branch level. The branches in England have adopted a two track approach to protect pay and employment conditions of contracted-out workers and even new recruits of private companies after losing the ideological battle. By contrast, those in Korea have neither contributed to the reversal of the tide of externalisation of employment nor to the protection of subcontracted workers, except in two cases which paid off in representing outsourced workers' interests and improving their pay and terms and conditions.

The remainder of this section presents each union branch's responses, and analyses the ways in which the restructuring drives have impinged on those experiences, in more detail.



### *Branches of UNISON*

Despite the central role played by the state in restructuring public health system driven by market value, the branches of UNISON adopted a twin-track approach: fighting against the governments' initiatives towards marketisation; and protecting subcontracted workers employed by private contractors. Branch E1 committed itself to support subcontracted workers by harmonising their terms and conditions with those of the NHS staff, as did Branch E2. In addition, Branch E1 sought to prevent the lowering of pay and working conditions for those transferred, through a living wage campaign with other social movements, and allies in the community. Branch E3 took protracted strike against contracting-out lasting ten months (Interview, Branch E3), and also succeeded in providing decent pay and working conditions for those transferred, through negotiating with private companies after a failure to turn the tide.

All branches of UNISON studied adopted more realistic policies than those of KHMU, in large part because they thought that there was less possibility of stemming the tide of the government's policy, although they opposed contracting-out practices. They involved themselves in representing subcontracted workers' interests with the support of UNISON's national level activities in politics such as anti-privatisation publicity and lobbying of government.

All interviewees stated that, despite their opposition to contracting-out as part of privatisation in the NHS, they thought that they had to do something to represent privatised members. Whilst union responses at branch level have focused on

representing pay and working conditions of contracted-out workers, UNISON at national level has formulated and implemented strategies for opposing privatisation as well as for protecting the contracted-out workers. An interviewee summarised its tactic as ‘twin-track’ saying that:

UNISON opposes privatisation. The core belief is that public services [should be] publicly owned and publicly delivered. But there is also a pragmatic issue because privatisation will proceed in spite of union opposition. So UNISON attempts to ensure employment issues are fully considered and seeks a joint relationship with a new employer prior to transfer. (National Officer, UNISON)

This comment supports the findings of Givan and Bach (2007: 134) that unions have been forced to adopt a more pragmatic position in spite of ideologically opposing marketisation. According to the interviews, UNISON opposed privatisation on the basis of its core belief that public services should be publicly owned and publicly delivered on the one hand, and was pragmatic because privatisation would proceed in spite of union opposition on the other. UNISON sought to oppose contracting-out through national campaigns directed at political parties, media, and the public, whilst it also worked for protection of contracted-out workers, including new recruits, through several agreements with the government and organisations representing subcontractors, as discussed in more detail in Chapter 6. Regarding union responses at branch level, UNISON focused on intervention and involvement in the procurement process as early as possible, in order to minimise negative effects on health service quality, workforce arrangement and public ethos. Branches’ activities were aimed at representing the interests of subcontracted workers.

UNISON published a large number of reports and materials (e.g. UNISON, 2008a; UNISON, 2008b; UNISON, 2009; UNISON, 2010a; UNISON, 2012d) to support its branches to respond effectively to moves to outsource, and to support members transferred to private contractors. It also paid attention to protecting members in partially-privatised workplaces despite its principle of opposing privatisation. This may be one reason why exclusion or replacement type responses in Heery's typology (2004) were hardly found within UNISON. *Exclusion* refers union's strategy of eliminating both agency suppliers and agency workers in order to seek the abolition of 'fee-charging employment agencies' and *replacement* means that a union aims to replace private employment agencies with public agencies (Heery, 2004: 437). However, in accordance with a stark change of TUC's emphasis, a switch towards protecting and regulating agency workers (Heery, 2004: 437-438), UNISON did not adopt a policy of driving contractors and contracted-out workers from the labour market. Instead, it engaged in setting up improved regulation of the process of contracting-out, of contracted-out workers, and of new recruits.

At branch level, this study found similar approaches to those at national level. All interviewees in branches stated that they opposed contracting-out because it meant privatisation of the health service and thereby fragmentation of the workforce.

I am very proud of our health care system. The NHS is for us not for market [and] for money. Everyone should be covered by the public health service regardless of their income, their residence, their employment status, and so on. The health service is not for profit. (Branch E1)

Although the interviewees showed their policy preference as above, they also had a practical view towards cases that were already contracted-out: ‘If some of our members are transferred to private companies despite our opposition to privatisation, the branch has to protect their pay and terms and conditions’ (Branch E2); ‘After transfer took place on 1st June 2001 we negotiated the same pay and terms and conditions with the exception of the pension and the NHS injury benefit scheme for new starters including bank staff<sup>1</sup>’ (Branch E3).

It is, however, worth noting that one of the branches studied had a critical point of view towards the national union’s approach. This is related to the argument of Givan and Bach (2007: 136) that the relationship between unions and the Labour government is a reason why the union stance has been reactive rather than proactive.

Branch E3 started industrial action in August 2000 against the Trust’s drive to contract-out services using the PFI scheme. Despite the longest strike action in the history of the NHS, which lasted ten months, this branch did not win its fight and as a consequence, the Trust started the process of contracting-out. One interviewee of this branch said:

We insisted that our strike should have been political and ideological. We wanted our national union to support us and to make this issue a country-wide agenda because it was not only our branch issue but the problem to devastate [sic] much of our NHS. But the national union did not call for industrial action. Do you know why they didn’t? In my knowledge, it is because of its political stance. UNISON is affiliated with the Labour Party so they could not call for

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<sup>1</sup> ‘Bank’ denotes an in-house temporary staffing bank whereby a company employs temporary workers directly, which is used as a source of internal flexibility (BIS 2011: 5, 10).

industrial action against the Labour government. But as you see, we did a strike action against the coalition government's pension reform last November [in 2011]. It is a sort of limitation of the affiliated union. We felt they [UNISON headquarters] live in the pocket of Labour governments and also felt they could've done more. (Branch E3)

This interviewee's criticism of UNISON can be interpreted as a view that faced with Labour's transformation towards a more market-oriented regime, UNISON should have responded more ideologically and more actively. The fact that UNISON is a Labour-affiliated union and one of Labour's biggest financial backers lends weight to this view, which means that the special relationship between the two made it difficult for UNISON to resist at national level. In this regard, the interview with a National Officer at UNISON is pertinent:

As government drives towards marketisation and privatisation have developed, the focus of UNISON approach shifted from political to pragmatic. (National Officer, UNISON)

Although the National Officer interviewed did not agree that the link to the Labour Party precluded UNISON's political and ideological battle, this interviewee admitted that the union became more focused on pragmatic and realistic policies for subcontracted workers. This evidence supports the assessment of Givan and Bach (2007: 134) that 'union opposition has ... become more pragmatic and less ideological'. Their argument is predicated upon the following explanation: whilst the Conservative government of 1979 was elected in the context of an anti-union sentiment and had intensive distrust of public provision, New Labour after 1997

attempted to depoliticise its reform agenda, stating explicitly that ‘the key test is what works’ (Milburn 1999, cited in Givan and Bach 2007: 142).

Despite the change in UNISON focus, the national organisation continued to speak against contracting-out by publishing guidance, training materials, and leaflets for its branches and for the public. The intent was to spread awareness of the negative impact of contracting-out by showing the sharp drop in the number of domestic staff, the deterioration of service quality, intensification of work, increasing numbers of cases of infection, and other relevant side effects (UNISON, 2004; 2005b; 2008b; 2009; 2010a). Whilst UNISON informed the public and its members of the fact that it stood against contracting-out, saying that there should have been an end to a tendering regime which put cost ahead of quality, at the expense of jobs, pay, and conditions (UNISON, 2005b), it encouraged branches to improve pay and terms and conditions of transferred members and to organise them including new recruits.

### *Branches of KHMU*

In contrast to the branches of UNISON implementing two-track policies, KHMU seemed to have done little to protect subcontracted workers or to stem the tide of outsourcing, although they asserted that indirect employment should be abolished in the labour market. Branches K1 and K2 were not engaged with the process of contracting-out due to lack of a formal mechanism for negotiating over contracting-out. Branch K3 even agreed with the management decision to contract out services such as cleaning and catering on the grounds of protecting the employment security of existing branch members in the context of a massive restructuring of hospital K3.

These three branches of KHMU being trapped in political rhetoric neither prevented each hospital's outsourcing services nor represented outsourced workers' interests.

In contrast to England where governments have implemented massive contracting-out drives since the early 1980s which urged hospital trusts to outsource services in the name of cost savings and efficiency improvement, hospitals in Korea seemed to have been affected by fierce competition in the market rather than by the direct pressure from governments. It is the case that governments' policies applied to public hospitals had an impact on privately-owned hospitals but the latter did not have a strict obligation to follow those policies. Intensified competition in the health sector, however, encouraged private hospitals to adopt more flexible work organisation faced with the pressure to cut costs and improve flexibility.

There were at least three ways in which subcontracting affected all five branches observed in this study. The first was that contracting-out was phased in over a long period. This practice was found in the experience of all five branches. In the case of Branch K4, for instance, the cleaning service in Hospital K4 was contracted-out not long after the hospital was established and the catering service ten years later. This form of practices made it hard for union branches to be involved in the contracting-out process. This was confirmed by the following comment:

The hospital has been outsourcing services over a long period of time, not on a large scale in a short time. Sometimes we haven't noticed whether services were contracted-out because they were small in size at the time. (Branch K1)

During this phased approach, a second way in which subcontracting had affected all five branches was that hospitals tended to outsource services without properly informing a union branch despite a collective agreement at the workplace level regarding employer's obligation to consult its counterpart about contracting-out plans. Although this was an obvious breach of agreements, in most cases, employers claimed ignorance of their obligations. Furthermore union branches felt they had little power or little interest in fighting against contracting-out. Although three branches studied (K1, K2 and K3) with above fifty percent of union density at each workplace cannot be said to have little power, they did not (or were not able to) take action to preclude contracting-out as the management initiative towards contracting-out took place step-by-step over time at a small scale. By doing so, hospitals gave little room for union branches to be involved in the process or to develop a timely strategy against subcontracting. The following comment helps illuminate the situations:

The hospital contracted-out some services without giving us [the branch] any information in advance. When we closely questioned managers about it, they just said that they were still thinking, or that the plan was not finalised. Hence, we often didn't know when we needed to (or could) be involved and missed the chance to oppose the plan. (Branch K2)

The third way in which all five branches studied has been affected by subcontracting was a new work organisation including contracting-out services set up in the process of the establishment of a new hospital through a merger of two or more existing hospitals or via closure of existing hospitals. Examples included the case of K1 and K3 branches. For instance, Branch K3 previously based on Hospital K3-A and Hospital K3-B had to negotiate for the transfer of the existing workforce to the new



Hospital K3 with no less favourable employment and working conditions. Although Branch K3 succeeded in making an agreement to transfer *all* existing workers with the same conditions, this agreement was put in place after the new hospital had already arranged to contract-out some services such as cleaning, security, call centre, and parking. This meant that Branch K3 was not able to intervene in the process of reorganising the workforce in the new hospital. The branch had no choice but to accept a two-tier workforce in the new hospital at the expense of securing existing members' employment continuity. As a result, transferred cleaners and newly deployed cleaners employed by a private company were working at the same hospital with different pay rates and terms and conditions. The following comment demonstrates why Branch K3 responded in that way:

I cannot say with confidence that this is the best result. However, we had no choice, in order to protect our members. It is an unprecedented victory in the history of KHMU to make an agreement to transfer *all existing members* to a new hospital. I think it is a problem that there are two types of cleaners with different working conditions in the same hospital. Nonetheless we [Branch K3] did our best to secure members' employment. (Branch K3, italics added for emphasis)

This comment shows that existing members benefited from this negotiation in exchange for a two-tier workforce in the new hospital. Although there were differences in the ways in which hospitals have driven restructuring, this study argues that intensified competition in the health sector in Korea has made branches adopt conservative decisions focusing on existing members' interests. The three branches which represented a typical type of responses in KHMU opposed contracting-out rhetorically but did almost nothing practically. In the process, the

role of KHMU, as the sectoral union at national level was also limited in its reach. KHMU supported each branch where the conflicts over outsourcing become an issue, but failed to pre-empt employers' moves towards outsourcing. Neither did KHMU achieve even minimal legal regulations to prevent possible abuses of employers' power or to protect working conditions of workers either at risk of being contracted-out or already contracted-out. Officials in each branch felt that lack of support from the national union, poorly established legal regulations, and the existing members' fear of being negatively affected by such practices had hindered the ability of branches to resist contracting-out practices. In this regard, this study underlines that, contrary to the argument of some authors (Anderson and Holmes, 1995; Murray, 1983; Pulignano, 2005), the deregulated and weak institutional framework made unions receptive and defensive rather than antagonistic against restructuring and its outcomes.

Interestingly this study found two outliers, branches K4 and K5, which presented a different type of responses from the three discussed above. As examined later in this chapter, these two branches tried to pre-empt employers' moves for contracting services out by organising strike actions and rallies. In relation to those in the services contracted-out, these two branches actively organised or supported organisation to protect their interests.

### **5.1.3 Summary**

To summarise, restructuring led by government encouraged more centralised and more practical responses in England, while that driven by employers in Korea caused

fragmented responses depending on the size and the speed of restructuring at the workplace level. This finding indicates that the policies and actions of unions as ‘secondary organisations’ are in large part shaped by the power and strategies of employers, management and the state (Hyman, 1997a: 309; Poole, 1986). Contrary to Poole’s analysis (1986: 73), however, militant employer strategies and a powerful role of the state did not promote labour radicalism or a politically active labour movement in union responses to subcontracted labour. Nevertheless, evidence explained so far seems to support the explanatory power of institutions, the role of the state and employer in this context, since the source of restructuring and its coverage do explain differences in typical responses of union branches in England and Korea.

## **5.2 Flexible use of the workforce**

Before examining the issue of legal regulation, there is a need to explore the features of subcontracted labour in the English and Korean health sector because union branches’ interpretations of subcontracting and subcontracted workers are a starting point to formulate its policies. Existing studies (Gumbrell-McCormick, 2011) note that most unions would oppose outsourcing due to their concerns over the possibility of membership loss, deteriorating pay and employment conditions of workers, and other negative effects on unions and workplaces. It is likely, however, that individual union members’ views may differ from their unions’ opinion. Members often have ambiguous opinions because they might think that subcontracting may help them preserve their decent wages and privileges as the in-house workforce (Doellgast, 2008: 265). As a result, union members might take a divisive belief such as a ‘them

and us' attitude. Because one of main reasons for outsourcing is to reduce costs, subcontracted workers are likely have inferior working conditions, (Pulignano, 2005: 157) and they have little opportunity to bargain over these terms with their 'real employer' (Wills, 2009: 444). To this end, the ways union branch members perceive the rise of subcontracted labour would be the rationale behind each branch's policies and actions, even if they are not solely decisive.

This section examines whether branches' interpretations are similar or different between the two institutional settings by showing how union branches understand the following issues: why subcontracted labour is preferred, how the use of this employment differs from that of other forms of precarious labour, and under which circumstances how subcontracted workers are managed at work and by whom. Answering these questions helps explain the effect of the rise of subcontracted workers on unions and their members.

### **5.2.1 Staffing preferences**

In England where the government has driven contracting-out, there were few legal constraints on the processes involved when hospital employers decided to contract out their services. Under the pressure of government in the name of, for example, Compulsory Competitive Tendering (CCT) and Private Finance Initiatives (PFI), NHS hospitals were forced to contract out services. The question here is why governments preferred to use contracting-out among various forms of flexible employment arrangement. Givan and Bach (2007: 137) argue that governments wanted to privatise nationalised industries and public utilities and to promote

liberalisation to foster competitive markets. The governments' intention was also associated with the outsourcing of employer responsibilities towards employees to private companies (Davidov, 2004: 727).

While the practices of contracting-out were initiated by governments in England, the experience of the Korean health sector painted a different and more complex picture. Although there was a government drive behind contracting-out in Korea, this was limited in scope to government-owned organisations or public corporations which are few compared to the case of England. Given that only ten percent of hospitals were owned and run publicly, this raises a challenging question of why so many hospitals, eight in ten as of 2010 (MoEL, 2010), have been adopting this strategy, so-called externalisation of employment. As discussed earlier in this section, it was caused in part by the trend of organisational isomorphism (Eun, 2008). In the context of intensified competition in the health sector hospitals began to adopt outsourcing strategies competitively.

Regarding employer' preference on subcontracting, some (Lee, 2011a; Lee, 2011c) argue that laws passed in Korea aiming to protect workers in flexible employment arrangements rather encouraged employers to use other forms of flexible workers, such as subcontracted labour. The laws in question were the Act on the Protection, etc., of Dispatched Workers in 1998 and the Act on the Protection, etc. of Fixed-Term and Part-Time Employees Act in 2007. According to the former, employers were required to use temporary agency workers only for jobs which required professional knowledge, skills or experiences (Article 5 (1)) or if there was a vacancy due to maternity leave, illness, injury, *etc.*, or there was a need to

temporarily or intermittently secure a workforce (Article 5 (2)). It is noteworthy that employers were not permitted to use these workers in certain jobs including the work of assistant nurses in the medical service according to the Enforcement Decree of the Act on the Protection, etc., of Dispatched Workers (Article 2 (2) 3).

The purpose of the subsequent Act in 2007 was to redress undue discrimination against fixed-term and part-time employees (Article 1). Both of these Acts legislated employers' obligation to turn a flexible workforce, fixed-term and part-time workers and temporary agency workers who has worked for more than two years, into regular workers of the user company. The revised Act for dispatched workers in 2012, in particular, regulated that employers who illegally used temporary agency workers had an obligation to directly employ those workers regardless of the period of working, compared to the previous Act which only constrained to employers this obligation if such workers had been used for more than two years.

Despite the aim of these laws to protect employment security and working conditions of contingent workers, they have tended to act as a platform to proliferate outsourcing (Lee and Eun, 2011). This is because, after the enactment of these laws, many companies refused to turn contingent workers into regular positions by terminating their employment contracts just before meeting their legal requirement of two-year service and then replacing many of them with subcontracted workers (Lee, 2011a: 300; Lee, 2011c: 774). Furthermore, some companies have continued to use illegal agency workers since the governments were reluctant to impose strict punishment on companies that had violated the rules (Kim, 2010: 247). This

phenomenon has accelerated the proliferation of subcontracted workers. One interviewee commented that:

Hospital managers used to complain about the introduction of stricter regulations on contingent workers. They said that the legal obligation to turn contingent workers into regular ones after two years of service was an onerous responsibility. So they preferred using subcontracted labour with a clear job description in order to avoid being accused of illegal use of temporary agency workers. (Branch K2)

While employers have tended to blame the strictness of the use of contingent workers, the labour movement criticised loopholes in the current laws and practices of employers that bypassed the laws by terminating employment contracts for contingent workers just before the end of their second year. To this end, unions argued for introducing fundamental measures to set a limit on reasons for hiring or using contingent workers.

The intent of these laws was defeated by employers who resorted to an expedient. In order to avoid legal obligations, employers illegally use temporary agency workers or utilise subcontracting after terminating existing employment contracts, or invent a new type of employment contract in between regular and contingent work arrangements. (National Officer, KHMU)

This Korean case added further evidence to support the work of Olsen and Kalleberg (2004: 340) who argue that the introduction of stricter regulations on one form of flexible employment arrangement may increase the use of other arrangements. This study argues that the two Acts regulating the use and management of contingent

workers are not only insufficient to protect these workers but also play an important role in the spread of subcontracting.

Seniority-based pay system has also been identified as one of reasons for the proliferation of subcontracting from the employers' points of view. This system means that the size of a pay increase depends on workers' age and length of service, especially in Korea where seniority is considered as a factor in determining pay (Jung, 2011: 246-247). A branch official recounted:

Cleaners, for example, tend to be dominated by older women workers with long service and hence their pay increased automatically every year before contracting-out. A long-term employed cleaner could earn more than a newly recruited nurse. The hospital made use of the difference in the pay level between low-skilled cleaners and core medical staff to make a rationale for contracting-out. (Branch K3)

Once cleaning services were contracted-out, in many cases, their pay was cut significantly, down to the national minimum wage line or slightly above it. Employers could receive benefits not just by reducing payroll costs and enhancing flexibility but also by cutting fringe benefits such as tuition fees for workers' children, special bonuses for holidays, medical support, and so on which generally applied only to full time permanent workers of the company. This reflects the employment practices of firm internal labour markets in Korea (Jung, 2011: 248).

It is increasingly evident that employers' preferences for cost saving, flexibility, efficiency and outsourcing their responsibilities toward workers to a third party is closely linked to contracting-out practices in both countries. This study proceeds to



explore how unions understood this move, which helps explain why they decided to make particular types of responses.

### **5.2.2 Union branches' interpretations**

This study now addresses questions about how unions have perceived the changing nature of work and why they have (or have not) attempted to represent interests of subcontracted workers. Interestingly, this study found that despite differences in typical branch responses to subcontracted workers in the two institutional settings, all interviewees for this study had similar ideas about subcontracting, all saying that they opposed the externalisation of employment through contracting-out, and that all services should be kept in house. They pointed out deteriorating service quality and working conditions especially for transferees caused by contracting-out services as follows:

[The growth of subcontracting is] ... dreadful. It has been done for profit. It is for cutting costs to make money. It made service less accountable ... working conditions [both of transferees and new comers] worse. I don't agree. (Branch E2)

If a service is contracted-out, everything is done by [the] contract [which] specified exactly what should be done, without flexibility. To give just one example ... physiotherapy services [in this hospital] have been contracted-out. The contract says that we [the hospital] give five outpatient appointments [per patient]. But it is not good because some patients only need three, while some people need ten. Patients with the same condition with different socio-economic backgrounds might have different demands. But when the service

has contracted-out, it is harder to be flexible. It [contracting-out] is the worst not just for workers but for service users. (Branch E1)

After a company took over the cleaning service, the wage for cleaners was cut by almost half. It is slightly above the national minimum wage. But, ironically they kept doing same jobs at the same workplace. (Branch K4)

Despite this common idea on contracting-out, there were slightly different points that have been emphasised by the interviewees between countries. While those in England put more accents on the political drive for contracting-out, those in Korea attributed this practice to fierce competition among hospitals. This point is closely related to the source of restructuring, presented in Section 5.1. Taking for example the UNISON branches first:

This [contracting-out] is the default position of governments. Considering the amount of money put into it [contracting-out practices], it is not value for money ... [and] not a rational business choice. (Branch E2)

The Tories keep saying ... contracting-out is the best way to make the NHS more efficient. The more we contract-out and more privatise the NHS, the less efficient it is becoming. And it has impacted negatively on the quality of care in many areas. The NHS is... should be the best, most efficient health system in the world. ... Sorry, I am not a nationalist though. We need to defend it [the NHS]. (Branch E3)

These interviewees also criticised the practice of contracting-out as being a step towards privatising the NHS. With the public ethos they asserted that all the services within the NHS should be run by public organisations. When an interviewee was

asked if she thinks the practice of contracting-out should be abolished, she said without hesitation that:

Absolutely... 100% for sure... Everything being contracted-out should be brought back in house. Nothing more should happen. (Branch E2)

By contrast, those in Korea pointed out each management's decision as the key driver of contracting-out and then explained the spread of this practice has been precipitated by organisational isomorphism in the context of globalisation. This is illustrated by the following comment:

I have no idea why most hospitals prefer contracting-out. I can see that there must be an obvious cost saving effect but don't know if it is beneficial in the long term. Hospitals try to follow what big-sized hospitals with a lot of profit have done. (Branch K4)

Another interviewee commented in a similar vein:

Hospital management knows that the way to save costs is to exploit workers, particularly in ancillary services. It is hard to find hospitals that directly employ cleaners. It became a norm then. More and more hospitals are trying to operate with only directly employed highly qualified medical staff. In Korea where the medical market is dominated by private hospitals, there is no mechanism to control a segmented service and fragmented workforce. (Branch K2)

As such, union branches' interpretations of contracting-out practices had a lot in common. They all thought it was carried out to make more profit (irrespective of real outcomes) by reducing labour costs, to harm service quality and working conditions, and to weaken the influence of trade unions. But there was a slight difference in that

those in England considered it as a politically-driven practice, while those in Korea as a more market-driven one.

### **5.3 Legal regulation**

This chapter has so far examined how union branches' responses were generated differently depending on the source of workplace restructuring and the ways in which subcontracted workers were managed at work. These questions led to a need to explore legal provisions since the extent to which legal regulations are involved in the advent and management of subcontracted workers might affect branches' responses. This is associated with the question of the extent to which legal regulations have functioned as either opportunities or constraints for unions' responses in relation to subcontracted labour. The term legal regulation here refers to those affecting the process of contracting-out and concerning the individual and collective rights of workers involved in contracting-out, coupled with the national (or sectoral) minimum wage legislation which is primarily designed for workers in low-paid jobs including subcontracted workers in question in this study. The issue of employer responsibilities under the triangular employment relationships with the third party involved is discussed in more detail in Chapter 6.

Exploring legal regulations allows us to understand whether or not they act as a substitute for union activity. Developing the point made by Booth and Francesconi (2003), legal provisions such as the minimum wage legislation or EU directives might weaken unions' efforts to recruit subcontracted workers as it is possible that such initiatives may discourage them from joining a union. So, legal regulations

which help subcontracted workers to improve their pay and terms and conditions may substitute for the function of unions. In a similar vein, Baccaro and his colleagues (2003) maintain that a strong institutional position may discourage unions to organise low-paid workers. Alternatively, legal provisions may act as opportunities for union representation by allowing unions to monitor compliance with the law in order to protect the rights of low-paid workers and thereby attract them (Booth and Francesconi, 2003).

In this regard, the issue of legal regulations on contracting-out has made the health sector in England and Korea particularly appropriate for studying. Contrary to Korea with its lack of regulations on the process of contracting-out and the conditions of workers involved in it, there are regulations in England, represented by the Transfer of Undertakings (Protection of Employment) Regulations usually referred to as ‘the TUPE Regulations’.

Although there are criticisms of the effectiveness of TUPE on the grounds that it ensures only minimum standards, it is limited in coverage, and its effect declines (Colling, 1999; Cooke *et al.*, 2004; Domberger, 1998; Marchington *et al.*, 2011), this study found that the TUPE regulations provided a basis for protection of employees’ rights on pay, and terms and conditions, and of employees from dismissal before or after a transfer. The TUPE regulations are a good example to support the argument that national institutional regulation may mitigate, to some extent, disadvantages such as lower pay and inferior benefits experienced by contingent workers (Gumbrell-McCormick, 2011; Lind and Rasmussen, 2008).

Turning to the case of KHMU this point is much clearer. There is a lack of legal mechanisms regulating employment relations and the rights of transferred workers (Kim *et al.*, 2012) so that subcontracted workers could hardly get any legal protection in relation to the continuity of both employment and pay and terms, and conditions after transfer. As found in all five branches studied, once a transfer takes effect, they are urged to sign a completely new employment contract with worse pay, terms, and conditions than they would have had if they were still employed by the original employer. Under market competition with little legal regulation to minimise the gap between workers with different labour market positions, the union's role in interest representation is likely to favour the relatively secured at the expense of the less advantaged.

This finding supports an argument that legal regulations are likely to function as opportunities for union activity. In other words, a union is more likely to represent subcontracted workers whose pay and terms and conditions are not less favourable than regular workers. It is because, under this circumstance, a union can adopt inclusive policies without making too much extra effort to forge common interests between workers on a different basis of employment contracts. Therefore this study argues that in England where legal protection for pay, working conditions, and collective rights of subcontracted workers is higher than that in Korea, the union branches have been more involved in organising and representing these workers. It supports the alternative position of Booth and Francesconi (2003) arguing that legal provisions may act as opportunities for union representation.

To this end, this section explores patterns in branches' responses to legal regulations on pay, terms, and conditions of the transferred and new recruits, and on collective rights of existing unions and workers involved in the transfer.

### **5.3.1 Individual rights**

It is reasonable to assume that legal regulations to guarantee relatively reasonable pay and working conditions for subcontracted workers may discourage them from joining a union. This is because, without being organised which sometimes may result in losing their jobs due to management hostility toward unions, they can get benefits to some extent within the legal framework. For this reason, Baccaro *et al.* (2003) argue that a strong institutional position has a reverse impact on incentives to organise. Considering a union's limited capacity and resources, however, another assumption could be formulated that a union is more likely to represent contingent workers whose pay and terms and conditions are not less favourable than regular workers. This would be because a union can make a positive outcome without making much more extra efforts to forge common interests between workers on different employment contracts. This is the point of departure of motivation for this section.

A stark difference in legal regulations in the two countries was whether there were regulations designed to offer protection for pay, terms, and conditions of subcontracted workers. The TUPE regulations enacted in 1981 and amended in 2006 have been implemented in England with the aim of preserving the continuity of employment and terms and conditions of the transferred when a transfer takes place

(BIS, 2009: 4). By contrast, there was no specialised legal regulation for the transferred in Korea. Pay and working conditions for these workers were regulated by laws applying to all employees regardless of employment status such as the National Minimum Wage Act and the Labor Standard Act.

The difference in regulations concerning individual rights for subcontracted workers may have caused different union responses. This is because the extent to which these workers are covered and protected by legal provisions is likely to influence on the willingness and capacity of union branches' representation. Given that a union is an organisation to represent, in a narrow sense, the interests of its members (Simms and Charlwood, 2010), the more diverse members' interests are, the harder a union needs to put forth efforts to reconcile them. In this regard, this section argues that legal regulations in England represented by the TUPE regulations helped the branches of UNISON adopt a more inclusive approach to subcontracted workers than counterparts in KHMU.

The TUPE regulations provided for the terms and conditions of employment set by one employer to be carried over to another employer following a merger or some forms of contracting-out (Rubery *et al.*, 2005: 64). Under the regulations, employees of a hospital became automatically employees of the new private sector employer on the same terms and conditions, except some occupational pension rights when the transfer took effect (Cooke *et al.*, 2004; Méhaut *et al.*, 2010). A white paper states that 'it is as if their contracts of employment had originally been made with the transferee employer' (BIS, 2009: 4). However, there was a key concern over worse pay, terms, and conditions of new recruits directly employed by the contractor



because they were not covered by the TUPE regulations and their pay and benefits were set by the private employer (Givan and Bach, 2007: 146). This would cause a disparity in pay and conditions between transferred staff and newcomers for the same work.

Since 2000, government policy has shifted following pressure from public sector strikes and a high profile 'living wage' campaign, resulting in the introduction of a new code of practice, so-called the 'two-tier code', which applied first to local government and then was extended to other areas, including the health sector (Méhaut *et al.*, 2010: 343). According to the two-tier code, private sector service providers shall offer pay and benefits to new recruits that are 'not less favourable' than those of transferred employees covered by the TUPE regulations (Grimshaw and Hebson, 2005: 114; Méhaut *et al.*, 2010: 343).

Although there are critiques of the effectiveness of TUPE, in that it ensures only minimum standards and is limited in coverage and its effect declines (Cooke *et al.*, 2004; Domberger, 1998; Marchington *et al.*, 2011), this study would argue that it certainly helped in protecting employees' rights and employees from dismissal before or after a transfer.

Turning to the case of Korea this point becomes much clearer. There have been no legal regulations specially aimed at protecting transferred workers and new recruits and thereby subcontracted workers could not get any legal protection in relation to continuity of both employment, and pay and terms and conditions after the transfer. Once a transfer took effect, they were urged to sign a completely new employment

contract containing worse pay and terms and conditions than they would have had if they were still employed by the original employer. To take caterers at Branch K4 as an example:

Their pay was cut by almost 50 percent if they wanted to continue to work at this hospital. (Branch K4)

Once a hospital decided to outsource a certain service, it dismissed workers who formerly provided that service and then let a new provider hire them at inferior pay and working conditions. If those workers wanted to work at the same workplace, most of them were forced to sign a new contract because it was not easy for them to find another job, so they felt they had no choice but to accept the terms of the contract. This was associated with the fact that most such are doing low-skilled and low-paid jobs.

Although there were some Acts and regulations on the transfer of undertakings, these all were to regulate business contracts not employment contracts. Contracting-out was seen only as a part of business activities in Korea. Transferred workers have been forced to accept much worse pay, terms, and conditions. Although they were subject to employment laws as employees of a new employer, they were forced to make completely new employment contracts with inferior pay, terms, and conditions.

There were national minimum wage regulations in both countries but the effect on subcontracted workers varied significantly. While the pay level for all in the NHS, including subcontracted workers, was far above the national minimum wage due to the Agenda for Change, as discussed in Chapter 6, legislation in Korea tended to

serve to fix the wage level for subcontracted workers at the minimum wage level every year. Although it is said that subcontracted workers in Korea have benefited from the national minimum wage, this study argues that it served to reduce the pay level to the lowest level legally.

This difference raises a question about whether or not government initiatives with the aim of preventing the conditions of the workforce from deteriorating could facilitate unions' inclusion of weak groups of the workforce. It is possible that such initiatives may act as a substitute for union initiatives to represent precarious workers in that legislation such as the minimum wage may replace collectively bargained wages (Booth and Francesconi, 2003: 387). However, data collected showed that unions in England, where laws and regulations have been enacted to prevent the lowering of wages and conditions of subcontracted workers, are more likely to organise them than those in Korea that lack protection provisions for workers involved in transfer of undertakings. In this regard, it can be argued that when a disparity of pay between regular and subcontracted workers decreases, a union is more likely to represent contingent workers without making much extra effort. This is in line with the alternative argument of Booth and Francesconi (2003: 387) that such legislations may be complementary with union recruiting and representing activities by allowing unions to monitor compliance with those initiatives which might result in attracting non-standard workers.

This point is also closely connected with an issue about how unions' interests are formed, as discussed in Chapter 2. A logic of interest representation is believed to rest upon changing union conceptions of the legitimacy of both contingent workers

and contingent work (Heery *et al.*, 2004a: 148). Applying such an argument to this study, it is the case that unions in the two countries oppose outsourcing regardless of their success or failure to stop it, which means they do not legitimise this form of employment arrangements. But their conceptions of the legitimacy of subcontracted workers seem to be different. While unions in England were seeking to regulate and improve conditions for these workers, those in Korea (with two exceptional cases) tended not to involve themselves in the issues of subcontracted workers. This study argues that this difference comes in part from legal regulations in each country. Regulations which help decrease the gap between regular and subcontracted workers in pay and terms of employment have to some extent resolved a conflict of interest between workers. By contrast, unions in Korea where there were few regulations for protecting subcontracted workers have been experiencing a ‘them and us’ culture in large part resulted from far inferior pay and terms of employment of subcontracted workers.

### **5.3.2 Collective rights**

While differences in legal regulations concerning individual rights for workers involved in a transfer in the two countries contributed to variations of branch responses of UNISON and KHMU, this study found that there was no great difference in legal provisions for collective rights. This is because collective rights in both countries were guaranteed on the basis of the employment contract (Park *et al.*, 2009; Wills, 2009). Workers were only allowed to exercise their collective rights toward an employer who employed them, which means workers’ rights were subject to their employment contracts. These experiences were in line with the work of Wills

(2009: 445) arguing that protocols of labour law have developed on the basis of the employment contract rather than on who has the real power over the contracting process. In a similar vein, Cotton (2010: 13) points to the difficulty in relying on contractual law, which makes it nearly impossible to establish who holds employers' responsibilities.

This division of employers causes the devolution of managerial responsibilities to subcontractors at a lower position than a user hospital. It makes it difficult for a union branch to conduct a substantial collective bargaining - 'the *sine qua non* of trade union organization'(Wills, 2009: 445) – where subcontracted workers are involved. A hospital as a principal employer, with real power over the contracting-out process, outsourced its responsibilities toward employees to subcontractors who are subject to the main employer's discretion. Hence this situation is called as 'a never-ending game of hide and seek and a never-ending carousel ride' (Kang, 2007: 5). The discussion concerning employer responsibilities receives more attention in Chapter 6.

Despite the same approach to employer responsibilities towards employees, legal regulations in England were more favourable to the transferred in that transferred staff were able to exercise their collective rights which they had been granted before transferring such as those to organise collectively, to bargain, and to strike through a union, although the counterpart in their collective activities were unsurprisingly the subcontractor that employs them not the hospital that uses them. The experiences of UNISON branches show that when a transfer takes place, recognition of the union by the employer also transfers over to the new employer and thereby representatives of

the transferred can negotiate with their new employer without an additional procedure of recognition (UNISON, 2008b: 9). In this process it is vital to get an agreement from the new employer that recognition will continue (UNISON, 2008b: 9).

Under the TUPE regulations, as the cases of Branches E1, E2 and E3 all show, transferred workers could keep their union membership after a transfer. As such, the TUPE regulations were a huge help to the union branches in keeping their membership after some members were transferred to private companies. This highlights the fact that legal regulations in England have had a positive impact on union organising activities. This becomes increasingly evident as a more general principle in the Korean case where no legal regulations concerning the continuity of collective rights of transferred workers existed, which had a negative effect on the unions' ability to act effectively.

In Korea, once contracting-out takes place, the contract of employment for transferred workers with a hospital is completely terminated and they have to sign a new contract with a new employer. All workers employed by a subcontractor are considered as new recruits regardless of their previous employment contracts. Hence if they intend to call for formal collective bargaining with the new employer, they have to either establish their own union, join an industrial union individually, or a union branch. By contrast with England where legal provisions ensure the continuity of collective rights of transferred staff, those rights in Korea are regulated by the labour law applying to all workers without a special clause for transferred workers.

Trade Union and Labor Relations Adjustment Act (hereafter TU Act) enacted in 1997 and last amended in 2008 regulate workers' collective rights as follows:

Workers are free to organise a union or to join it (Article 5); and

The representative of a union has the authority to bargain with its employer or an employer association and to make collective agreements for the union and its members (Article 29).

Although unions in Korea did not need to win recognition for collective bargaining, unlike those in England, workers were only allowed to negotiate with a new employer only if they established or joined a legitimate union by TU Act.

There are two conclusions that can be drawn from these findings. First, in respect of employer responsibility towards collective rights for subcontracted workers, the two countries had the same principle in common on the basis of the employment contract. There have been some conflicts on who was the real employer in practice so the final decision on that has rested on court judgements (Cotton, 2010; Kang, 2007). Second, despite the commonality there was a stark difference between the two: transferred workers in England were allowed to enjoy their collective rights under the TUPE regulations. Given that subcontracted workers were likely to lose their jobs if they were involved in union activities (Wills, 2009), this study argues that the TUPE regulations helped the transferred keep their union membership. There is little doubt that it encouraged the union branches to continue to represent the interests of subcontracted workers. In this regard, this study argues that legal regulations relatively generous to transferred workers helped the branches in England organise and represent subcontracted workers.

## 5.4 Variations in union responses

This chapter so far has highlighted differences in patterns of union responses between countries with different sources of restructuring and differing legal regulations. This confirms that the capacity of union branches to represent the interests of subcontracted workers is in large part conditioned by national and sectoral institutions. It appears, however, that institutions alone are insufficient to explain variations in union branches' responses, because of data from two branches of KHMU. Within a given institutional setting, the responses of Branches K4 and K5 towards subcontracted labour differed markedly from the typical response represented in those of the three branches. The responses of these two outliers in Korea are closer to those in England: they implemented inclusive policies towards subcontracted workers by accepting these workers into their representational domain and improving their pay, terms, and conditions by negotiating with subcontractors. The experiences of Branches K4 and K5 demonstrate that despite the importance of institutions in shaping union branches' responses, non-institutional factors such as the role of leaders, internal politics within a branch, and other resources available can also make a difference in responding to subcontracted labour.

### *Branch K4*

Branch K4 resisted the hospital's attempt to lower wages and conditions of subcontracted workers by replacing existing company with another in 2006. Without any legal protection for transferred workers when a transfer takes place in Korea, a new subcontractor for a catering service urged existing subcontracted workers to



accept new employment contracts with inferior wages and conditions of employment.

A branch official explained:

The new company announced that it would cut the annual pay by almost 50 percent from 25 million KRW (around 12,000 GBP) to 13 million (around 7,000 GBP). The existing workers were really upset and intended to refuse the new pay scheme. Some of them visited us [the branch] saying that they wanted to join the union to fight against it. We [the branch] decided to accept them as branch members without hesitation and began to fight for decent wages. (Branch K4)

Most of the workers (19 of 20) in the catering service joined Branch K4 and the branch organised demonstrations including a sit-in protest and a strike against the new subcontractor as well as against the hospital at the top of the process of contracting-out. After these prolonged collective actions, the branch succeeded in making an agreement with the new subcontractor to secure decent pay for the caterers, although the new pay level was lower than before. In this process the branch profited from coalitions with allies in the community as well as patients.

We thought that it was important to pressurise not only the new subcontractor but also the hospital K4 by showing there was solidarity from other unions and social movement organisations. As you know, the hospital belonged to the service industry so that its reputation and image was part and parcel of its business. We made concerted efforts to show that inferior pay and working condition would lead to worse service quality because the food these workers provided was important for patients. (Branch K4)

### *Branch K5*

Branch K5 did not only improve working conditions of subcontracted workers by supporting to establish and operate a separate branch for them, as discussed in chapter 7, but it also achieved regular employment status with employment security and better pay and working conditions through legal actions for some of those workers. The branch paid particular attention to the legal status of nursing assistants since they were employed by an intermediate company but ordered and controlled by Hospital K5. As explained in Section 5.2, this form of employment relationship for nursing assistants is classified as a temporary agency work which is banned in the health sector in Korea.

The branch accused the hospital of illegally using temporary agency workers and the hospital then received a decision from the Ministry of Employment and Labor ordering that the hospital should directly hire these workers (MoEL 2012).

We prepared for more than a year in order to prove the hospital's guilty by collecting documentary evidence and doing interviews with these workers and their co-workers and finally we did it. (Branch K5)

The experience gives insight in three ways. First, despite a conservative shift in legal regulations regarding flexible use of workforce (Lee and Eun, 2011), this case highlights that there is room for turning the tide in the use of subcontracting at least for a certain form of employment. Due to the increasingly complexity of workforce utilisation, this form of illegal use of agency workers is expected to be popular in the

Korean health sector, which means that there is still scope for the involvement of trade unions to reverse this trend.

Second, Branch K5 used this legal action as a platform to reconcile potential competing interests between workers in different employment contracts. While collecting data for the accusation against Hospital K5, branch officials not only met nursing assistants but also nurses employed by the hospital on a permanent full-time basis. By doing so, the branch helped the nurses grasp the magnitude of the problem regarding illegal use of temporary agency workers and encouraged them to have a sense of solidarity.

They [the nurses employed by Hospital K5] were not reluctant to give evidence on how closely their jobs are connected with those of nursing assistants, which was essential to prove that the nursing assistants were ordered by the hospital not by the agency they were employed. The nurses we met all were kind to the branch trying to turn the nursing assistants into regular workers, because they began to understand that this form of labour utilisation was not fair and would cause a problem such as reduction in health service quality in a long term. (Branch K5)

As this quotation shows, this branch took advantage of likely tensions between workers to promote increased mutual understanding by persistent work towards regular workers. Third, cooperation between branch K5 and a separate branch for subcontracted workers (see chapter 7 for a detailed discussion of this separate union branch) in this process played an important role. While the two branches were preparing for legal action, both were mobilising and encouraging their own members.

As such, in contrast to Branches K1, K2 and K3 of KHMU, these two actively intervened before and after contracting-out despite the fragmented nature of the contracting-out process and unfavourable legal contexts. Despite the fact that all branches studied considered managerial restructuring to be a threat, while three branches (K1, K2 and K3) were passive, the other two utilised employers' initiatives as a platform to expand their representation. The experiences of these two show that under the same institutional constraints on union activities towards subcontracted labour, branches can make different responses, which is not explained by the institutional approach. Hence, this analysis demonstrates the limitation of institutional path-dependency approaches. The way in which unions make use of institutions depends on the capacity of unions to pursue their interests (Dekocker *et al.*, 2011: 604).

This study reveals that branches' leaders played a decisive role in this process by formulating and sticking to the rules and having long discussions with their existing members who may have been either reluctant to approve or opposed to agree their unions' focus. Despite limitations and constraints on branches concerning representation of subcontracted workers, branches with strong leadership, active involvement of subcontracted workers, and effective contacts with allies in the community could make a difference within a given sectoral setting.

## **5.5 Concluding summary**

This chapter analysed how the process of contracting-out under a certain legal context affected branches' responses. As shown throughout the Chapter, the

UNISON branches E1, E2 and E3 implemented a twin-track strategy of both opposing contracting-out through campaigning and lobbying at national level and protecting contracted-out workers at branch level, in a context of government-driven contracting-out and the existence of legal provisions regulating the process and the rights of transferred workers. By contrast, the three KHMU branches K1, K2 and K3, in a relatively unfavourable context acquiesced or agreed the management decision of contracting-out in hope of securing the conditions and pay of existing members and excluded subcontracted workers from their constituencies.

The more centralised and practical responses of UNISON branches were affected by massive government initiatives, coupled with the relatively higher level of legal protection for subcontracted workers in England compared with that in Korea. The decentralised (workplace-level) and receptive responses of KHMU, represented by three branches (K1, K2 and K3) were highly influenced by fragmented management initiatives and the lack of legal regulations on the process of contracting-out and rights of workers involved. Importantly this study also found two outliers (K4 and K5) in Korea which adopted inclusive strategies, as shown in the UNISON branches. These two explicitly showed that despite common constraints in a given institutional setting, union branches could make a difference in patterns of union responses. Three non-institutional factors, *i.e.*, the role of leaders, the willingness of subcontracted workers, and relationship with allies in the community played an important role in shaping these inclusive strategies towards subcontracted workers.

From the interview and documentary data collected, this chapter argued that the differences in patterns of union responses confirm that institutional factors, the

source of restructuring and legal regulations have an important role in shaping union responses. It has also been shown that an emphasis on the differences in institutional factors gave an insufficient understanding of union branches' responses by addressing the experiences of two outlying KHMU branches that showed a similar response to those of UNISON. These cases support the analysis of Turner (2007: 10) who argues that trade union representatives 'have a range of choices even in the most difficult circumstances'. Although the existing literature accounts for patterns of union responses by referring solely either to institutionalist or actor-centred approach, this chapter suggested that the explanatory power is enhanced by combining these two approaches into a single analytical framework. A more detailed discussion of an integrated approach is addressed in Chapter 8.

## **Chapter 6 Collective bargaining and subcontracted labour**

Having examined differences and similarities in unions' policies and activities towards subcontracted labour in the context of the restructuring and legal regulations in Chapter 5, this study turns its attention to collective bargaining systems. Among various kinds of representation methods, collective bargaining plays a pivotal role in industrial relations. This is because the process of collective bargaining and its outcome determine the terms and conditions which regulate pay levels, working time, methods of working and procedures for resolving differences between workers and employers (Marchington *et al.*, 2011: 49).

The reason collective bargaining is particularly important in this study is that under triangular employment relationships, unions need to adopt new strategies for collective bargaining. Unions need to decide how to represent employees of the third party (subcontractors), which presents different challenges in collective bargaining from the traditional one. Wills (2009: 444) summarises this new phase as follows:

Subcontracting works to break the mutual dependency between workers and employers that has been so central to the labor movement in the past.

When representing subcontracted workers, not only do unions need to reconcile the various demands of members with different employers, but to decide whom unions will negotiate with. Their counterparts can be either subcontractors or a user company, or both of them in determining pay, terms, and conditions of subcontracted workers. Unions may decide to negotiate only with subcontractors, as contractual

employers of these workers, as unions do under traditional employment relationships. As discussed in Chapter 1, the relationship between a user company and subcontracted workers is not clearly defined. Despite no relationship existing between the two in theory, a user company may be involved in supervision (Kalleberg, 2000: 350; Olsen, 2006: 97). More importantly, unions need to negotiate with a user company because the final decision on conditions of work of subcontracted workers is made by a user company, 'their real employer' (Wills, 2009: 444) through a business contract with subcontractors. The complexities of this type of employment relationships make it difficult, in general, for unions to represent subcontracted workers through existing channels (Kalleberg, 2000: 358). As such, studying union responses to subcontracted workers in relation to collective bargaining is important for developing an understanding of union strategies and the factors affecting their responses.

This chapter investigates how collective bargaining systems have contributed to particular responses of union branches in the two countries. To this end, it explores the dynamics of collective bargaining over the issues of subcontracted labour in the different national settings and examines the factors that help explain variations in the process and outcomes of bargaining within and between countries.

Before moving on to the analysis of empirical evidence, it is necessary to address two criticisms of the use of collective bargaining to explain union responses to subcontracted workers. First is a criticism of Clegg's view on collective bargaining and second is that of the adequacy of bargaining as an effective method to represent the interests of these workers.



Clegg (1976) emphasises the role of collective bargaining in explaining several aspects of union behaviour such as union government, strike action, and union attitudes to industrial democracy. By saying that ‘differences in collective bargaining can explain variations in union behaviour’ (1976: 8), he argues that unions’ power is based on where bargaining is conducted. This view, however, has been criticised on the grounds that the direction of causality is not clear and his explanation, with a focus on institutional contexts surrounding unions, is deterministic (Frege and Kelly, 2003: 11-12; Shalev, 1980: 28-29). This criticism is supported by data collected in this study from KHMU, showing that the reform of union structure to industry union from enterprise unionism has led to a change in collective bargaining structure at sectoral level, irrespective of how well this new bargaining structure has been established, which is discussed in the next section.

The other criticism of the use of collective bargaining is whether collective bargaining is effective for representing contingent workers. Among others who raise this question (Heery, 2009; Kretsos, 2011; Wills, 2009; Wills and Simms, 2004), Simms (2010) presents two reasons for doubt. First, large numbers of contingent workers are employed in the sectors where employees are not organised into unions such as hotel, catering, retail, and so forth. Second, lack of unions’ engaging in ‘distant expansion’ (Kelly and Heery, 1989: 198) makes it likely that collective bargaining will remain a poor mechanism for representing these workers. Here the term ‘distant expansion’ refers to ‘recruiting employees in workplaces without any union presence or recognition’ (*ibid.*). Although some contingent workers are covered by collective bargaining (sometimes through expanding bargaining coverage), this difficulty for the effectiveness of collective bargaining became more

evident given declining union membership. In the UK, total union membership stood at 26.0 percent in 2012 (BIS, 2013) and in Korea at 10.1 percent in 2011 (MoEL, 2012). These compare to the twentieth century peak of membership at 55.4 percent in 1979 (BIS, 2013) and 19.8 percent in 1989 (MoEL, 2012) of the working populations in each country. Although in the English public sector (including health care) union density was 56.3 percent as of 2012 which was far above the average density (BIS, 2013), the trend towards decline is not significantly different than in other sectors.

Despite the importance of these criticisms, data from this study suggest that collective bargaining is one of the main factors which have influenced union behaviour for the following reasons. Clegg's emphasis on collective bargaining in explaining union behaviour does not seem to be supported. As mentioned above, data collected from KHMU shows that union behaviour was not fully dependent on collective bargaining, but unions rather took the lead in reform of collective bargaining structures. Nevertheless, this study pays attention to collective bargaining because collective bargaining remains 'the primary trade union vehicle for advancing the interests of its members' (Conley and Stewart, 2007: 518). It is important to examine how established institutions for collective bargaining have contributed to shaping union representation for subcontracted workers.

In relation to the context of declining membership and influence of unions, collective bargaining may not be effective to improve conditions of employment for subcontracted workers who are likely to work in sectors which are less likely to be unionised. Whilst this limitation of the power of collective bargaining to explain

union responses should be noted, where union branches exist with involvement in the conditions of subcontracted workers, union responses must be explored. Investigating the role of bargaining should show whether or not existing bargaining systems are capable of incorporating the interests of subcontracted workers. More importantly, the triangular employment relationships provides unions with a new challenge of separation of employers, which means they need to decide how to deal with the third party employing subcontracted workers. In this chapter, the experiences of union branches are analysed, three in UNISON and five in KHMU, in relation to the challenge of the rise of subcontracted labour.

Despite the criticism of his deterministic view of collective bargaining that shapes union behaviour, Clegg's terms regarding the level and the extent of bargaining (Clegg, 1976: 8-11) are useful and have been adopted for this analysis. The level of bargaining means where it takes place and with whom, *i.e.*, at workplace level with managers or at industry level with employers' representatives, or at national level with the government. The extent of bargaining refers to its coverage, *i.e.*, how many workers in a workplace (or a company), an industry or a country are actually covered by collective bargaining agreements (*ibid.*). These two terms, the level and the extent of bargaining, are widely used in industrial relations studies (Kuruvilla *et al.*, 2002; Schmitter, 1981; Soskice, 1990; Traxler and Behrens, 2002; Western, 1997). The issue of the level and coverage of collective bargaining is related to the question of which interests a branch seeks to represent and how it does so.

Data collected in this study show that differences in collective bargaining systems have led to different union responses to subcontracted workers. The branches of

UNISON where collective bargaining is relatively centralised have negotiated at sectoral level (Bosch *et al.*, 2010; Galetto *et al.*, 2012) as well as with private contractors in order to represent interests of subcontracted workers. They have dealt with issues concerning these workers ranging from wages and working conditions to their collective rights. The experience of KHMU differed. A bargaining structure at sectoral level was established and had operated since 2004 but did not last long, as discussed in Chapter 4 and later in this chapter. Eun *et al.* (2007) and Lee (2011c) argue that collective bargaining structures in the Korean health sector have become centralised but this is not well established. This ‘disorganized centralisation’ (Lee, 2011c: 768) influenced the three KHMU branches that have hardly negotiated with either hospital employers or subcontractors over issues related to subcontracted workers. Even at the bargaining table, they rarely addressed these workers’ specific concerns other than implementing a few clauses agreed during sectoral bargaining. This finding is in line with the work of Bosch *et al.* (2010: 91) highlighting that ‘the more inclusive the set of institutions, the better protected are those at the low end of the workforce’. However, the two outliers showed different stories from the typical responses in Korea: negotiating with subcontractors for pay, terms, and conditions of subcontracted workers even within a shared institutional setting.

Branches in England reported a wider agenda than those in Korea which focused mainly on representing existing members’ interests. This can be accounted for by the different levels and structures of bargaining between the two. The discussion about the level, structure, and agenda of collective bargaining in both countries in this study requires explanation of the issues of bargaining coverage and employer responsibility which also depend on institutional settings.

Empirical evidence enables this study to question a purely institutionalist approach. The institutionalist approach asserts that social actors behave in a way which is strongly affected by their national and sectoral institutional arrangements (Allen, 2004; Pontusson, 1995). According to this approach, there remains little scope for social actors to shape outcomes with their own aims. Nevertheless, this study found two exceptional cases KHMU branches (K4 and K5) which showed more inclusive activities compared with the typical cases. This shows that branches can gain an independent voice in representing interests of subcontracted workers which may rely on the role of leaders who mobilise bargaining resources (internal and external to branch) and the willingness of subcontracted workers .

This chapter consists of five sections. In Section 6.1, the evolution of collective bargaining in the two countries and the current level of bargaining are explained. This section also addresses the degree of centralisation of bargaining and the issue of articulation in the process of bargaining. Section 6.2 then examines the variety of bargaining agendas by looking at pay, conditions of employment, social benefits, and other relevant issues. Sections 6.3 discusses the collective agreement coverage, and Section 6.4 the related legal issues, both with a focus on employer's responsibilities toward subcontracted workers. These are followed by Section 6.5 which analyses two outlying cases in Korea which shows the limitations of an institutionalist approach and the possibilities for an integrated approach. The chapter concludes by summarising the findings and considering the implications of the findings.

## 6.1 Bargaining level

This section examines the ways in which the level and structure of collective bargaining have influenced similarities and differences in patterns of branch responses to subcontracted workers. Union strategies seem to differ from country to country due to different institutional arrangements in the areas of industrial relations (Frege and Kelly, 2003: 12). Some argue, however, that the growth of flexibility in the labour market resulting from deregulation, privatisation and liberalisation has reduced the extent of variation in union behaviour caused by different institutional arrangements (Pernicka, 2009: 462).

Collective bargaining is an important mechanism for improving terms and conditions of employment and a key issue is where such activity takes place (Benson and Gospel, 2008: 1366-1368). In UNISON and KHMU, where the branches studied were established at the national or industry level, as described briefly in Chapter 4, their main locus of collective bargaining lies beyond the workplace. These unions experience a relatively centralised structure compared to those in other sectors within each country in the context of union decline and the decentralised bargaining structure (Bosch *et al.*, 2010; Eun *et al.*, 2011; Lee, 2011c; Méhaut *et al.*, 2010; Marchington *et al.*, 2011). Here the term ‘centralisation’ refers to the level of bargaining, with collective bargaining taking place at sectoral, regional, or national level (Bosch *et al.*, 2010: 101).

In the experience of the branches in England, the bargaining systems represented by Agenda for Change (AfC) and the Pay Review Body (PRB) allow unions to operate

in a centralised bargaining structure, although the institutional arrangement of collective bargaining in the public sector have been pressurised to decentralise over the last twenty years (Bosch *et al.*, 2010: 103). In addition, several distinctive characteristics of institutional settings were abolished such as the principle of ‘fair comparison’ (Bach and Winchester 2003). Under the Agenda for Change which is the national pay, terms and conditions agreement for almost all NHS staff (UNISON, 2012a), it would be impossible for UNISON branches to set up a separate bargaining structure unless employers were trying to drive down the terms and conditions (National Officer, UNISON).

By contrast, the bargaining structure in the Korean health sector, which was regarded as fragmented at enterprise level has become relatively centralised, following the successful reorganisation of enterprise unions into the industrial union, KHMU, in 1998. But this can best be described as ‘disorganized centralization (Lee, 2011c) due to the hostility of employers toward sectoral bargaining and the high level of branches’ autonomy, which is rooted in the legacy of enterprise unionism. Since its establishment, KHMU has demanded a transformation of bargaining structure at the industry level and has succeeded in bargaining with employer representatives of hospitals where branches of KHMU existed and in making the first industrial agreement in 2004. However since the organisation representing employers’ interests, KHMEA (Korean Health and Medical Employers Association) which was only established in 2007 resolved to disband itself in 2009, there has been no employer’s association in the Korean health sector so that KHMU has been conducting negotiations with all hospitals where its branches are organised separately.

This section investigates how the differences in bargaining level have contributed to patterns in union responses to subcontracted workers. Drawing on empirical evidence, it argues that the dominant collective bargaining structure is an important factor that shapes a particular response. To this end, it traces the trajectory of collective bargaining structures in the English and Korean health sectors, followed by an analysis of the bargaining level in relation to interest representation for subcontracted workers and the issue of articulation between the national unions and branches.

### **6.1.1 Trajectory of bargaining structures**

This section describes the development of bargaining structures in the health sectors in both countries before examining the relationship between the level of collective bargaining and the extent of interest representation for subcontracted workers. The discussion of the trajectory of bargaining structure allows insight into how unions have attempted to get bargaining structure centralised in the face of the opposition of government's and employers' attempts to decentralise the bargaining structure in England and employers' attempts to keep the fragmented bargaining structure by refusing to participate in sectoral bargaining in Korea.

In England, where centralised bargaining was dominant in almost all industries, collective bargaining began to be decentralised in much of the private sector from the mid-1970s. This trend was accelerated during the Conservative governments following the 1979 election (Flanagan, 2008: 413-415; Marchington *et al.*, 2011: 50). Detailed analyses of the 2004 and the 2011 Workplace Employment Relations



Survey (Kersley *et al.*, 2006; Wanrooy *et al.*, 2013) show this trend clearly. The proportion of workplaces with 10 or more employees covered by collective bargaining has declined from around 70 percent in 1970 to approximately 27 percent in 2004 (Kersley *et al.*, 2006: 180). Across all workplace data (regardless of the number of employees), this declined further to 16 percent in 2004 and 13 percent in 2011 (Wanrooy *et al.*, 2013: 22). Between public and private sectors, there is a noticeable difference in the proportion of workplaces with any collective bargaining and of employees covered by collective bargaining. Those in the public sector where the health sector belongs was 70 and 69 percent respectively in 2011, compared with 8 and 17 percent in the private sector (Wanrooy *et al.*, 2013: 22).

Although bargaining structure seems to be stable in the public sector, the institutional arrangements of bargaining have been pressurised towards decentralisation over the last twenty years (Bosch *et al.*, 2010: 103). This trend reflects the abolition of several distinctive characteristics of institutional settings. For example, the bargaining principle of ‘fair comparison’ with the private sector in terms of pay levels and increases was replaced with that of ‘affordability’ which is defined by strictly enforced cash limits on public expenditure (Winchester and Bach, 1999: 45-46). In addition, this study considers the effects of Agenda for Change and Pay Review Body in the health sector.

The Labour government published Agenda for Change in early 1999, and it was fully implemented by 2004 having outlined the case for a comprehensive modernization of NHS pay systems (Bach and Winchester, 2003: 302-303). The main elements of the AfC system were as follows: first, pay structures for different occupational

groups were reclassified into three: doctors and dentists, nurses and other professions, and all other staff. Second, grades within each pay spine were determined locally based on a single, NHS-wide job evaluation scheme. Third, progression on the basis of responsibilities and competencies was introduced in order to improve the links between education and development and pay progression. Lastly, while a set of 'core' conditions of service were determined at national level, others were subject to variation at local level (Bach and Winchester, 2003: 302-303).

In contrast, the bargaining structure in Korea has been fragmented at the enterprise level, maintained by a long history of enterprise-level union (Bae *et al.*, 2008; Lee, 2011c: 785). Most collective bargaining was conducted at the enterprise level corresponding with the enterprise-based union structure (Lee, 2011a: 293). Since the mid-1990s, labour movement leaders began to realise that enterprise unionism could not protect members' interests, which were under threat of high unemployment and redundancy. Unions were established at industry level in the banking, metal, and health sectors, following concerted efforts to integrate enterprise unions into industrial ones and then to make sectoral agreements. Considering the evidence showing a tendency towards decentralisation of collective bargaining in many developed countries (Benson and Gospel, 2008; Brown, 2003; Flanagan, 2008; Katz, 1993; Streeck, 1991), the Korean case is an anomaly. As Lee (2011c: 786) argues,

[T]he Korean case demonstrates that even if a change in the economic context weakens the rationale for multi-employer bargaining, the collective bargaining structure can still be centralized.

This study seeks to account for this exceptional trend in Korea and assess the likely consequences of this development using the example of KHMU. The union made great efforts to establish an industry-level bargaining structure even before integrating enterprise-level unions into the industrial union. Uniform demands were established during a synchronised schedule of negotiations (Lee, 2007). KHMU leaders thought that changing its organisational structures did not directly mean the transformation of bargaining structure. Since its establishment in 1998, KHMU demanded a transformation of bargaining structure at industry level and made the first industrial agreement in 2004. This triumph was due to KHMU's consistent efforts including industrial actions, lobbying government and politicians, campaigning for industrial bargaining, sit-in protests, to argue for the new bargaining structure. Although it can be argued that 'it remains unclear whether Korea's collective bargaining structure can be stabilised at the industry level largely because of the refusal of employers to participate in sectoral bargaining' (Lee, 2011c: 778), these experiences presented significant changes in bargaining structure toward centralisation.

This study examines the extent to which change and reform in the two countries have contributed to the capacity of union representation of subcontracted workers' interests in terms of enhancing employment security, improving pay and terms of employment and reducing the disparity between workers. One of the main reasons for the drive toward collective bargaining at the industry level was to represent the wider interests of workers, covering subcontracted workers.

### 6.1.2 Bargaining structure

This study turns its attention to the bargaining level by looking at where the collective bargaining for subcontracted workers takes place. As shown above, despite the decentralisation trend in collective bargaining in most developed countries, the English health sector has enjoyed centralisation with an ability to exert an influence over the government as employer, and establishing a national pay scale even for frontline employees (Bosch *et al.*, 2010: 103). The health sector in Korea has also experienced a new development toward centralisation (Lee, 2011c: 783-784). Nevertheless, there were marked differences in the level of centralisation, coordination, and stability of bargaining structure between the two. By investigating the experiences of union branches, this study argues that different approaches to subcontracted labour have resulted from different bargaining structures.

#### *UNISON*

One of the stark differences is whether subcontractors are involved in collective bargaining for subcontracted workers. UNISON was involved in a separate forum for these workers with the Department of Health and the organisations representing contractors. They reached an agreement in October 2005 entitled ‘Agenda for Change and Private Contractor Staff Agreement – A Joint Agreement’ (hereafter the Agreement) aimed at protecting terms and conditions of such staff as an equivalent to Agenda for Change (DH, 2007: 4; UNISON, 2008b: 14). In order to enforce the Agreement, it regulated that ‘contractors who do not accept terms of agreement will not be allowed to bid for contracts’ (UNISON, 2006a: 1). The Agreement covered

staff working for private companies on soft facilities management contracts such as catering, cleaning, portering, laundry, and switchboard. This was implemented from 1 October 2006 following an interim period from 1 October 2005. (DH, 2007: 4).

One of the biggest concerns of UNISON was the two-tier workforce within the NHS. Workers transferring from the NHS to the private sector as part of an outsourcing move were entitled to receive protection of their terms and conditions following the TUPE (UNISON, 2008a: 18). There were, however, still issues that remained unsolved. If new workers were required in the outsourced organisation due to retirement, turnover of existing workers, or some other reason, they could be offered a different employment package including different levels of pay, pension, training, and annual leave, which resulted in a two-tier system (UNISON, 2008a: 18). Two individuals doing the same work could receive remuneration packages of a differing value.

As such, UNISON has improved the position of subcontracted workers by reintegrating them into NHS pay systems by the Agenda for Change framework and the extension of the Code of Practice on Workforce Matters (the 'Two-Tier Code') throughout the public sector with the aim of ensuring that new contract staff have terms and conditions no less favourable than transferred employees (Cabinet Office, 2005). Despite pension provision being excluded, this agreement has been considered to have a positive effect on pay, terms, and conditions of subcontracted workers (Grimshaw *et al.*, 2007). As discussed in Chapter 5, under the TUPE Regulations, employees of a hospital automatically became employees of a new private contractor on the same terms and conditions except some occupational

pension rights when the transfer took effect (Cooke *et al.*, 2004; Méhaut *et al.*, 2010). With the AfC which came into effect from 2004, UNISON sought ‘legal advice on whether staff who have been TUPE’d out of the NHS to private contractor were eligible for AfC terms and conditions under TUPE entitlements’ and received the legal advice which suggested that ‘this would depend entirely on the wording of the individual’s contract of employment’ (UNISON, 2005a: 8).

Whilst all parties involved refer to it as an ‘agreement’, it is not ‘what is traditionally understood as a ‘collective agreement’ such as the agreements in the NHS Staff Council Handbook. It is basically an agreement reached between the parties and approved by the government’ (UNISON, 2005a: 11). Notwithstanding, it is believed to be enforceable in that the ministerial statement said that ‘[m]y department will be contacting NHS organisations as soon as endorsement is confirmed urging them to implement with immediate effect. In future, should industrial relations or service quality issues arise in relation to soft FM (Facilities Management) contracts one of our first questions will be whether the terms of the statement have been followed as well as all parties involved agreed not to give an entitlement to any further contracts to contractors which attempt to opt out of this agreement’ (UNISON, 2005a: 11). According to the Agreement, NHS contracting authorities need to make sure that all contractors ‘are priced to cover the costs of applying its terms for the duration of the contract’ in order to adopt and implement this agreement (UNISON, 2006a: 16).

This was a national agreement but it was implemented at each hospital in the NHS which raises questions for unions at branch level. All contractors had to ‘employ staff on terms and conditions (excluding pensions) that are no less favourable than

those set out in the NHS AfC Staff Handbook' (UNISON, 2006a: 7). The meaning of 'no less favourable' is understood to mean that 'the private contractor companies will have to employ staff on terms and conditions that are broadly similar to those in the NHS AfC Staff Handbook. They have to be at least of equal value in total' (UNISON, 2006a: 7).

For example, Branch E1 reached an agreement with the Hospital Trust and its private company in 2004 which provided a revised rate of pay for contract staff (Interview, Branch E1). Three parties agreed to end pay parity issues that existed not only between NHS and contract staff, but also between differing groups of contract staff. This agreement is not exactly same as the Agreement but is considered to achieve nearly all that the Agreement set out. In addition UNISON, along with other unions such as GMB and Unite signed a national agreement with a big private contractor in order to ensure terms and conditions of all contract staff were no less favourable than transferred employees (UNISON, 2008b).

There is a need for local discussions to ensure that any national agreements are implemented appropriately (UNISON, 2006a: 8). Otherwise a lack of local discussions, largely caused by employer's strong intention to reduce cost or its hostility toward unions may prove a source of deteriorated terms and conditions of contract staff and likely conflicts. One of the main reasons for two strikes led by domestic, porters, and catering staff working at two NHS hospitals in December 2010 was because private contractors refused to pay sick pay, overtime, or unsocial hours payments equivalent to Agenda for Change (UNISON, 2010b).

However, following the government announcement of the withdrawal of the Two-tier Code with immediate effect on 13 December 2010, the Agreement has also not been applicable (Cabinet Office, 2010). This move followed the government's abolition of the two-tier workforce agreement and meant that, for new contracts, contractors were now free to offer different terms and conditions of employment to new starters working on public sector contracts. However, where the Agreement is already in place, it has become part of terms and conditions for employees and consequently, can only be changed with agreement from employees. This is in line with general employment practice (NHS Employers, 2011). Three branches studied already reached agreements concerning subcontracted workers, so that they can rely on that agreement regardless of the abolition of the joint agreement.

#### *KHMU*

In the Korean case, this study found that there was no formal mechanism for representing subcontracted workers at sectoral level. This was partly caused by a less developed sectoral bargaining structure, coupled with a long tradition of enterprise-level unionism. In accordance with the agreement of 2004, the Korean Health and Medical Employers Association (KHMEA) was established in 2007 with the aim of representing the interests of hospital employers in negotiating with KHMU (Lee, 2011c: 784). Although KHMU claimed to represent the interests of subcontracted workers, subcontractors were not allowed to join the KHMEA on the grounds that they did not deliver *medical* services (National Officer, KHMU). As a result, there has been no mechanism for subcontractors to get involved in collective bargaining at sectoral level either before the breakup of the KHMEA in 2009 or afterwards.



As described previously, subcontracting raises concerns at the branch level over bargaining structure and whether a hospital or subcontractors, or both could be the appropriate counterpart. Data collected show that majority of branches of KHMU, as shown in the branch K1, K2 and K3, has no relationship with subcontractors. Apart from sectoral agreements, the three branches conduct additional or supplementary bargaining with their employers over how to implement the outcomes of sectoral bargaining. There are different pay structures depending on occupation, length of service, specific qualifications, and so on which must be accounted for appropriately. Furthermore they bargain with their counterparts over specific issues which only apply to employees of that hospital such as working time, annual leave, the number of staff to be employed. The situation is totally different from English cases where workers in the NHS were put into the one pay structure nationally which comprised different pay level depending on occupation, qualifications, and length of service.

A new development of the bargaining structure in relation to subcontracted labour has been under consideration in Korea to address these difficulties. One possible way is to establish a bargaining table between KHMU and some of the large subcontractors, a strategy UNISON took. Given that hospitals tend to be provided with workers only from selected subcontractors, such companies begun to play a bigger role in providing workers for ancillary jobs in hospitals. Hence, KHMU expects that once it establishes a bargaining table and reaches an agreement with leading subcontractors, subcontracted workers, working for different hospitals can get the same terms and conditions of employment.

There are big companies which provide workers in cleaning, catering, security, and so on to big hospitals. If we set up a bargaining table with the companies,

we expect it to become much easier not only to improve working conditions of workers but to organise them. It could be called ‘pattern bargaining’. Once we make an agreement with one subcontractor, we expect to see the spread of similar agreements to others. I think this is very challenging, we know this is very important and a crucial way to represent the interests of contingent workers. (National Officer, KHMU)

However, this intention has not been implemented as a formal policy and is still in a conceptual stage. One of the main reasons why KHMU was not yet able to implement this idea into policy is because there is still a feeling that negotiating with subcontractors is to be considered as admitting the legitimacy of intermediary function in the labour market. Despite a long debate about the abolition of indirect employment or the elimination of discriminatory practices of the indirectly employed combined with the prohibition of illegal indirect employment, KCTU, one of the national labour federations that KHMU affiliates to has been pushing hard for the elimination of indirect employment practices from the labour market (Korea Daily Labor News 2012). This seems to be a political and ideological issue.

I have been arguing for the adaptation of ‘two track’ strategy. But many said this may result in the weakening of our principle that the principal employer should have responsibility... .. but my view is different. I think there are some issues to be solved through negotiating with contractors. But many disregard it. (National Officer, KHMU)

Other officials at national level who were interviewed also emphasised this practical approach and expected pay and working conditions of contingent workers to be ratcheted up.

There is no doubt that we should negotiate with a hospital, the *real employer* of subcontracted workers. However it was not a propitious circumstance due to the limitation of legal regulation on employers' responsibilities, coupled with the refusal of hospital employers to negotiate. Accordingly I think we need to negotiate with contractors first and then expand our room to manoeuvre towards the negotiation with hospital employers. (National Officer, KHMU, italics added for emphasis)

This idea can be interpreted as being similar to the strategy of UNISON, the so-called 'twin-track approach' which means not only to opposing privatisation but also putting a pragmatic strategy in place through intervention and involvement in the procurement process and its outcomes. As the process develops and privatisation has been proceeding in spite of union opposition, UNISON has shifted its focus from 'political' to 'pragmatic' (National Officer, UNISON).

### **6.1.3 Articulation**

This section examines the degree of articulation of bargaining activities at different levels within the unions. Drawing on empirical evidence, it argues that the level of vertical integration within unions has had positive effects for representing interests of subcontracted workers. The most resilient union movements refer to those that maintain an effective articulation between central and local levels with strong organisation at both levels (Kjellberg, 1983, cited in Hyman, 1997a: 313).

Under Agenda for Change it would be impossible for union branches to set up separate pay and terms of employment (UNISON, 2012a). There was little room for branches to manoeuvre. Although branch officials found themselves negotiating

workplace-specific issues such as arrangements for carrying over annual leave, special leave, resolution of disciplinary matters and so on with their contractual employers (*ibid.*), almost all pay and terms and conditions of employment were determined at sectoral level.

KHMU also had control over the bargaining of its branches. For example, wage rates negotiated through sectoral agreements have generally been respected at the local bargaining table (Lee, 2011c: 784). However, it can be said that KHMU did not have very strong power over the decision of branches, although it was considered that the level of control of headquarters was relatively strong compared with other industrial unions in the metal and banking sectors (Lee, 2011c). While branch leaders had to redistribute upward the organisational resources including union dues, they also had to consider the needs of existing rank-and-file members of the branch. Given a long tradition of enterprise unionism coupled with the relatively unstable bargaining structure at sectoral level and members' concerns over sectoral bargaining, which could be used as an instrument for wage restraints (Lee, 2011c: 778), branch officials were likely to demand autonomy in implementing policies of the central union. Union branches of KHMU have been under the strong influence of the structure and practices of enterprise-level bargaining, represented by enterprise consciousness and financial autonomy. As a result, a unique two-tier model of bargaining has developed in Korea where industrial unions wield little power over the decisions of branches. This arises from the relatively high level of each branch's autonomy, although rights to sign up to collective agreements and to strike were at the headquarters' discretion. This is one of reasons why the transformation of the bargaining structure in KHMU was described as 'disorganized centralization' (Lee, 2011c: 768)

This confirms that there is a positive relationship between the level of vertical integration within unions and unions' ability to represent interests of subcontracted workers. This finding supports Heery's work (2004: 441) arguing that a union with decentralised bargaining and relatively autonomous workplace trade unionism is likely to present the type of regulation which involves the regulation of subcontracted workers' terms and conditions through engagement with subcontractors or a user company *without* organising these workers into its representational domain. Empirical evidence collected for this study shows that Heery's argument drawing on the UK unions' experiences is well applied to the Korean health sector context. This shows more clearly through a comparative lens of this study.

## **6.2 Bargaining agenda**

This section explores how far interests of subcontracted workers have penetrated the bargaining agenda by looking at pay determination and other terms and conditions of employment. The analysis of bargaining agenda highlights three aspects in relation to representing the interests of subcontracted workers pertinent to this study. First, the extent to which bargaining has contributed to the improvement of employment conditions of subcontracted workers in terms of employment stability, social benefits, voice at the workplace, and so on. Second, whether the bargaining has resulted in mitigating income inequalities between regular and subcontracted workers. Third, how unions have been involved with subcontracted workers in the process of setting up the agenda at the bargaining table.

In order to address these questions posed, this section investigates the ways in which differences in bargaining agenda have contributed to patterns in union branches' responses by looking at the issues of pay determination, terms and conditions of employment and the process of agenda settings. Data collected reveals that although UNISON and KHMU have been operating to a greater or lesser extent under national systems of collective bargaining, the scope of the branches' representation with regard to pay and conditions of employment of subcontracted workers varied in comparison between the two unions. This study found that it was caused by the degree of centralisation of bargaining, which supports the institutionalist approach. However this study also highlights the limitation of this approach by presenting empirical data from the outlying branches of KHMU which showed a different approach from the typical one in Korea, as discussed in Section 6.5.

### **6.2.1 Pay determination**

Pay for all staff in the NHS is determined by government ministers, on the basis of recommendations of the NHS Pay Review Body (NHSPRB), an independent body composed of members from a variety of professional, academic and business backgrounds (Newell, 2009; OME, 2013). All concerned parties such as government, NHS Employers, and staff organisations submit evidence on pay and related issues, and also NHSPRB members visit trusts and other health care units to meet staff and managers, to gather information and views on pay and related issues before making recommendations (OME, 2013). Although it does not look like the common kind of collective bargaining, it is regarded as an extension of bargaining (Winchester and Bach, 1999: 44-45).

The work of NHSPRB applies to all staff including ancillary and maintenance and estates staff, administrative and clerical, administrative managers and other groups of staff (OME, 2013). The pay level of employees working for private companies is determined based on this system and majority of them fall into the bottom three of the nine pay bands (UNISON, 2006a). In the case of Branch E1, for instance, an agreement between three parties – the branch, the Trust and a private contractor – put all posts for subcontracted workers into pay bands 1 to 3 in 2006 and this has persisted to date. This has to be ‘no less than specified in the Agenda for Change pay band’, which means that a subcontractor cannot simply try to apply the bottom point of each pay band (UNISON, 2006a: 8). Each band has several pay points and two gateways. Progression through the gateways in each pay band is linked to the application of the Knowledge and Skills Framework (KSF in the NHS) (UNISON, 2006a). A subcontractor must ‘adopt and implement an objective method of job evaluation, agreed in partnership that results in equal pay for work of equal value compared to other employees of the contractor working on NHS contracts’ (UNISON, 2006a: 13).

It is noteworthy that one of the contested issues in UNISON’s Health Care Service Conference in April 2012 was whether there was a need to establish another forum for negotiations on NHS pay instead of the NHSPRB. This motion was triggered by the government’s decision to freeze pay for NHS staff between 2011 and 2013. This raised a question of the validity and the future of the pay review body in determining pay awards for NHS staff (UNISON, 2012b: 26-27). Despite its failure to pass, it showed that members’ concerns about the independence of NHSPRB have been building up. It also showed a distinctive feature in the English health care systems is

that pay determination was used as a political instrument by governments aiming to meet fiscal pressures (Grimshaw *et al.*, 2007).

In contrast, pay increase rates in Korea were determined to varying degrees depending on hospital types. KHMU and KHMEA agreed, for example, in 2007 on a 4.0-5.3 percent of wage increase rates depending on the size and characteristics of hospitals. The two parties also reached an agreement to use a certain amount of the pay increases for members to improve pay and terms of employment for contingent workers. Accordingly, contingent workers or those who cannot join KHMU can benefit from the agreement, by describing the way to apply that provision to them in supplementary agreements at the branch level. Following the agreement, each branch made a further agreement with its counterpart over how to implement this at workplace level. For example, the agreement in Branch K1 applied 5.0 percent wage increase rates outlined: 4.2 percent applied to existing members and the remaining 0.8 percent was used for contingent workers by spending the amount of money on increasing their pay. However, since the sectoral bargaining system was suspended in 2009, there has been no mechanism to regulate the pay of subcontracted workers at sectoral level.

### **6.2.2 Terms and Conditions**

As with pay determination, terms and conditions for these workers were protected by the NHS Agenda for Change agreement in England, while those in Korea were not covered by any official agreements.



Terms and conditions of employment for subcontracted workers in England were also protected by the Agreement which prescribed that whatever terms contractors proposed to apply under this agreement must be no less favourable than the terms and conditions operating under the NHS Staff AfC Handbook (UNISON, 2006a: 15). The NHS AfC agreement contained conditions on the following: maternity leave and pay, redundancy pay, mileage allowances, subsistence allowances, equal opportunities, dignity at work, caring for children and adults, flexible working arrangements, balancing work and personal life, an employment break scheme, and other relevant provisions. A striking recent change in pension schemes for subcontracted workers was that they would be entitled to the NHS pension scheme later in 2013 (People Management, 2013). Since 1999, according to the TUPE regulations, NHS staff transferred to the private sector have been guaranteed a 'broadly comparable' pension scheme. But the schemes applied to subcontracted workers were not the public-sector pension schemes. Although the government move was triggered by private providers arguing that 'this pension requirement has put them at a disadvantage when bidding for contracts against other NHS trusts who are part of the government-backed schemes' (*ibid.*), unions backed this move because it helped preserve membership numbers and thereby could enhance the viability of the NHS pension scheme.

In the Korean case, according to sectoral agreements from 2004 to 2008, provisions ranged from the principle of sectoral bargaining to enhancing the public role in the health service, employment, pay, labour process including working hours, the form of shift work, overtime pay rates, annual and maternity leave, sexual harassment, health and safety, and other relevant issues. However, most of these provisions applied to members with a full-time permanent job. There was a section specifying

conditions for contingent workers in the sectoral agreement in 2007 with the aim of improving pay and conditions of employment of contingent workers. As a result, more than one thousand workers who were indirectly employed began to have entitlements to special holiday benefits and medicare reimbursement which only applied to workers employed by a hospital. More importantly, the agreement in 2007 contained a provision stating that an employer shall make an effort to guarantee continuity of employment for subcontracted workers in the case of the change of an existing contractor. It needs to be appreciated that KHMU made sectoral agreements including provisions for subcontracted workers who usually did not have membership. Nevertheless, this type of bargaining is regarded as *proxy* bargaining. The three branches of KHMU did little to communicate with subcontracted workers during the bargaining process to find out what they really wanted. Although the process of agenda setting is closely related to the ways in which subcontracted workers get involved in union activities, these branches negatively objectified the subcontracted workers. The experience of these three branches (K1, K2 and K3) is in stark contrast with that of two outliers in KHMU (K4 and K5) where branch officials communicated with subcontracted workers in person and mobilised them in order to advance their demands.

### **6.3 Bargaining coverage**

This section addresses bargaining coverage in order to examine how the scope of collective bargaining coverage is related to patterns of union responses to subcontracted labour. The share of workers who benefit from a collective agreement rests on the coverage of the agreement (Bosch *et al.*, 2010: 93; Clegg, 1976: 8-11).

The term 'coverage' is distinguished from union density but it approximates the unionisation rate in England and Korea (Bae *et al.*, 2008; Flanagan, 2008; Freeman, 2008). This is rooted in the lack of mechanism to extend coverage to all workers and firms in a sector (or a country). Declining unionisation level in the two countries is, therefore, related to declines in collective bargaining coverage (Freeman, 2008: 643; Yoon, 2008b). In contrast to other sectors in each country, UNISON and KHMU have been conducting collective bargaining at sectoral level.

This section argues that the degree of bargaining coverage has a positive influence on union representation capacity by improving pay and terms of employment for subcontracted workers who are mostly in low-wage jobs. It is in line with the work of Méhaut *et al.* (2010) arguing that there is a positive relationship between the degree of inclusiveness of a wage-setting system and the incidence of low-wage work. This study takes a further step by uncovering dynamics in the process of implementing national or sectoral bargaining agreements at workplace level. It argues for the importance of institutional arrangements which result in different branch responses. To this end, this section explores the extent to which workers are covered by collective agreements and pay determination by examining the Agenda for Change and Two-tier Code in England and the annual sectoral agreements and their related supplementary agreements at branch level.

### **6.3.1 Coverage and union density**

The scope of collective bargaining coverage relies on different institutional setting in countries. The work of Bosch and his colleagues (2010: 94-102) demonstrates that

institutional linkage can be classified into four types: 1) low trade union density causes low inclusiveness; 2) high union density leads to high inclusiveness; 3) extended bargaining agreements and strong employer organisations contribute to high inclusiveness; and 4) high employer density and high coverage do not result in high inclusiveness due to the employers' refusal to extend agreements. The first two types are based on the link between union density and collective bargaining coverage. The low-low connection found in the liberal market economies with few other mechanisms to cover non-union members signifies that a low union density has led to low coverage in collective bargaining.

In broad terms, England and Korea fit into the first category that coverage is mainly influenced by one single factor: union density (Bosch *et al.*, 2010: 95; Lee, 2011a). The two are a typical case which shows that when union density is low, bargaining agreement coverage reflects this (Bosch *et al.*, 2010: 102; Eun *et al.*, 2012b). In other words, the coverage in England and Korea is almost equal to, or only slightly higher than unionisation level. In this context, declining union density produces commensurate declines in collective bargaining coverage (Freeman, 2008: 643).

Looking into the sectoral level in the two countries, however, a different picture appears. Whilst collective agreement coverage in Korea is slightly higher than unionisation level across the board including the health sector (Eun *et al.*, 2012b), that in the English health sector has trodden different trajectories compared to that in the private sector. All workers employed in the NHS are covered by a centralised pay determination system and the Agenda for Change agreement (Newell, 2009). Furthermore, employees of companies that provide outsourced services can benefit

from the quasi-extension of the national wage agreement (Méhaut *et al.*, 2010: 335). This means that the English health sector can be regarded as the third type with extended bargaining agreements. As such, the more stable institutional arrangement in the English health sector is more propitious for representing the interests of subcontracted workers than that in Korea.

### **6.3.2 Mechanism for extension**

Terms and conditions of employment for all employees in the NHS were determined by the Agenda for Change (hereafter AfC) agreement so that all employees could be covered by this highly centralised agreement regardless of union membership, across all regions and hospitals. There was no need to make an effort to extend the collective agreement to employers who are not affiliated to the signatory employer associations because the system already embraced all NHS employees (Newell, 2009).

Although pension schemes (for private companies' workers) differ, Agenda for change applies to all workers. (Branch E1)

By contrast, the experience of KHMU reflects that of other sectors in Korea. Like other industrial unions, KHMU was also confronted by difficulties such as low union density, limited resources in terms of union finance and the number of staff, employers' hostility to sectoral bargaining and very few mechanisms for ensuring the extension of sectoral agreement to employers who did not take part in the sectoral bargaining system. In this situation there is little opportunity to address the extension of bargaining agreements to the unorganised or contingent workforce.

Taking the sectoral agreement of 2007 as an example, there was no separate provision about the extent of agreement coverage. It was interpreted that the agreement covered only KHMU members employed by hospitals that took part in the sectoral bargaining. Considering low density of KHMU membership that stood slightly above 10 percent among all health sector workers, the extent of the influence of collective agreement was limited. This is one of the marked differences between UNISON and KHMU. In England, all NHS hospitals are obliged to implement the AfC agreement every year regardless of union presence in their hospitals and unionisation rate. Once pay, terms, and conditions of employment are agreed at NHS Pay Review Body and NHS Staff Council, they ought to be implemented for all NHS workers.

It should be noted that there were efforts by KHMU with a positive outcome which resulted in the extension of the bargaining agreement by providing for non-unionised workers, as explained in Section 6.2. Apart from this exceptional provision, two questions arise in relation to union members employed by hospitals that did not participate in the sectoral bargaining, and non-union members in hospitals that did take part in the bargaining. The question is whether the sectoral agreement can extend beyond the core groups of members to cover contingent workers. It was not possible to extend coverage of sectoral agreements to subcontracted, and other contingent workers. Employers who did not take part in the sectoral bargaining system are not bound by the agreement and instead, take responsibility only for an agreement negotiated with a branch at the workplace. Non-union members in hospitals participating in sectoral bargaining may or may not be covered, depending on branch density. This is because there is a legal provision regarding binding force

of collective agreements in Korea. The Trade Union and Labor Relations Adjustment Act (TULRAA) states that:

[W]here a collective agreement applies to at least half of the ordinary number of workers performing the same kind of job and employed in a single business or a workplace, it shall also apply to other workers performing the same kind of job and employed in the same business or workplace (Article 35: General Binding Force).

Due to this provision all employees, regardless of union membership, are covered by the sectoral agreement in all branches studied with above 50 percent unionisation level except Branch K4. However, there is no reason to assume that this provision applies to subcontracted workers because they are not employed by a hospital.

#### **6.4 Employer responsibilities**

A fundamental problem that arises in triangular employment relationships is about joint employer status: who should take responsibility towards workers employed by the third party. This issue is based on the questions of ‘who controls the employees, gives orders, directs work, hires, and fires’ (Kalleberg, 2000: 352) and thereby leading to the issue of who is bound by labour law to participate in collective bargaining and implement collective agreements.

Unlike temporary help agencies, as discussed in Chapter 1, subcontractors supervise their employees’ works but the extent of control exerted by the client may not be clear-cut in practice (Kalleberg, 2000: 350). Taking a contracted-out cleaning service

in a hospital as an example, this ambiguity becomes evident. Cleaners conducted their jobs all around the hospital including cleaning patients' rooms and the wards in which most regular medical staff were working. Cleaners were likely to get orders from staff employed by the hospital because tidiness was also related to the quality of medical service. Due to such circumstances, the question of who should be considered the real (or genuine) employer of subcontracted workers in question is still unclear (Davidov, 2004: 729).

In other words, it is directly associated with the question of whether a union confirms the legitimacy of the third party and to what extent a union would call for employer responsibilities from both or either employer. This section explores the ways in which legal regulations concerning employer responsibilities have contributed to variations in union responses. To this end, it examines legal provisions concerning employer responsibilities and analyses evidence from the process and outcomes of supplementary bargaining at workplaces. On this basis, it argues that despite the similar legal frameworks in relation to employer responsibilities in the two countries, union branches have responded in a different way which relates to a broad national context.

#### **6.4.1 Protocols of labour law**

Given that one of the reasons for subcontracting is to outsource employer responsibilities towards employees to the third party, it is vital to clarify who is the legitimate employer for subcontracted workers (Davidov, 2004). The triangular employment relationships have, as Cho (2012b: 6) argues, the risk of not only



intermediary exploitation but also of exempting the employer from their responsibilities. If an employer takes an ambiguous attitude toward subcontracted workers or tries to avoid responsibilities, terms and conditions of employment will deteriorate and their employment security will be undermined. On this account Wills in the study (2009: 447) dealing with community-union organising efforts insists on the need to put pressure on the 'real employer' at the top of any contracting chain.

The reason this issue comes into question is because of the protocols of labour law that have developed subject to only two parties' involvement in the supply and management of labour in England and Korea. Additional ambiguities arise in triangular employment relationships (Kang, 2007; Park *et al.*, 2009; Wills, 2009). With respect to the issue of employer responsibilities, both countries have broadly similar regulations.

Employer responsibilities in England and Korea are based on the principle of an employment contract with 'clearly identified parties' which makes it extremely difficult to establish who holds employers' responsibilities beyond employment contracts (Cho, 2012b; Cotton, 2010). As Cotton noted:

In the absence of a contract of service, how this is established rests on the deliberation of courts. (Cotton, 2010: 13)

Interestingly, a similar pattern of court decisions is found in the two countries. While decisions are not consistent, only a few imposed employer responsibility on the principal company on the grounds that there is an implied contract between the principal company and agency or subcontracted workers. Taking the decision of the

Supreme Court in Korea<sup>2</sup> - as an example, the point becomes much clearer. In contrast to other decisions from the Court which focused on the employment contract itself, the judgement in this case was based on who has the right to give work instructions. It was ruled that even if a field manager of the subcontractor gave specific work directions to the subcontracted workers, that manager was simply delivering the decisions of the principal company, or under such control (Cho, 2012b: 7; Kang, 2011).

This is, however, an exceptional ruling. In reality, most subcontractors take fundamental responsibility for their employees, according to the spirit of legislation in the two countries. This legal framework contributes to patterns of union responses. This is because, considering that a union seeks to improve terms and conditions of employment for, in a narrow sense, those who are in the union through collective bargaining with its legitimate employer(s), the union has to decide with whom to negotiate. This issue is illuminated by analysing the union branches' policies and actions in relation to this legal framework in the next section.

#### **6.4.2 Union branches' dilemma**

With respect to employer responsibilities, union branches were confronted with two main options. First, if a union seeks to challenge the legitimacy of the third party, it is likely to call for bargaining with the real employer at the top of the chain in order to turn subcontracted workers into directly employed positions or at least to improve pay and working conditions of these workers. In this case, the ultimate goal of the

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<sup>2</sup> Supreme Court of Korea Decision, 2008Du4367, Decided 22<sup>nd</sup> July 2010

union is to determine who should be considered the employer by probing the nature of the triangular employment relationships. Second, if a union admits that it is almost inevitable to accept subcontractors as employers under the existing legal framework, it is likely to see their responsibilities as existing jointly or severally with the client hospital.

Data collected revealed that the responses of three KHMU branches seemed to be predicated upon the principle of not confirming the legitimacy of the third party, in that they all refused to accept subcontractors as counterparts in their bargaining unit. In contrast, the three UNISON branches had been negotiating with private companies. At least, in legal terms, the UNISON branches seemed to confer legitimacy on subcontractors as employers. But this study cannot state that the three Korean branches were more committed to their principles because they had hardly done anything to turn the tide of emerging subcontracted labour. In a similar vein, it is hard to say that English branches had deserted their principles just because they have negotiated with subcontractors to improve subcontracted workers' conditions of employment practically.

With respect to the issue of responsibilities of both employers, all branches studied in England and Korea have to some extent demanded employer responsibilities of hospitals through the sectoral and/or enterprise level bargaining agreements. UNISON branches have pressurised hospital trusts to extend their responsibilities towards subcontracted workers by enhancing bargaining resources based on organising these workers. In contrast, the three typical KHMU branches (K1, K2 and K3) have paid less attention to this issue and were more focused on encouraging

hospital employers to have sympathetic attitudes to subcontracted workers without extending collective agreements and organising them. Under the same context of triangular employment relationships which could create difficulties for unions in attracting and thereby organising subcontracted workers (Gallagher and Sverke, 2005), the English union branches responded in a more inclusive way based on existing institutional resources such as the more centralised bargaining system than those in Korea.

This issue is associated with not just legal regulation but also with activities at branch level in relation to how it can be implemented. The experience of KHMU presents a good example. Regarding the influence of the change in bargaining structure on issues of subcontracted workers, KHMU seemed to have had some positive impact on revealing the real employer. In the first sectoral agreement in 2004, a provision for the indirectly employed was put in section 5 regulating the societal responsibilities of hospitals. This was aimed at imposing to some extent employer responsibility on hospitals by stating that ‘hospital employers endeavour to help subcontracted workers to be hired by a new company in the case of transfer of undertaking’ (The Sectoral Agreement in 2004). It seems similar to that in the TUPE regulations even if there is a little difference in the phrases. This must be a significant outcome.

Despite the importance of this provision, it cannot be said that it functioned adequately because most hospital employers preferred using subcontracted workers without union involvement and even if they were asked to comply with the provision, they could say that it compelled them to “endeavour to do” rather than requiring

success at doing so. Furthermore the agreement included the phrase of ‘a hospital is not an employer with obligations by law towards subcontracted workers’, which reflects hospital employers’ strong intentions not to be involved in legal responsibilities for these workers. From KHMU’s point of view, accepting this phrase is a strategic retreat. It is assumed that KHMU took one step back in this battle in order to sign the *first* sectoral agreement. A National Officer of KHMU commented:

This first sectoral agreement was a historical triumph for the Korean labour movement. Although we did not succeed in explicitly fixing the hospitals’ responsibilities towards the indirectly employed, the section that mentions to some extent hospitals’ obligations towards them is considered to be a big step forward. (National Officer, KHMU)

This provision had been put into collective agreements regardless of how powerfully it has been implemented at the workplace level until the sectoral bargaining ceased in 2009. In the process of supplementary bargaining following the sectoral agreement, this study found that branches did usually not consider subcontractors. Even if there were some provisions which should be applied to subcontracted workers, they usually deal with these matters through the subcontracting employers. An example includes the case of branch K1 which sought to apply the agreement to subcontracted workers in supplementary bargaining with Hospital K1.

The sectoral agreement of 2004 stipulated that ‘33,000 KRW (approximately 18 GBP) per month should be given to the indirectly employed in order to improve their working conditions’, which gave rise a question as to who had responsibility to do so. This could be interpreted in two ways: the hospital employer should take

responsibility in terms of interlocutors of the agreement; or the subcontractor should do it in terms of the legal status of the employment contract. The solution the branch achieved was that the subcontractor gave that benefit to its employees after being given the amount of money by the hospital.

Negotiating over the financial benefit for these workers was part of implementing the sectoral agreement. Regarding this issue, we have never bargained with subcontractors. We've never thought about that. When we signed the agreement including the provision for these workers, we thought the responsibility for implementation should be on the hospital not subcontractors.  
(Branch K1)

As such, the three branches K1, K2 and K3 of KHMU had little direct relationship with subcontractors in terms of bargaining. Instead, they attempted to improve pay and working conditions of subcontracted workers to some extent by imposing the responsibility towards them on the principal employer even if the extent of improvement is very limited.

## **6.5 Variations in union responses**

It is certainly the case, as discussed in previous sections, that differences in the collective bargaining system in terms of bargaining level, agendas, and coverage in the two countries have contributed to a different scope of union branches' representation of subcontracted workers' interests. The branches of UNISON with a more centralised and stable collective bargaining system have better represented the interests of subcontracted workers than those of KHMU. This section, however, indicates that the two outliers of KHMU exerted a significant influence in

representing these workers' interests despite practical impediments to meaningful, legally bounded or practically influential, collective bargaining.

Unlike the three typical branches of KHMU, empirical evidence from Branches K4 and K5 highlights similar responses to those of UNISON branches. Branch K4 had been negotiating with both Hospital K4 and two subcontractors. In the case of Branch K5 which played a decisive role in establishing a separate branch for subcontracted workers, it had supported the separate branch's bargaining with subcontractors by sharing information from the user hospital and the branch's own resources. These two cases reveal that union responses faced with similar challenges might be similar to those under different institutional settings and can differ from those within a given national and sectoral context. These findings clearly indicate the limitations of the institutional approach which more focuses on differences mediated by different institutions (Wailes *et al.*, 2003: 621). Furthermore, they lend weight to the criticism of Clegg's view (1976) because experience of two outlying branches explicitly shows that under a given collective bargaining structure, union behaviour in relation to representing subcontracted workers can differ. This shows, as discussed in Chapter 8, additional evidence to reveal the weaknesses of Clegg's exclusive focus on collective bargaining for explaining various aspects of union behaviour.

Accordingly, this section argues that coupled with the institutional approach, non-institutional factors need to be integrated in explaining patterns of union responses. To this end, the two outlying branches of KHMU responded to subcontracted labour through collective bargaining is analysed and then why they have responded in a

particular way with a focus on leaders, the represented and internal politics within a branch is investigated.

### **6.5.1 Constraints but also opportunities**

The two KHMU branches adopted an inclusive approach towards both subcontractors and their employees, which means that the type of responses can vary even within a single national setting. While other three branches have played a minimal role in representing these workers through collective bargaining, Branches K4 and K5 were actively involved in negotiating with subcontractors, directly or indirectly in order to regulate and improve terms and conditions of employment of subcontracted workers. Despite less favourable institutional settings surrounding the branches compared to those in England, these two used more inclusive strategies.

#### *Branch K4*

This study found that Branch K4 had negotiated with three different companies: the hospital, and two subcontractors for cleaning and catering respectively. Different bargaining agenda were present for these negotiations, depending on the coverage of each collective agreement and the interests of each group. Like the other branches, this branch did supplementary bargaining with the hospital following a sectoral agreement. In addition to this, the branch bargained with the two contractors. Speaking strictly, a bargaining agent, usually the secretary of the branch, is not an employee of the subcontractors but they accepted the secretary as a representative of their employees. According to the principle of labour law based on employment



contract, it seems to be difficult to organise but was possible due to the union structure at industry level not on an enterprise basis. Regarding this bargaining structure, Branch K4 secretary commented:

Despite a big change in our bargaining structure at sectoral level, members employed by subcontractors are hardly regulated by the sectoral agreement. It is impossible for subcontractors to join the sectoral bargaining and thereby the agreement did not apply to cleaners and caterers. This is why we *have to* negotiate with contractors separately. (Branch K4, italics added for emphasis)

While most collective agreements concerned regular workers employed by hospitals who joined the KHMEA, there was little room for subcontracted workers, which is interpreted as 'structural exclusion from collective bargaining' (Simms, 2010: 27). Under this constraint, Branch K4 has sought to find room to manoeuvre and then began to negotiate with two subcontractors. The collective agreement between Branch K4 and the subcontractors covered almost the whole range of issues from succession of employment contracts in case of transfer of undertakings to refurbishment of staff lounge facilities. In addition pay, extra work premiums and severance pay, working conditions including working time, holiday, annual leave, disciplinary matters, welfare benefits, collective rights including bargaining and collective action and works council, and other relevant matters were also addressed in these negotiations. An official of this branch commented:

It is no exaggeration to say that our branch has been negotiating all year round. Through this process we're trying to make the responsibility of a real employer at the top of contracting chain clear. (Branch K4)

What this study points out is about the issue about the legal provision regarding binding force of collective agreements. While the two subcontractors have to comply with this rule because majority of cleaners and caterers joined the branch, all employees of Hospital K4 are covered by the sectoral agreement despite low density, around 10 percent. This rate is far below the eligible level for the binding force of collective agreements by law. Coverage seems to come from the employer's attitude toward the branch.

All employees can be covered by both the sectoral and supplementary agreements at the workplace level. I think it is because management does *not* want non-union members to join the branch and to recognise the privilege of union members by treating all employees equally regardless of their membership. (Branch K4, italics added for emphasis)

This comment recalls the work of Booth and Francesconi (2003), discussed in Chapter 5, arguing that legal regulations might either weaken union organising campaigns or act as opportunities to attract low-paid workers. This case indicates that management may wield power on the basis of legal provisions in order to discourage employees to join the branch. Nevertheless this study argues that the generous coverage of collective agreements is an outcome of branch's prolonged demands, power and influence. In this regard, there is a need to discuss the low union density of Branch K4, which will be explained in Chapter 7.

#### *Branch K5*

The case of branch K5 presents similar evidence despite a difference from that of branch K4. Branch K5 had actively supported the establishment and activities of a

separate branch for subcontracted workers for the hospital K5 without organising them into its own branch (see Chapter 7 for a more lengthy discussion of union structure of the branch K5). The separate branch had conducted collective bargaining with subcontractors. What should be noted is that the representative(s) of Branch K5 also went to the bargaining table as one of interlocutors despite the subcontractors' refusal at the beginning of the bargaining.

Due to the change in our organisational structure to the industry level, officials of the national union are eligible to attend collective bargaining at the branch level. We fully have been exploiting this opportunity. (Branch K5)

Under enterprise-level unionism, it was hardly possible for representatives not employed by the company to attend bargaining at the workplace level because they were considered a third party which had no direct relationship with the company. The involvement of a third party in activities of an enterprise union such as bargaining or collective actions was banned in Korea. Reorganising enterprise unions to industry level, however, created new opportunities for union officials by allowing them to engage in activities at the branch level. An official of Branch K5 commented:

A subcontractor was not able to refuse the attendance of representatives of the industry union at the bargaining table. The person eligible to sign an agreement at the branch level is the General Secretary of KHMU and thereby any other officials can negotiate with hospitals and their subcontractors where members of KHMU exist on behalf of the General Secretary. Managers of subcontractors did not understand our legal positions at first but began to understand. (Branch K5)

The experiences of Branch K5 indicate that it made full use of the resources of the industrial union despite legal regulations based on employment contracts and lack of understanding of employers. This is a good example of turning limitations into opportunities. To achieve this, officials of the branch had been working with those of the separate subcontracted workers' branch not only during bargaining but before and after that.

### **6.5.2 Branches' capacity of representation**

The experiences of Branches K4 and K5 leads to a question about what contributed to these exceptional cases, in stark contrast to the other branches of KHMU studied. This study, first and foremost, pays attention to the role of leadership. Officials of Branches K4 and K5 have a clear goal and willingness to represent the interests of subcontracted workers. An official of Branch K4 commented:

I have been as busy as a bee. I took on too many tasks which should be shared with other representatives. But we don't have adequate facility time. We have no way. So I have to break up my sleeping time in order to undertake union duties and activities. During the period of collective bargaining – as I told you, I had to conduct three different bargaining processes [with the hospital and two subcontractors] – I could not go back home frequently nor have enough sleep.  
(Branch K4)

Officials of this branch were imbued with a sense of purpose about what unions do, and devoted themselves to workers regardless of their membership and employment status. In the case of Branch K5, much effort was made to forge similar interests with the separate subcontracted workers' branch by sharing information received

from the hospital and the branch's resources such as the office, desks, computers, a printer and other facilities. This co-operation helped the branches to plan and evaluate joint bargaining strategies and daily activities for members of both branches.

An official of this branch commented:

It was not difficult to share facilities such as the office space that we [the main branch] already had. We [Branch K5 officials] took it for granted. By using the same office, we [officials of the main branch and the separate branch] were able to see each other every day and thereby develop joint strategies and actions on a daily basis. (Branch K5)

These examples underline that leaders of the two branches have more actively sought to explore workers' interests rather than merely selecting interests from amongst union members. In addition, it must be emphasised that one of the factors which led to different responses from those in the other three branches was the existence of unionised subcontracted workers in the two exceptional branches. Regardless of whether they joined the same branch or not, workers with membership are likely to encourage branches to do something for them through collective bargaining.

When they [subcontracted workers] joined a union, they were in a very vulnerable position, for example, on the verge of redundancy caused by a change of subcontractors or under the threat of wage cutting, and so on. So they made desperate efforts to achieve what they wanted to achieve at the bargaining table. (Branch K4)

Unionised subcontracted workers, whether as a result of a branch's organising campaign or a voluntary decision of their own, were more likely to be represented in

consideration of their inferior pay and working conditions. Furthermore they could often not even consider joining a union because there were many cases that a user company fire subcontracted workers on the basis of union membership through changing subcontractors (Eun *et al.*, 2007). Hence when subcontracted workers join a union often means that they are willing to take that risk and ready to fight to get their decent working conditions back. This makes it easier for a union to represent their interests through collective bargaining.

It is also worth noting that there might be tension between a branch and existing members with mostly permanent contracts when the branch seeks to represent the interests of subcontracted workers. Existing union members might express dissatisfaction with allocation of resources of a branch, which is associated with ‘them and us’ attitude.

Members among regular workers may think that we [the branch] should devote ourselves to them not non-organised subcontracted workers. So they are somewhat discontent with the union spending union budget for and using my facility time for these workers. (Branch K1)

In most cases, a union branch suffers from budget constraints and resource limitations and thereby a branch’s activities on behalf of subcontracted workers are likely to be limited. Despite this, Branches K4 and K5 made a different response towards inclusion of these workers through persistent efforts to reconcile likely conflicting interests of workers with different types of employment contracts.

This clearly shows that union branches within a given institutional setting are able to adopt a different strategy towards subcontracted workers, which highlights the limited explanatory power of institutions despite their importance in explaining differences of typical responses between the two settings. Hence this section highlights the potential of union branches to maximise opportunities even within a constraint institutional context depending on the role of leaders and willingness of subcontracted workers to act.

## **6.6 Concluding summary**

This chapter explored the way in which collective bargaining systems have influenced union responses in the English and Korean health sector. The bargaining systems in terms of the level, structure, agenda and coverage differed markedly between the two, which had a significant impact on different patterns of branch responses to subcontracted labour. The branches of UNISON operating within the relatively centralised and stable bargaining system have been involved in and dealt with issues of subcontracted workers, which provided these workers with a mechanism to get their voice heard. In contrast, the ‘disorganized centralization’ (Lee, 2011c) of the bargaining system in the Korean health sector made it difficult for branches to actively address the concerns of subcontracted workers, coupled with the legacy of enterprise unionism which led to branches focusing more on existing members within the workplace. The differences in industrial relations institutions, collective bargaining systems in this chapter, helped explain different patterns of union responses to subcontracted workers. Institutions matter in shaping union strategies.

This chapter also marked significantly different responses within a single national and sectoral context by presenting the experience of Branches K4 and K5. These two showed that despite unfavourable collective bargaining systems for representing workers employed by a third party, branches could adopt a different response from the typical one represented by the three KHMU branches K1, K2 and K3. This supports the assertions that the institutionalist approach alone is not sufficient to account for variations in union responses because there is scope for unions to make significant choices whatever their institutional constraints are. This chapter argues that institutions matter but provide only a partial framework for understanding various patterns of union responses, which is discussed in Chapter 8 with the wider relevance. To summarise, the findings presented in this chapter lend weight to the importance of an integrated approach between institutional and non-institutional factors in explaining patterns of union responses.



## Chapter 7 Union structure and governance

This chapter addresses the question of how union structures in the two institutional settings have contributed to similarities and differences in patterns of union responses. Given the growth of subcontracted workers at a time of declining union membership and an emerging representation gap, this changing workforce composition presents significant challenges to unions. Unions have to decide whether or not to represent these workers by including them into their constituencies (Cerviño, 2000; Heery, 2004). In contrast to other contingent workers directly employed by a user company, the representation of subcontracted workers requires the expansion of representation *beyond* the workplace where a branch is mainly based, as seen in the case of UNISON and KHMU. Faced with this situation, some unions have sought to expand their representational domain to cover contingent workers through a ‘beyond the enterprise’ approach (Heery *et al.*, 2004b: 31), which helps us understand that the union structure, in some cases, may be in need of reform to make it possible to recruit and organise these workers into its constituency.

The term *union structure* here is used for two aspects of structure: external and internal. The former refers to the scope and the boundary of membership; and the latter means its governance, in other words representation and administration (Fiorito and Jarley, 2008: 189). This study calls external structure ‘union structure’, and internal structure ‘union governance’, for convenience.

The issue of union structure is closely related to the question of how unions represent whose and which interests. As Simms and Charlwood (2010) note, trade

unions as agencies whose main role is to represent members' or, more broadly, workers' interests have to answer these fundamental questions. Drawing on Hyman's work (1997b: 516-521) concerning unions and interest representation, the question of *whose interests* involves a union's constituency, *i.e.* the boundary of membership. Once a union decides its constituency, it tends to prioritise the interests of a certain group of workers which could be detrimental to others. Hence setting the bounds of membership is a union's vital strategic choice because 'unions tend to act on behalf of specific constituencies and to focus on distinctive aspects of their constitutions' needs, aspirations and experiences' (Hyman, 1996: 55). It might be an exaggeration or a misinterpretation to say that unions represent *only* the interests of their members. But it is the case that the scope of unions' capacity of representation tends to be forced to be confined in part by the constraint of labour law based on the employment contract at the enterprise level at least in England and Korea (Eun *et al.*, 2012a; Wills, 2009) (see Chapters 1 and 6 for more discussion of distinctive features of labour law). Even if a group of subcontracted workers falls within union demarcations, whether or not the interests of these workers get represented relies in part on how effective they make their interests heard within the union (Simms, 2010: 28).

The question of *which interests* refers to the agenda that a union tries to push in relation to its counterpart(s), usually an employer or an association of employers, or sometimes the government. Interests here vary, ranging from a traditional core agenda of bread-and-butter and workplace rights and career opportunities to issues which address the role of the state such as social wage and labour market policy, and broader issues on community and environment. The issue of *how to represent* is

associated with the question of organisational form, capacity, democracy and activism. Even if branch membership is open to subcontracted workers, the ways in which these workers' interests get represented remains an important issue as the increase of heterogeneity of members might make it difficult for branches to represent the interests of its constituency. As Hyman (1997a: 311) argues, 'more diversified patterns of employee interests intensify the problem of filtering and aggregating constituents' expectations'.

For this reason, it is important to examine the ways union branches have responded when faced with emerging subcontracted workers with potentially conflicting interests compared to those of existing members. This chapter analyses branches' responses to subcontracted labour, by raising these fundamental questions with a particular focus on union structure and governance.

The data collected showed significant differences in patterns of branches' responses between UNISON and KHMU. While all three UNISON branches accepted subcontracted workers as their members, three of the five KHMU branches did not offer their membership to those workers. Furthermore, UNISON branches have represented the interests of subcontracted workers relatively well by allowing them to participate in branch activities and to be branch representatives, putting branches' efforts into organising regardless of employment status, and paying attention to handling their grievances in addition to collective bargaining procedures with private contractors. In the three Korean branches whose strategies have been established to be dominant within KHMU, as identified in Chapter 3 through interviews and desk research studying each branch rulebook, the limited membership provision made it

nearly impossible to represent interests of subcontracted workers. Despite the recent change in the bargaining system being centralised since 2004 (see Chapter 6 a fuller discussion of this point), where some agreements concerning pay, and terms and conditions of subcontracted workers were made, these branches have seemingly closed branch governance systems which did not include subcontracted workers as members nor representatives for subcontracted workers. The two remaining KHMU branches, however, present different responses from the typical response, by accepting subcontracted workers into its representational domain (Branch K4) or by actively supporting a separate branch for these workers (Branch K5). The analysis in this chapter examines how and under what circumstances the branches' choices have been exercised in a different or similar way in the case of subcontracted workers.

These findings raise a question about why the dominant strategy of branches between the two countries differs. If this is because of different institutional arrangements in industrial relations, this study raises another question about how to explain the emergence of two exceptional Korean cases within a given institutional setting. This requires investigating other, non-institutional factors which may have helped union branches organise and represent subcontracted workers, which may include features of the branches' structure.

Drawing on empirical evidence, this chapter argues that distinctive features of union structures between the two unions are likely to provide only a partial explanation of patterns of union responses to subcontracted workers. As Wailes *et al.* (2003) argue, institutions alone cannot explain both similarities and differences, despite the importance of institutions in shaping union strategy. Under a dominant union

structure in a given setting, union branches can make a difference depending on the role of leaders and the willingness to act of subcontracted workers, as confirmed in experience of Branches K4 and K5. This underlies the need for an integrated approach combining both institutional and non-institutional factors in explaining union behaviour.

The chapter is structured in four sections. Section 7.1 examines patterns of union branch structures in the two countries with a focus on membership provisions in their rulebooks and collective agreements, and the ways in which a branch has exercised those provisions in organising strategies and outcomes. This helps establish *whose interests* a union branch seeks to represent. Differences in the trajectory of trade union formation of UNISON and KHMU are also illuminated to explore the origin of those behaviours. Section 7.2 investigates the ways in which each branch has been governed. Union governance provides a useful focus for examining how and why unions reconfigured in response to the introduction of the new type of employment arrangement. This section also deals with the issue concerning which interests and how these are represented other than through collective bargaining. This inquiry allows us to understand the influence of union branch structure and governance on daily activities including recruitment and organising, communication at work, and grievance settlements for subcontracted workers. In Section 7.3, the cases of two outlier branches of KHMU are analysed with a focus on what has driven the different responses within a given institutional setting. This chapter concludes with an evaluation of the explanatory power of the institutionalist approach and an emphasis on an integrated approach.

## 7.1 Union structure: theory and practice

This section explores the ways in which features of and changes in union structure have contributed to patterns of responses to subcontracted workers. For this, it examines the types of union structure in the two countries with a focus on membership provisions in rulebooks and collective agreements, and how unions have exercised these provisions in their organising strategies. As Gumbrell-McCormick (2011: 297) points out, union structure is one of the factors which conditions how unions respond to the need to represent the interests of subcontracted workers. This helps us understand *whose interests* unions seek to represent. What contributed to those decisions is also illuminated by exploring differences in the trajectory of unions' structural form in each country over time.

### 7.1.1 Structure and membership

First, the organisational structure of the two unions is considered, which allows us to capture structural similarities and differences between the two, with questions of where the branch is located within the union and who can be branch members. Data collected showed that UNISON and KHMU have a *similar* structure, although there is a difference in the scope of membership: UNISON covers public services which consist of seven service groups including health care, local government, and transport, whilst membership of KHMU includes only workers in the health sector. The two unions' rulebooks (KHMU, 2011; UNISON, 2006b) show a typical three-tier structure of a general or industrial union: national headquarters, regions, and branches allocated to each region. The definition of a *branch*, the unit of analysis of

this study, is almost the same, locating it mainly on a workplace basis. Crucial to the union structure of UNISON and KHMU is an understanding that the structure of a union branch was not confined within the workplace.

UNISON says that a union branch is made up of people working for the same employer or sometimes working for the company which is used by the main employer (UNISON, 2013). In a similar vein, the KHMU's rulebook states that a branch shall establish at workplace level or in an administrative district (KHMU, 2011) and hence can be established beyond an area covered by a single employer within a region, across several regions, or nationally with the permission of the national executive committee (Rule 3.10.1). Furthermore, UNISON explicitly addresses outsourced workers in the Code of Branch Practice by stating that:

Branches may be established to organise the employees of one principal employer, but should then also seek to organise the employees of any other employers providing parallel services (for example where services are outsourced). (UNISON, 2011: 6)

This clause serves to encourage a branch to establish its scope of representation on the basis of an area 'covered by the principal employer' (UNISON, 2011: 6). Although KHMU did not have such a clear clause as UNISON, membership provisions of the two unions allow their members to establish a branch based not just on the workplace but beyond, which means that all branches can form their structure to include subcontracted workers in theory. Despite the similar structure of the two unions, the scope of representation in practice differed markedly. Whilst the three UNISON branches included subcontracted workers in their constituencies, the three

typical branches of KHMU did not allow subcontracted workers into membership. The membership provision in the rulebooks makes this much clearer.

Membership of UNISON is open to all who work in public services (UNISON, 2006b: 4, Rule C. 2.1), which means that all who work to deliver public services are eligible to be members regardless of employer. Membership in KHMU is not significantly different. The KHMU Rulebook states that any person working for, seeking a job in, or who had worked for health service can join KHMU (Rule 3.7.1). As shown, there is no barrier in theory for subcontracted workers to join either union. However, the issue of which branch they shall belong to remains critical because once a person joins UNISON or KHMU, individual member shall belong to a branch as a bedrock of the union (KHMU, 2011: 2, Rule 3.8.1; UNISON, 2006b: 27, Rule G 1.1). The problem is that once subcontracted workers join the union, they may have different kinds of membership with full-time regular members with different contractual employers.

This is one of stark differences between the two national unions. In contrast to KHMU, UNISON specifies explicitly the scope of branch membership, defining that people working for the company which is used by the main employer shall belong to the branch (UNISON, 2013). This is a useful starting point for differentiating types of union responses.

### **7.1.2 Inclusion**

With respect to the challenge of emerging subcontracted labour facing unions, a



branch might decide to expand its coverage to subcontracted workers in two ways of either by including them into unions' own constituency, in some cases through revisions to union structure for instance amendment of the membership provision, or by supporting them either to establish or to join a separate union branch. These two can be said to be unions' inclusive strategies. The responses of three UNISON and two KHMU branches (K4 and K5) belong to this type. These branches included transferred workers and even new recruits into their representational domain and also recruited and organised them, though the K5 branch's experience was slightly different by supporting formation of a separate branch for subcontracted workers.

The membership of all three UNISON branches studied (E1, E2 and E3) was open to workers employed by not only the Hospital Trust but private contractors. Although there were variations in the numbers of subcontracted workers at the workplace and in their participation rate in the branch, all three branches had included them as members and had been negotiating with private companies. For the branch representatives interviewed, it was obvious to organise contracted-out workers into their branches because they thought that nothing had changed in terms of union representation, since transferred workers had still been working at the same workplace even after contracting-out. Several reasons can be proposed to explain why three UNISON branches implemented inclusive strategies in comparison to three typical KHMU branches. First, there were many who already had membership in the branch even before transfer took place and accordingly there was little incentive to exclude them from the branch. The representatives of the branches interviewed took the continuity of membership for granted, saying that:

I have no doubt that we all are the same union members. They were originally our branch members and would always be. (Branch E3)

Another interviewee commented in a like-minded vein:

We [regular and contracted-out workers] were the members of the same union. [After being contracted-out] what has changed? In terms of union representation, there was nothing to be changed. They were still working in this hospital with regular workers. (Branch E1)

Second, the ethos of public health care has influenced the inclusive policy. All interviewees asserted that they vigorously opposed subcontracting of public health services and that the services privatised should be brought back in-house.

If we exclude transferred members from the branch, it would be considered that we abandoned our principle to keep services in-house. Whether some members are transferred to private contractors [or not], we are all delivering a public health service. (Branch E2)

This comment helps us understand that for the English union branches with a public sector ethos and shared experiences as branch members, integrating the interests of members with different employment contracts within the same branch was not a strain.

Third, the TUPE regulations helped the branches to keep contracted-out workers' membership. As explained in Chapter 5, regarding recognition of the union by the previous employer, the obligation shall transfer over to the new employer, so that the new employer is obliged to recognise a trade union where there is a recognition

agreement between the transferor and a recognised trade union (TUPE regulations 6 (1)). Accordingly, even after being contracted-out, the transferred workers with membership of a branch were able to keep membership, coupled with the transfer of any collective agreements by or on behalf of the transferor. This supports the argument that legal provisions may act as opportunities for union representation (Booth and Francesconi, 2003).

Fourth, what is interesting is that outliers were not found in England in contrast to the case of Korea. A National Officer responsible for issues on contracting-out said that:

As far as I know, there is no branch that has its rule to bar membership to the transferred workers and new starters. It would not be acceptable. (National Officer, UNISON)

This is largely because, in terms of the boundary of membership, it is a breach of UNISON's national rulebook for a branch to decide to exclude private subcontracted members from its membership. One interviewee said that:

Where members have been transferred from a hospital to a private company as part of contracting-out, the branch would not be able to exclude these members from membership (National Officer, UNISON).

In other words, there is no barrier to subcontracted workers including new recruits employed by a subcontractor joining a branch. This is probably why this study did not find any exceptional cases in England. The majority of branches have a mix of public and private membership as the result of widespread contracting-out that has taken place in the health sector.

Some distinctive features such as shared experiences as union members, the public ethos, legal regulations, and the relatively articulated structure between different levels of the union provided the branches of UNISON with more favourable contexts to include subcontracted workers into their representation domain. This inclusive policy would in turn be of great help for UNISON in keeping membership levels relatively high and not to ebb away in effectiveness in representing the interests of actual and potential members. UNISON believes that it should not ‘make transferred members feel cut off from the union or develop the belief that being a member of the union is no longer worthwhile’ (UNISON, 2012d: 4)

### **7.1.3 Exclusion**

At one end of a spectrum, exclusion can be divided into two types: one is to explicitly exclude subcontracted workers; and the other is not to do anything for them, although without a clear exclusion from the constituency. Unions in the first category may limit membership to those with a particular contract of employment or with different employers and may refuse to organise subcontracted workers. This may be because they consider that organising these workers would legitimise this type of employment arrangement (Gumbrell-McCormick, 2011: 300). This strategy may result in a positive outcome, turning these workers into regular ones with better pay and working conditions. However, it is also possible for unions to be less concerned with defending the rights of subcontracted workers than opposing such work *per se*. Unions may consider that it is almost impossible to turn the tide of the trend to use workers employed by a third party. This study found that no branch was in the first category.

Unions in the second category are those that undertake no activities for subcontracted workers, although there is scope for them to organise these workers according to their rulebooks, as previously explained (see Section 7.1). Rather, in return for unions' acquiescence concerning the inferior conditions of employment of these workers, unions may enjoy the prerogative of advocating for existing members through enhancing their employment security, pay, and working conditions. The three typical KHMU branches (K1, K2 and K3) are amongst these. Furthermore, as explained in Chapter 3, desk research analysing rulebooks of 140 out of 165 branches revealed that no branch other than the two outliers, Branches K4 and K5, included subcontracted workers explicitly in their rulebook. Some rulebooks had scope for interpretation in their membership provisions but in fact these branches did not organise subcontracted workers. Under KHMU's rulebook, as mentioned earlier in this chapter and in Chapter 3, there was no barrier to accept subcontracted workers into a branch's membership but the membership provision in most branches' rulebooks was confined to workers who were employed by a hospital. These explicitly excluded workers employed by subcontractors despite sharing the same workplace. The legacy of enterprise-level unionism encouraged these branches to consider subcontracted workers as 'others', coupled with little control over the membership provision wielded at national level. One National Officer of KHMU summed up as follows:

A long history of enterprise unionism made the interests of members work only within a workplace. It is very hard for members to accept the idea of organising people employed by *other* employers. They think it has no relevance to their interests. Hence it is very demanding and time consuming to organise subcontracted workers because we [representatives of the union] have

to persuade existing members while working for subcontracted workers.  
(National Officer, KHMU, italics added for emphasis)

Furthermore, a 'union-shop' provision may prove to be a source of exclusion. Before transforming its organisational structure into industrial level in 1998, the 'union-shop' provision was considered as one of the labour movement's triumphs in Korea. This is because it enabled a union to recruit members more effectively by requiring that 'employees joined the union within a specified period of time after obtaining employment' (Gaebler, 1981: 592). One example was Branch K1 where this provision was enacted in its collective agreement, regulating that 'employees eligible to be union members shall join the branch as soon as possible after obtaining employment' (Branch K1 collective agreement, 2009: 1.7). The discussion of the provision in this branch being subject to an employment contract led to an exploration of the boundary of membership in the union branch's rulebook. Despite the amendment of its rulebook after joining the industry union, KHMU, there was little difference in membership provision. Branch K1 rulebook defines the boundary of membership as 'the branch is made up of people who belong to Hospital K1' (Rule 2.6). The meaning of 'belong to' is generally interpreted in Korean as 'are employed by' (Interview, Branch K1). This is consistent with Koo (2001: 205), who claimed that workers in Korea are preoccupied with factory-specific problems and are less interested in, or could not afford to divert attention to, issues about changes in the labour market or problems in the wider community.

Even in the case of some branches where union-shop provision was not put in their collective agreements, branch rulebooks have changed little after the organisational reform. Branches K2 and K3 belong to this group. This is rooted in the strong

enterprise consciousness represented by ‘them and us’ or ‘insider and outsider’. Perceptions of branch members employed directly via a permanent contract toward subcontracted workers are evident from the following extracts.

Do you know how our members responded to issues of subcontracted workers? When I spread our branch’s intention to recruit cleaners or workers in maintenance sector, the first reaction I got was “why?” Our members asked with a doubtful look as if “how dare subcontracted workers be members of *our union?*” (Branch K1, italics added for emphasis)

Although members are working with cleaners and porters in the hospital, members think these workers are in a separate group. Some think that it is irrational that subcontracted workers are under inferior working condition but, this is at best sympathetic. There is no further step. (Branch K2)

This study found two compelling factors helping explain why this enterprise consciousness has been sustained. First is the relatively short period of a service contract – mainly one or two years. This is a marked difference from the English case, where service contracts usually last twenty or thirty years. What is worse is that there are many ways for a user hospital to replace a subcontractor with another when encountering any issues where a union could get involved. Generally what causes subcontracted workers to join a union is a threat of losing their job or deteriorating conditions of employment. Since joining a union *per se* requires them to take the risk of causing an immediate protest, existing members may be reluctant to accept an inclusive policy. Second is a less stable industrial union. As discussed in Chapter 6, ‘disorganized centralisation’ (Lee, 2011c: 768) in terms of collective bargaining at sectoral level and union governance, in particular the issue of articulation encouraged existing members to settle for the status quo.

#### **7.1.4 Summary**

As such, the boundary of membership at the branch level compared between UNISON and KHMU varied markedly. In UNISON branches, if a subcontracted worker decided to join a union branch, she or he was able to be a member without any barriers, unless her or his job was classified as a restricted non-union job. In contrast, in the three typical KHMU branches, even if subcontracted workers wanted to be union members, more specifically to be members of a branch established at the workplace they were working in, it was nearly impossible to do regardless of the jobs they held. In other words, these workers have not been recruitment targets of the three branches both in theory (rulebooks) and in reality. Only in the two branches K4 and K5 were subcontracted workers allowed to join branches along with regular workers. Although the separate contractual status of subcontracted workers might create practical and formal legal difficulties for unions, as Gumbrell-McCormick (2011: 299) argues, in attempting ‘to represent the different and sometimes conflicting interests of these workers along with the interests of other workers at the same site’, the branches of UNISON included subcontracted workers into their own structures. By contrast, the three KHMU branches presenting typical responses in Korea did not create new structures to represent potential members among subcontracted workers. In other words, the union structures of these branches were not yet appropriate for incorporating the interests of these emerging workers.

Having examined union responses in relation to union structure, the next section examines how union governance has influenced union behaviour towards subcontracted workers. Union governance is also an important focus for exploring



how union branches seek to reconfigure the way they are operated in response to emerging, more dynamic, employment relationships.

## **7.2 Union governance**

This section investigates ways in which branches have been governed, which provides a useful focus for examining how and why they sought to reconfigure the ways they were operated as the new type of employment arrangement began to increase. As Hyman (1997b) argues, the issue of *how to represent* is associated with that of organisational form, capacity, democracy and activism. An analysis of branches' responses is presented here, by answering the question of how to represent the interests of subcontracted workers with a particular focus on branch governance.

The questions can be summarised in two parts: first is whether a union branch governing structure is appropriate to represent the interests of subcontracted workers in terms of membership meetings, and whether there is a specialised branch official for subcontracted workers; and second is whether organised subcontracted workers can take part in union activities in terms of the right to elect officials, to be elected, and to participate and to speak in meetings. The former is related to the issue of branch governing structure and the latter is to do with subcontracted workers' involvement as branch members.

These issues are closely related to that of priorities in union governance. There had been similar debates on the representation of women within unions. Cockburn (1991) and Rees (1992) show the lack of representation among and for female

members and then point out the structural barriers in the way of women expressing their interests within unions. More specifically, Terry (1996: 91-94) describes the debates about male domination of union government when establishing the government of UNISON. In a similar vein, the discussion in this section focuses on the question of how to get the interests of those regarded as the minority within unions represented.

In addition to the issue of union governance, this section deals with another question: unions' vertical co-ordinating capacity resulting from the articulation between different levels of the union, in particular between national union and branches. In what follows, each of these questions is analysed and presented with empirical evidence from three branches of UNISON and three typical branches of KHMU. The experience of two outliers (K4 and K5) in KHMU is discussed in the subsequent section.

Before moving on to the discussion on these questions, it is necessary to note that the differences in the scope of membership discussed in the previous section have strongly affected the union branches' internal structure. In the three English branches whose memberships are open to all types of workers in their workplaces, subcontracted workers can be included in the governing structure and can take part in branches' activities in order to make their voice heard. In contrast, the three KHMU branches do not have that sort of mechanism for subcontracted workers. These findings seemingly support the institutional approach in that differences in union governance between branches in the two countries have contributed to different responses. However, this argument encounters difficulties in explaining the

two outlying cases of KHMU, which present similar patterns in union governance shown in the English case study, discussed in Section 7.3.

### **7.2.1 Governing structure**

This section examines the union branches' governing structure with a focus on whether the existing structure fits with representing the interests of subcontracted workers. Under the rulebooks of the national unions, UNISON and KHMU, the framework of branch governing structures presents a similar trend. The top decision-making body in all branches studied is the branch meeting that all members of the branch shall be entitled to attend and in which matters of branch policy are decided by the membership. There is also a branch committee as the main organ for administering branch business, which consists of branch officials including a chairperson, a branch secretary, and other officials elected (or in some cases appointed) in order to co-ordinate negotiations at branch level, recruit and organise members, represent members' interests and exercise relevant functions (KHMU, 2011; UNISON, 2006b).

However, this study found distinct features of the UNISON branches. Branches have been operating a joint branch secretary system. An example includes Branch E3 with separate branch secretaries: one responsible for employees of the Trust; and the other with responsibility for employees of private companies. This branch thought the best way to represent members effectively was to have a dual representation system.

We are one branch with officials and stewards for Trust and C [the name of a private subcontractor, anonymous]. There is a Trust Joint Negotiating Committee and the company C JNC. The same applies to Health and Safety Committees. (Branch E3)

The same is true in Branch E1. This branch also operated a joint branch secretary system. Although it currently has one branch secretary, the intention is to have a dual system.

We did have a joint secretary system. We wanted to share our roles as branch representatives. But the other secretary retired. ... In an ideal world, we would have a section allocated the role with company A [the name of a private contractor, anonymous] and we hope somebody among subcontracted workers will be prepared to take that joint branch secretary role. But we just don't have that at the moment. (Branch E1)

The branches of UNISON had a dual representative system under the rule of 'one branch at a workplace' regardless of the employers of the members. As a consequence all members of the branches were likely to have equal rights within the branch by attending meetings and events for members and thereby were able to communicate with each other, which enhanced the branch's ability to coordinate inter-firm relations and reconcile interests between members employed by different employers.

Experiences in Korea differ considerably. The three typical branches did not allow subcontracted workers to join even in theory so they had no experiences with these workers within branch governance. The Korean branches have seemingly closed branch governance systems without any members or representatives among

subcontracted workers, despite the recent change in the bargaining system which was centralised since 2004 in the wake of transforming union structure from enterprise into industrial unionism. This shows that although unions in the Korean health sector changed their organisational structure at industry level in order to counter the casualisation of labour, they did not succeed in establishing branch governing structure to represent subcontracted workers. This means that existing governance institutions were not suitable for representing the interests of these workers.

### **7.2.2 Members' participation**

Another issue about representing subcontracted workers is whether branches allow them to have equal status in branch activities such as in electing officials, the right to be elected as branch officials, and to attend and speak in branch meetings. This study found that there was no structural barrier in the way of subcontracted workers having influence within UNISON branches E1, E2 and E3.

All staff have the right to join the branch and all members shall be eligible for full rights and benefits. ... Members should pay subscriptions according to the rulebook. Within the Trust and [company B], we have an arrangement for members to pay their union subscription through their salary (Branch E2).

This study also found through observation of Annual General Meetings of these three branches in March 2012 that there was no barrier to members employed by private companies attending and speaking at branch meetings. The workers with membership were also entitled to elect and to be elected as branch officials. Branch E1 has recently elected a person employed by the private company A as one of

branch officials. The newly elected official is supposed to work as a health and safety representative for all members not just for subcontracted workers, although she is an employee of the private company. Nevertheless she reported that she was the only person elected as a branch official among subcontracted workers so was intending to represent them as well.

I am going to represent everybody. As a representative of the branch, I will deal with health and safety issues for all members. But at the same time I will work for members of company A [the name of the private contractor, anonymous]. I think I can better represent outsourced workers than other officials from the Trust. Issues they raise are much easier for me to understand and handle. I already know what they do and what they suffer from (Branch E1).

This comments recall previous studies (Heery and Kelly, 1988; Simms, 2012) which suggest that female officials are likely to effectively represent female workers' interests by prioritising the organisation and representation of these workers. In a similar vein, the direct involvement of subcontracted workers in branch activities might present incentives for branches, as subcontracted workers' involvement serves to raise the profit of organising activity among subcontracted workers. This, in turn, is likely to contribute to the ways in which interests of these workers are formed and represented within a branch. As can be assumed, the three KHMU branches had no subcontracted workers in representative positions as they had no subcontracted workers as members. This shows that differences in union governance have contributed to differences in representational activities for subcontracted workers. Furthermore, as shown particularly in the experience of branch E3 with approximately 80 percent unionisation among subcontracted workers, the principle

of ‘‘like recruits like’ – employing organisers who match the target workers in terms of age, gender and ethnicity’ (Gumbrell-McCormick, 2011: 302) has been also influential in organising subcontracted workers in England.

### **7.2.3 Articulation**

The discussion on branch governance leads us to explore the idea of articulation, and vertical integration within unions. The most resilient union movements refer to those that maintain effective articulation between central and local levels with strong organisation at both levels (Kjellberg, 1983, cited in Hyman, 1997a: 313). While the two national unions, UNISON and KHMU have similarities in that they launched major organisational drives into the merger or at the industry level respectively, there was a subtle distinction in the directions of rule on articulation.

Taking the case of UNISON first, the three partner-unions, NUPE, NALGO and COHSE which had amalgamated to form UNISON in 1993, had been characterised as the union with ‘strong central leadership and weak branch organization’ until 1970s, although to varying degrees (Terry, 1996: 89). Through the period of 1980s when faced with hostile government and employer strategies, the issue of ‘the primacy of the decentralized, shop-steward-based approach’ was questioned (Terry, 1996: 91). UNISON can be seen to be located in between official-led unions (NUPE) and lay-controlled unions (NALGO). This positioning, as Terry (1996: 107-108) points out, might be also influenced by the size, power and resources of workplace and branch organisation as well as by the proportion of members who had experienced a different organisational culture before the merger.

In contrast, KHMU with a long tradition of enterprise unionism has more focused on how to redistribute upward the organisational resources centred on enterprises unions. KHMU represents a relatively centralised structure compared to other industrial unions in the Korean metal and financial sectors (Lee, 2011c) by allocating fifty percent of branch financial resources based on subscriptions of rank-and-file members to the national and regional unions and by having control over the bargaining procedure of its branches.

Across the country, there were 11 regions and 165 branches. Members pay their membership dues with one percent of normal wage per month and thereby the budget allocated to the national headquarters is 39 percent of membership dues, with 11 percent to regions and the rest (50 percent) allocated to branches. (KHMU, 2012)

An example includes the fact that wage rates negotiated through sectoral agreements have generally been respected at the local bargaining table. Despite these efforts, it would be premature to assume that KHMU has a strong influence over the decisions of branches. This is because, given a tradition of enterprise unionism and members' concerns over sectoral bargaining, which could be used as an instrument for wage restraints (Lee, 2011c: 778), branch officials are likely to demand autonomy in implementing policies of the central union. This tension contributed to a sort of closed branch structure with a focus on full time permanent workers directly employed by hospitals. As discussed earlier, the three branches prevent subcontracted workers from joining their representational domain, for instance by holding a union-shop provision in collective agreements or by not organising these workers. Contrary to UNISON, KHMU did not have a 'one branch in the workplace



or at major employer level' principle which would mean that all members regardless of employment contract are able to belong to one branch as far as they are working at the same workplace. This principle is used in other industrial unions like Korea Metal Workers' Union but KHMU did not set such a policy explicitly. An interviewee summed it up this way:

We did not need to have this sort of policy because there have been few controversial cases which required guidelines from above to be drawn up. We would take any action deemed necessary. But organisational structure at the branch level did not spell trouble for our union so far (National Officer, KHMU).

This comment can be interpreted as meaning that the national union did not actively encourage its branches to include subcontracted workers into their representational domain because National Officers did not feel the need to do. This strategy seems to be a compromise between the ultimate goal of reorganising its structure to cope with casualisation of workforce and the stabilisation of the industrial union supported by rank and file members who experienced enterprise unionism culture. The hospital sector trade union movement played an important role in initiating a movement beyond workplace interests by, for instance, establishing the first industrial union in Korea, KHMU, in 1998 and expanding its agenda to improve the rights of patients and beyond. The national union has announced that it pursued the social movement unionism and one of its priorities was organising contingent workers (National Officer, KHMU).

KHMU's leaders were, however, been still experiencing two major constraints: redistributing the organisational resources that had been owned by enterprise unions;

and catering to the needs of rank-and-file members working standard full-time permanent jobs. As a consequence, the union did not seem to build adequately articulated union structures and activities. Although Branches K4 and K5 had to deal with issues of subcontractors in their collective bargaining, sufficient additional resources such as supporting full-time officials for bargaining and extra funding were not provided to these branches. Though majority of branches still had a tradition of enterprise unionism, for instance, represented by a union-shop provision which is likely to cause 'factory consciousness' (Blanchflower, 2007), corrective measures were not yet adequately taken. Nevertheless, this study found two outlying cases in spite of difficulties under the given national and sectoral context, which tells us that the will of branch leaders, coupled with willingness of subcontracted workers to unionise, made different responses possible, as discussed in more detail in the next section.

### **7.3 Variations in union responses**

This chapter has, so far, argued that despite similar provision concerning branches according to the rulebooks of UNISON and KHMU, the way of applying the rulebook in each branch differed markedly, which resulted in differences in union responses to subcontracted workers. The more inclusive strategy of UNISON branches has resulted from the relatively favourable contexts of the UK such as the TUPE regulations, a long tradition of industrial (or general) union beyond workplace level, and the public sector ethos rooted in the distinctive feature of the public health service.

There are the two KHMU branches K4 and K5 which directly or indirectly include subcontracted workers into their representational domain and thereby allow subcontracted workers to participate in branch activities in a similar way found in those of UNISON. This finding casts doubt on the explanatory power of the institutionalist approach. Central to answering this question is an understanding that institutions alone cannot explain both similarities and differences, despite the importance of institutions that matters in shaping union strategy. As a consequence there is a need to extend the focus beyond institutions to explain what else matters. For this purpose, this section seeks to answer a question of why these two branches have presented different responses from the typical type of KHMU within a single national setting.

### **7.3.1 Two kinds of inclusion**

All branches of KHMU can, as explained in Section 7.1, be formed at workplace level or beyond according to KHMU's rulebook (KHMU, 2011). Despite this clause, the representational domain of the three branches K1, K2 and K3 was limited to workers employed by hospitals *not* by subcontractors. In contrast, the membership of Branches K4 and K5 was open to all workers including subcontracted workers. Although the ways to include these workers differed slightly between the two branches: the former included them as part of branch members while the latter supported formation of a separate branch for subcontracted workers, both are categorised into the same group, inclusion. One branch official summed up the reason for that very succinctly:

It doesn't seem to be important whether a branch organises subcontracted workers directly or indirectly, in so far as it seeks to represent their interests. What matters is what we are actually doing, finding flexible ways under unfavourable conditions. (Branch K5)

What is particularly interesting about this quotation is that given the long tradition of enterprise unionism, representing the interests of workers with *different* contractual employers must be a big step forward, and hence branch structure would not matter greatly.

#### *Branch K4*

Branch K4 included subcontracted workers into its representational domain and hence some of these who joined the branch can enjoy the same rights as other members with full-time permanent employment contracts. This branch began to organise them long after some services were contracted-out. The cleaning service was contracted-out before the branch was established in the late 1980s. When the catering service was contracted-out in the mid-1990s, the branch did not exercise enough power to turn the tide. The trigger for organising these workers was a transfer of a subcontractor in the catering service in the mid-2000s. The transferred workers from Hospital K4 enjoyed relatively better pay and conditions compared to the new recruits since the transfer, but a new subcontractor announced it would scrap the two-tier system and lower their pay and conditions in order to level off at those of new comers.

They [workers in the catering service] needed a union in order to fight against deteriorating wages and working conditions. When a new subcontractor took

over the hospital's catering service, their wage was severely cut, by 40-50 percent. Some subcontracted workers showed their intention to join our branch and we began to actively organise them. (Branch K4)

Organising workers in the catering service made it easier for the branch to organise cleaners who also suffered from wage cut whenever a transfer took place. As a consequence, workers in the catering and cleaning services began to join the branch.

It is worth noting that at the outset of organising subcontracted workers Branch K4 considered establishing a separate union branch for them as in Branch K5. This was because the representatives of Branch K4 had concerns about potentially conflicting interests between workers, the limited resources of the branch in terms of the number of representatives and the amount of finance available and likelihood of employers' resistance. But branch officials drew the conclusion that accepting them as branch members would be more effective for representing their interests. A branch official commented:

Although we were already fraught with difficulties in operating the branch, we could not sit back and watch what was happening regarding issues of subcontracted workers. We intended to support them to form their union. But it seemed to be very hard because they have little experience and little idea about labour movement. (Branch K4)

Officials of the branch thought that there was nothing but to extend its representation to subcontracted workers under considerable pressure despite difficulties facing them. In order to clarify the extended boundary of membership this branch amended its rulebook to *explicitly* state that subcontracted workers can join the branch, by saying that 'regardless of employment contract and status, all workers including full-time

permanent, temporary, part-time, outsourced and other forms of precarious workers are allowed to be members of the branch if they are working for Hospital K4' (Branch K4 rulebook, Rule 2.6). This branch has the most similar membership provision to the English branches with a mixed membership compassing both employees of the hospital trust and of private contractors. This is a stark difference from the three branches of KHMU where no branch had that provision in its rulebooks.

Before moving on to the case of Branch K5, it should be mentioned that in comparison to other branches, with mostly above 50 percent unionisation level among full-time permanent workers, the density of the branch K4 was very low, at 10 percent. This branch has organised and represented these workers as part of boosting its weak collective power resulting from the low level of unionisation. This shows that although management tried to use contingent workers as part of offsetting the effect of unions, because a peripheral group is less likely to take part in unions (Osterman, 1994; Pfeffer and Baron, 1988), union could exercise leadership to improve the effectiveness of union activity through organising and representing peripheral groups.

### *Branch K5*

Branch K5 had chosen to support the establishment of a separate union branch of KHMU for subcontracted workers and involved itself in the activities of organising them, offering useful resources such as its office, computers, a printer, and so on. A branch official explained the reason for the decision:

We [branch officials] mainly considered what would be most appropriate for representing them. We needed to take into account all resources we had at that moment. Considering the fact that these workers are vulnerable and insecure, we had to prepare for all possible scenarios including the case we need to deal with *everything* concerning issues raised by and targeted at them from A to Z when they joined the branch. But we had a limited number of branch officials and could not say for sure that existing members would agree with that situation. (Branch K5, italics added for emphasis)

One reason why it decided to support the separate branch was that there was an experienced union activist amongst the subcontracted workers, which was not the case in Branch K4. Before this activist was elected as the separate branch secretary he had experience in union activities and then played an essential role in organising and maintaining the membership with the support from the branch K5.

Branch K5 had, however, experienced a decline in existing members due to its active support for subcontracted workers. The number of members dropped by 200 from around 800 in 2004 to 600 in 2005 (Interview, Branch K5). Furthermore, for the first time in the history of the branch, two candidates were running for the election of branch secretary in 2005 and the challenger pledged to withdraw branch activities dealing with issues of subcontracted workers. Although the challenger lost that election, it confirmed that the branch had encountered resistance amongst existing members. As a result, this branch had to spend more than two years overcoming the aftermath of the election by persuading existing members to understand the need for branch activities for subcontracted workers.

We won the election, but we had to spend lots of efforts persuading existing members to understand the need for union activities for subcontracted workers.

Although we encountered difficulties in reconciling interests among workers, we still believe that we were right and we could overcome the resistance of existing members through intensive training about what unions do. (Branch K5)

As such, the two branches K4 and K5 illustrated similar patterns in representing subcontracted workers and showed seemingly different branch governance from that of the other three KHMU branches. A stark difference between the two groups in KHMU is that Branches K4 and K5 made a constant effort to construct a common interest between workers on different employment contracts. What follows is to explore why the outliers in Korea took a different approach from the dominant trend of branch responses in KHMU.

### **7.3.2 Branches' capacity for representation**

Whichever strategies branches chose of the two kinds of inclusion, they were likely to struggle with some problems. If a branch decided to accept subcontracted workers into its constituency, it needed to accommodate likely conflicts of interests among workers with different contractual terms and conditions of employment (Gumbrell-McCormick, 2011: 301). Even if a branch supported these workers to join a separate union branch, there would be potential pitfalls such as the risk of marginalising the branch. Organising these workers into separate unions seems to be easier than reconciling them within existing union bodies, but, as Gumbrell-McCormick points out (2011: 302), it might be in danger of isolating or marginalising the separate unions from the core union structures. This gives rise to questions of what made it possible for the two outliers to implement inclusive strategies, despite these potential



difficulties, coupled with institutional and historical constraints contributing to exclusive strategies found in the other three KHMU branches.

Drawing on empirical evidence that highlights the micro-politics of two union branches, this study identified three key features that led to branches taking a different response from the dominant behaviour in KHMU. First, the focus of branch leaders was beyond representing full-time regular members, second, there were subcontracted workers willing to join a union and act as union members, and third, a relatively favourable context in which a branch operated with allies, was identified. Each is examined in turn.

The leadership, first and foremost, has been crucial to the inclusive policies of both branches in branch structure and governance. Despite common difficulties across the board in operating a union branch such as lack of facility time for branch representatives, limited financial resources, a deep-seated enterprise consciousness, and other unfavourable conditions caused by employers' hostility towards unions, leaders of the two branches adhered closely to their ideological position in representing the interests of subcontracted workers doing something different from other branches by organising these workers through amending rulebooks or collaborating with the separate branch. Borrowing Cerviño arguments (2000: 9-13) about incentives and costs in union organising, leaders of these two branches made good use of ideological and organisational incentives despite the risk of paying costs such as losing their existing membership, which might weaken a branch's collective power against the counterpart, the employer. As clearly shown in the experience of Branch K5, existing members are likely to withdraw from the union whenever they

do not feel satisfied with it. Representatives of the branch have managed this challenge by emphasising the need to work with subcontracted workers many times, which eventually helps existing members to realise that this is the way to enhance not only their rights but the interests of working class as a whole.

Second, in this process, the attitude of subcontracted workers also played an important role. As shown in both cases, the intention of these workers to join a branch was perfectly timed as it coincided with the willingness of representatives of the two branches to make changes. As Cerviño (2000: 11-12) points out, the attitude of these workers provided an appropriate context to develop each branch's inclusive strategy. This is well contrasted with Branch K1 where when asked by subcontracted workers, the representative told them to visit a regional office instead of the branch. Furthermore, this reminds us of the principle of 'like recruits like' (Gumbrell-McCormick, 2011: 302), as mentioned in Section 7.2. One official of KHMU summed up how important this principle was and how well it worked in organising subcontracted worker in the case of Branch K5:

Organising subcontracted workers from amongst themselves would be the most effective way. The secretary of the separate branch scratched subcontracted workers where they itched by fulfilling their long-cherished desires, for example having a rest room. He did it because he knew what they wanted. The other day he made an enlarged copy of a ballot paper before an election and then used it in teaching them how to vote. Many subcontracted workers are older people who have a problem with reading. (Branch K5)

In particular, as found in the experience of Branch K5, activities in conjunction with leaders of the separate branch resulted in not only improving the conditions of employment for subcontracted workers but enhancing worker solidarity.

Last, this study needs to mention some distinct contexts in which these two branches operate. As mentioned earlier, the unionisation level of the branch K4 has gradually dropped to 10 percent which is a very low density in the Korean context. Although this has probably weakened the branch's collective power and influence, the branch made use of this crisis as an opportunity in order to boost its organisational capacity. One representative of Branch K4 summed up the constraints and opportunities facing the branch:

Ironically, the low density helped us to organise subcontracted workers. If we [the branch] had got quite a number of members among regular workers it could have been more difficult to do that. I expect that more regular workers would get inspired by the fact that an organised power can make a difference, which will encourage them to join the branch. (Branch K4)

As commented, the challenge of the low density of the branch highlighted the opportunity to organise subcontracted workers. Furthermore, a relatively strong collective power against the employer lies behind the inclusive strategy, which is confirmed by the fact that the number of full-time paid officials is three in the branch with less than 100 members among regular workers.

Another point is distinct characteristics of the area in which the two hospitals K4 and K5 are located. Given the feature of the health service with, to some degree, a geographical limit, the climate of industrial relations within the area and the reputation of the hospitals are likely to affect actors' behaviour. Both areas have witnessed industrial actions including strikes against precarious work with increased frequency and intensity, which provided circumstances propitious for unions to unite

with allies within the community and adverse for management to unilaterally ignore unions' demands.

## **7.4 Concluding summary**

This chapter explored how union structures have affected patterns in union responses to subcontracted workers with a focus on two aspects of union structures: external structure, the scope and the boundary of membership and internal structure, union governance. Regarding the questions of *whose interests* and *how* union branches have represented those, this chapter found that the typical responses of union branches studied in the two countries differed. The three UNISON branches included subcontracted workers into their representational domain and represented their interests by allowing them to be involved in all branch activities in their capacity of members just like regular workers employed by hospitals. In contrast, subcontracted workers in the three KHMU branches did not fall into these branches' demarcations and thereby their interests were hardly represented within the branches. The findings tell us that the three UNISON branches placed emphases on reconciling likely diverse interests coming from different employment contracts, while the three typical KHMU branches have tended to more focus on representing the interests of existing members. However, this chapter also found two outlier branches in KHMU whose responses differed from the typical one. These two branches represented the interests of subcontracted workers by accepting them as branch members or actively supporting the establishment of a separate branch for these workers.

Throughout this chapter, the following questions were analysed: why the typical strategy of branches between the two differed; why the exceptional cases were found in Korea; and how to explain differences and similarities not only between but also within countries. The differences mainly emerged in relationship to differences in institutional contexts in which the two unions, UNISON and KHMU, were operating. The relatively stable union structure of UNISON at national level has led three branches to include subcontracted workers into their representational domain and hence the interests of subcontracted workers were represented. In contrast, despite the structural change of KHMU into sectoral level, the three branches studied have still focused on interests within the workplace based on employment contracts, which means that there is little evidence that branch structures and governance of KHMU are equipped to deal with potential members among subcontracted workers. However, as shown in the two outliers of KHMU, despite differences in union structures, there was still scope to make a difference depending on the role of leaders, active involvement of subcontracted workers and the extent of reconciling seemingly different interests between workers on different employment contracts.

As the wider relevance of this point is discussed in Chapter 8, the findings of this chapter support the argument that institutions alone cannot explain similarities and differences in union responses, despite the importance of institutions in shaping union strategy. Hence other, non-institutional, factors have also contributed to different and similar patterns of union responses in terms of union structure: the wills and the ability of branch leaders to reconcile potential conflicting interests among members; the extent of enterprise consciousness which has spread out throughout a branch; and shared experiences between workers with different employment contracts as members in a union branch.

## Chapter 8 Discussion

This study so far has explored similarities and variations in union responses to subcontracted workers in a thematic way, focusing on distinctive features of institutional arrangements between the English and Korean health care sectors. This chapter now returns to the literature summarised in Chapter 2 in order to discuss what this study added to existing ideas and theories.

The findings were that typical responses of unions between the two countries varied: union branches in England (E1, E2 and E3) included subcontracted workers into their representation domain and accepted subcontractors as counterparts in their collective bargaining, while those in Korea (K1, K2 and K3) neither included subcontracted workers within union demarcations nor accepted subcontractors as counterparts in their collective bargaining unit, seeking instead to regulate these workers' conditions of employment to some extent. This study also found two outlying cases in Korea whose response was similar to those in England.

These results illuminate the importance of an integrated approach between institutional and non-institutional factors in comparative industrial relations study. Although it is an accepted truism that 'institutions matter' in comparative political economy literature, the findings discussed in the previous chapters only partly support the institutionalist approach and require some non-institutional factors, such as the role of leadership, the attitude of the represented and the feature of locations where the branches studied operate. Accordingly, this chapter examines theoretical approaches in order to investigate to what extent the findings support the approaches

reviewed earlier respectively and discusses how far the analytical framework presented in Chapter 2 is useful to explain underlying relationships that contribute to patterns of union responses.

Not only do the findings help expand the understanding of union responses to contingent workers by exploring unions' link to the triangular employment relationships with the third party involved, but also they give an insight into whether existing structures both within and surrounding unions and their branches are well-equipped to represent the interests of subcontracted workers. For the sake of an effective account, this chapter starts with the latter two themes first, the link between unions and subcontracted labour, and comparative study on union strategies in Sections 8.1 and 8.2 respectively and then discusses the theoretical contribution in Section 8.3. The final section concludes by emphasising the importance of an integrated approach.

## **8.1 Unions and subcontracted labour**

Much of the prior research on union responses to contingent workers (Cerviño, 2000; Gumbrell-McCormick, 2011; Heery and Abbott, 2000; Heery *et al.*, 2004b) focused on the link between unions and these workers *in general* with less attention to a particular type of flexible work arrangements and have tended to pay much attention to mapping and evaluating union responses. As is well known, contingent workers are not a homogeneous group (MacKenzie, 2008: 6) and among a variety of contract types, there are different levels of labour market power (Kunda *et al.*, 2002). Dealing with them as a whole may hinder us from understanding distinctive features of each

contingent employment arrangement. The challenges facing unions in representing contingent workers might differ depending on the type of contingent work arrangements (Gallagher and Sverke, 2005: 196; Malo, 2006). Variations in employment arrangements also affect union responses on the grounds that workers' attitudes to unions and the working environment might have various impacts on unions. Although there are a few studies that have explicitly addressed the link between unions and a particular type of contingent workers, agency workers (Heery, 2004) and freelancers (Heery *et al.*, 2004b), the link between unions and subcontracted employment had not been examined in detail until now.

As mentioned in Chapter 2, studies on subcontracting mainly focus on the analysis of management perspectives (Eun, 2008), the state of these workers (Allen and Henry, 1996; Cooke *et al.*, 2004), the union involvement in the process and outcomes of contracting-out (Hayakawa and Simard, 2001), and the social relations among workers (Lee and Frenkel, 2004). The issue of how unions have represented these workers appears to be a gap in knowledge which this study addresses. Investigating union representation in relation to subcontracted workers is important because it enables us to understand whether existing union representation structures and functions are capable of incorporating the interests of emerging subcontracted workers employed by the third party (subcontractors). In this regard, this study also makes an important link between studies on union responses to contingent work and those on subcontracting.

Apart from the fact that most subcontracted workers as shown in other types of contingent workers are locked in precarious employment (Allen and Henry, 1996),



distinctive features of subcontracted workers studied in this research can be summarised as follows: first, they have experienced a dual relationship with two (or more) employers, which helps define this group distinctively from those with a single employer; second, they tend to have an open-ended employment contract with their contractual employer compared to those with fixed-term contracts with a set period of service; and third, they were likely to work for at least eight hours a day unlike part-timers. When compared with temporary agency work, the evidence tells us that these workers were most likely to be carrying out a distinct function from workers in conventional employment at the place of work such as catering or cleaning, and less likely to have direct relationship with management at a user company. These unique characteristics of subcontracted workers require special attention for unions in representing these workers' interests, ranging from decisions about the legitimacy of this type of indirect employment, through recruitment and organising, to representing their interests.

This study sought to address this shortcoming by analysing a union's link to subcontracted work in the English and Korean health sectors, especially focusing on union branches as the unit of analysis. As shown in previous Chapters 5, 6 and 7, studying this linkage is important in that it allows us to understand particular challenges union branches have encountered as subcontracted labour has been emerging.

First, given that a union branch, as the cornerstone of union organisation, was primarily based on a workplace with a single employer in the English and Korean health sectors, subcontracting *per se* provided union branches with the question of

whether to accept workers with different employers. Although the two unions, UNISON and KHMU gave their branches scope to include these workers by allowing branches to form their structure beyond the place at work, the branches studied have struggled with the separation of employers in that it required branches make *additional* efforts to reconcile potential different interests among members (or workers) with different contractual conditions.

Second, the union branches studied were faced with the issue of how to deal with the third party, subcontractors. As can be seen in the case of agency work (Heery, 2004), to accept subcontractors as union branches' counterparts may be perceived as conferring legitimacy of this type of employment arrangements. This form of indirect employment is clearly a breach of ILO declaration (ILO, 1944) which states that 'labour is not a commodity', as mentioned in Chapter 1. Although Davidov (2004: 728) notes that the legitimacy of intermediaries in the selling of labour is hardly contested anymore, data collected for this study highlights that union branches in both countries were still opposed to the business practice of subcontracting, albeit to varying degrees. Even if this opposition is mainly associated with unions' ideological positions, it is evident that unions' perception of subcontracting had an influence on their responses in either positive or negative ways.

Linking back to the findings in Chapter 6, the evidence shows that the three UNISON branches had a two-track approach: while they opposed contracting-out which facilitated the proliferation of indirect employment, they also expended effort to improve conditions of employment for subcontracted workers through collective

bargaining with subcontractors. It can thereby be interpreted that UNISON branches made a compromise between their ideological position and practical issues in the light of their insufficient power resources to stem the rising tide of employers' initiatives to contract-out services. However, it was not surprising that there were some other branches that have hardly done anything in relation to subcontracted workers and their contractual employers, as shown in the three typical KHMU branches. Although it can be interpreted that the ways in which these branches behaved are predicated upon their principles aiming at the abolition of indirect employment in the labour market, it may be closer to the truth to say that their behaviour was due to organisational apathy, or, more precisely, lack of ability to deal with issues concerning subcontracted workers.

Another issue related to the third party is the nature of this triangular relationship. Compared to the agency work, there were no relations between management of a user employer and subcontracted workers *in theory* since subcontractors supervised their employees' work, but the degree of control by the user company might not always have been clear-cut (Kalleberg, 2000: 350; Olsen, 2006: 97). As addressed in Chapter 5, one of the Korean branches (K5) succeeded in making subcontracted workers obtain full-time permanent regular workers' status by proving that managers of a user hospital substantially ordered and supervised these workers, which was considered as illegally-used agency workers according to labour law (Act on the Protection, etc., of Dispatched Workers). As such, labour movement must probe the nature of the triangular employment relationships in order to clarify who should be considered the real employer.

Third, if it is decided to represent these workers, union branches may need to form an appropriate representation structure. Although it can be said that dealing with the issue of contingent work is not a new challenge facing unions, representing subcontracted workers requires fresh forms of representation that ‘break with the dominant, workplace centred pattern’ (Heery *et al.*, 2004b: 20). This study found that the branches that represented subcontracted workers better than others formed a structure beyond the workplace or collaborated closely with a separate branch for subcontracted workers. This study supports the need to form union structure at a level above the workplace enterprise, which has also been suggested by some who studied trade union representation of contingent workers (Heery, 2009; Heery *et al.*, 2004b; Kretsos, 2011; Wills, 2009; Wills and Simms, 2004). In this regard, existing forms of representation of the typical union branches in Korea (K1, K2 and K3) are not effective in protecting subcontracted workers.

In respect of better union structures, some have argued for regionally based forms of representation, while others emphasise sectoral or occupational representation (Cobble, 1991; Cobble and Vosko, 2000; Herzenberg *et al.*, 1998; Milkman, 2006; Vosko, 2000). This study does not intend to insist that there is a ‘best’ form of union representation of subcontracted workers. Rather it adds the evidence in previous studies with a focus on the representation structure *beyond* the individual enterprise.

## **8.2 Comparative study of union strategies**

This study sought to add the evidence about patterns of union strategies concerning subcontracted workers collected from a comparative study. This attempt is expected

to help explain both variations and underlying causes of strategies made by unions with different institutional arrangements.

First, in order to present patterns of union responses to subcontracted workers, this study used Heery's typology (2004: 435) which comprises four distinctive responses characterised by a combined policy towards agency workers and on agency suppliers. Although this typology is designed for union responses to agency work, it is functional for this study with a focus on subcontracted workers. This is because the typology explicitly works with the features of triangular employment relationships. As mentioned in Chapter 1, temporary agency workers have different features from subcontracted workers in terms of the supervision over these workers and work arrangements in relation to regular workers. Nevertheless, these two types of employment arrangements share the common feature, the triangular employment relationships involving with at least three parties. Hence Heery's typology was useful to classify union responses to subcontracted workers not only in England but in Korea. In this regard, it extends the usefulness of Heery's typology (2004) to the study of union responses to subcontracted labour, and shows its applicability to Korean context as well as the English one.

However, studies with a focus on classification of union behaviour have difficulty in developing an understanding of why unions respond in a particular way. As Frege and Kelly (2003: 10) point out, existing comparative studies in industrial relations have paid more attention either to explaining cross-country variations focusing on quantitative indices or to classifying various types, structure or identities of unions. Although some literature exists with a focus on unions' strategic choices in

collective negotiations over outsourcing (Doellgast, 2008; Hayakawa and Simard, 2001), not enough attention has been paid to how unions have responded to contingent workers, in particular subcontracted workers. Such issues in addition have not previously been addressed through comparative study. This study contributed to existing comparative industrial relations literature by moving beyond mapping and classification and by revealing factors shaping a particular type of responses. The analysis beyond classification, as discussed in more detail in the following section, helps us understand which factors have reliable explanatory power to explain complex dynamics of union behaviour.

It found that different institutional arrangements in the English and Korean health sectors have played a crucial role in shaping various patterns: the source of restructuring which caused growth in the number of subcontracted workers, legal regulations, collective bargaining systems, and union structures. These institutional factors were very useful to help explain why the typical responses between the two countries varied. In this regard, it is clearly the case that institutions matter. However, what were the compelling findings of this study is that institutions alone were not sufficient enough to explain variations of union responses. As the experiences of two outlying branches of KHMU have shown, variations in union responses were found within a single institutional setting and interestingly, the strategic choices of these two branches were similar to those of UNISON with different institutional arrangements. Hence, this study derived some factors other than institutions from the literature such as the role of leaders, the willingness of the represented and the potential to strengthen ties with allies in a community. The empirical evidence functions as a cornerstone to give the analytical framework (presented in Chapter 2)

explanatory power by suggesting the importance of an integrated approach between institutions and non-institutional factors.

In the next section, theoretical contributions of this study are discussed by showing how these factors have contributed to unions' strategic choices towards subcontracted workers.

### **8.3 Theoretical implications**

Comparative industrial relations scholars have long relied on the institutional approach in international political economy literature, rejecting a simple globalisation view emphasising the market forces associated with globalisation. The findings of this study did not support a simple globalisation approach because the typical union responses between the two countries differed. Although this study found similarities in patterns of union responses by showing the two outlier branches in Korea, it is hard to say that this similar response resulted from global market forces. Rather, this study suggested other non-institutional factors shaping this similar response.

This section seeks to show that data collected do not fully support the institutionalist approach, despite the importance of institutions of correcting the convergence logic argued by the simple globalisation thesis. It was almost impossible to explain not just differences within a country but also similarities between countries with the institutionalist approach, which is in line with the critique of Bamber and colleagues (2004: 60). This study drew on literature concerning actors' strategic choices, which

helped understand why variations in union responses within a given national setting and similarities between different institutional settings were found. Hence this study arrived at a conclusion that was drawn from these findings: the need for an integrated approach between institutions and actors' roles.

There has been some research in favour of the integrated approach (Frege and Kelly, 2003; Lee, 2009; Wailes *et al.*, 2003), but those researchers have mainly focused on attempting to present the potential of an integrated approach. Little emphasis has been placed on explaining how far this approach has explanatory power with detailed empirical evidence drawing on a 'most different case' comparison. In this regard, what this study contributes to existing literature on unions' strategic choices is not just extending the focus on institutions but also showing the need to integrate institutional and non-institutional factors into a single analytical framework.

In what follows, each of these currents in political economy literature is analysed with data collected from union branches in the English and Korean health sectors. For each theoretical current this section presents strengths and weaknesses by showing to what extent data collected for this study supports each current. It therefore, beyond the principle of 'institutions matter' which hitherto has influenced much discussion, presents the importance and adequacy of the integrated framework between institutional and non-institutional factors for analysing union responses



### 8.3.1 Institutional factors

In comparison to the simple globalisation approach emphasising convergence of patterns in industrial relations and the effects on actors including unions, the institutionalist approach is more effective to explain between-country divergence. As Kelly (2011: 57) sums up, ‘one of the staple propositions of recent comparative political economy is that institutions matter’. Scholars in this area, new institutionalism (*e.g.* Dore, 1986; Hall and Soskice, 2001a; Hollingsworth and Boyer, 1997; Weiss, 2003) pay much attention to the independent role of institutions, starting with the premise that differences in industrial relations institutions are likely to be enduring and suggests that globalisation is unlikely to lead to a general convergence in national patterns of industrial relations (Locke *et al.*, 1995). In this regard, Locke and Thelen argue that:

By pushing the core categories of institutionalist analyses, we demonstrate how various international trends are *not* in fact translated into common pressures in all national economies but rather are mediated by national institutional arrangements and refracted into *divergent* struggles over particular national practices’ (Locke and Thelen, 1995: 338, italics in original).

This study sought to investigate the ways in which unions with different institutional arrangements coped with a similar challenge, the rise of subcontracted workers. As addressed in previous Chapters 5, 6 and 7, there were not only variations but similarities in patterns of union responses. These findings are now analysed with the institutionalist approach. It was found out that the typical responses in the two countries markedly differed: while the UNISON branches included subcontracted

workers into their representational domain and regulated their terms and conditions by negotiating with private contractors, the three KHMU branches presenting the typical type of responses in the national union did not include these workers, nor negotiate with their employers, subcontractors. Contrary to case of UNISON where no exceptional cases found due to the articulated union structure and the encompassing collective bargaining system, there were two outlying cases in KHMU, which presented similar responses to UNISON branches.

This study considered the source of restructuring, legal regulation, collective bargaining systems, and union structure as crucial institutional factors shaping union responses. These four factors were closely related to how unions responded to subcontracted workers. As such issues were examined ranging from the emergence of subcontracting in each context, to how subcontracted workers were treated at their workplaces, and how subcontracted workers' terms and conditions of employment were determined.

#### *The source of restructuring*

Linking back to the findings in Chapters 4 and 5, the characteristics of the health sector in England and Korea varied in terms of the main financing source and the provision of health care service. The NHS is a publicly funded health service with budget in large part coming from general taxation, while Korean hospitals are financed by a mix of taxation, social insurance contributions and hospital bills paid by patients. In contrast to England, where health services are almost entirely delivered by public organisations within the NHS, even though some services are

now provided by private companies, the main health service providers in Korea are private hospitals. Despite different features of the two health sectors, the proliferation of subcontracting was found in both countries since the 1980s. The main body of health service in each country – the government in England and private hospitals in Korea – has initiated the restructuring by subcontracting some services, mainly those not directly related to the essential medical services such as cleaning, catering or maintenance. The two unions and their branches studied opposed the management-initiated restructuring, but responses differed. Drawing on empirical data, this study found the government-led restructuring in England towards externalisation of workforce had triggered more pragmatic and centralised responses nationally, whilst the market-driven change in Korea had contributed to more fragmented responses at branch level.

All branches of UNISON studied adopted realistic policies. In large part this seemed to be because they thought there was less possibility to stem the tide of the government's policy, although they opposed contracting-out practices. Even during the Labour's term of government between 1997 and 2010, the drive towards outsourcing changed little, which encouraged unions to become more focused on pragmatic and realistic strategies for subcontracted workers.

In contrast, the contracting-out drive in Korea was more affected by fierce market competition than direct pressure from the government. It is the case that government policies which applied to public hospitals, whose proportion stood at around 10 per cent, had an impact on privately-owned hospitals but the latter did not have a strict obligation to follow those policies. The outsourcing drive in Korea was initiated by

hospitals under market pressure, and showed a phased approach over a long period without unions' involvement in the process. This seems to have made union branches adopt conservative decisions with a focus on existing members' interests rather than expanding their representation. As such, differences in hospital sector and the source of restructuring have led to variations in union responses.

### *Legal regulation*

This study investigated the regulatory effect of labour laws associated with subcontracting and the affected workers in relation to union responses. The ways in which legal regulations were involved in the emergence and management of subcontracted workers also, albeit to a varying degree, affected union branches' responses. In combination with findings addressed in Chapter 5, the two countries presented different legal situations: in Korea there was a lack of regulations on the conditions of workers involved in contracting-out, there were regulations in England, represented by the TUPE Regulations. Despite some criticisms of TUPE on the grounds of narrow coverage and limited effects, it is the case that TUPE provided a basis for protection of employees' terms of employment and collective rights. Turning to the Korean case, the role of legal regulations is much less clearer. Lack of legal mechanisms regulating employment relations and the rights of transferred workers at the time of a transfer (Kim *et al.*, 2012) precluded subcontracted workers from being given legal protection in terms of both individual and collective rights.

The differences in legal contexts also influenced union branches in making their strategies. In situations where relatively favourable legal regulations apply such as

TUPE in England, union branches were more likely to adopt inclusive policies towards subcontracted workers without making too much extra effort to forge common interests between workers on different employment contracts. Hence this study argues that the higher the level of legal protection for pay, working conditions, and collective rights of subcontracted workers, the more actively union branches have organised and represented them.

This finding supports the alternative position of Booth and Francesconi (2003) arguing that legal provisions may act as opportunities for union representation. This is in line with the way in which the institutionalist literature conceptualises institutions as ‘beneficial constraints’, which refers to the situation where an institution which may function as a constraint rather acts a facilitator in achieving a certain goal. An example includes a legal minimum wage: while it causes difficulty for firms competing on low labour cost, it also encourages them to compete more on productivity (Kelly, 2011: 64-65).

Legal provisions such as TUPE, the minimum wage legislation or EU directives might weaken unions’ efforts to recruit subcontracted workers since it could be possible that such initiatives may discourage them from joining a union (Baccaro *et al.*, 2003). This is because these workers may think that they can be protected by these legal regulations without union membership. However, the English union branches utilised these legal contexts as opportunities to attract subcontracted workers by monitoring compliance with the law, which has led to more inclusive union policies. In this regard, data collected does not support the study of Baccaro *et*

*al.* (2003) which argue that unions with a weak institutional position are more likely to move toward organising.

### *Collective bargaining*

Among various kinds of unions' representation methods, collective bargaining is regarded as part and parcel of industrial relations since it determines the terms and conditions (Clegg, 1976; Marchington *et al.*, 2011). In particular, Clegg, one of the prominent institutionalists, argues that 'differences in collective bargaining can explain variations in union behaviour' (1976: 8). However, data collected for this study do not entirely support that argument. In line with other criticisms (Frege and Kelly, 2003; Heery, 2009; Shalev, 1980), this study criticises it mainly because of the direction of causality and the deterministic view. The case of KHMU shows that the reform of union structure has led to a reform of collective bargaining structures, although it is premature to say that the reformed, centralised bargaining structure has been well stabilised and organised. Furthermore, the outlier branches (K4 and K5) clearly highlight the weaknesses of Clegg's argument. Despite a shared collective bargaining system, only these two branches among the others in KHMU accepted subcontractors as counterparts in their collective bargaining units and negotiated terms and conditions of subcontracted workers. Nevertheless it is believed that Clegg's terms, the level and the extent of bargaining (1976: 8-11) are important criteria to compare each country's bargaining system and its related influences on union branches. Here the level of bargaining means where it takes place with whom, and the extent of bargaining refers to its coverage.

Another importance of collective bargaining comes from the feature of triangular employment relationships with three parties involved, rather than two as in traditional relations. The complexities have, in general, made it difficult for unions to represent subcontracted workers through existing channels (Kalleberg, 2000: 358). Data collected for this study underline that differences in collective bargaining system have led to different union responses to subcontracted workers. The UNISON branches where the bargaining system is relatively well centralised under the Agenda for Change have negotiated at sectoral level as well as with private contractors in order to present the interests of these workers. In contrast, branches in KHMU where the centralised bargaining structure has not been well established (Eun *et al.*, 2012b; Lee, 2011c) have hardly negotiated with either hospital employers or subcontractors for the issues related to these workers. This means that the more centralised and stabilised bargaining system paved the way for more propitious circumstances for the UNISON branches to include and represent subcontracted workers. In contrast, the ‘disorganized centralization’ (Lee, 2011c: 768) bargaining system in the Korean health sector made it difficult for the three branches to actively address the concerns of subcontracted workers, coupled with the legacy of enterprise unionism.

### *Union structure*

This study considered union structure as one of the institutions contributing to similarities and variations in union responses. Faced with changing workforce composition such as the rise of subcontracted workers unions have to decide whether or not to represent these workers by including them into their constituencies (Cerviño, 2000; Heery, 2004). Unlike with other contingent workers directly

employed by a user company, the issue of subcontracted workers requires the expansion of representation beyond the enterprise (Heery *et al.*, 2004b: 31), in particular where a branch is mainly based on a workplace, as seen in the case of the UNISON and KHMU. This study explored this issue with a focus on union branch external structure and internal governance in order to understand whose interests union branches sought to represent and how.

In contrast with other institutional factors examined, the two unions have something in common in union structure at national level. They all allowed subcontracted workers to join a branch based on the place at work, albeit to varying degree. But behaviour of each branch between the two unions differed: the UNISON branches opened their membership to subcontracted workers, whilst the three KHMU branches maintained closed membership among full-time permanent workers with a single employer, the hospital. Faced with the rise of subcontracted workers, while the former began to organise and represent them, the latter have done little such activity at branch level. As Peetz (1998: 9) argues, union membership is ‘influenced by both employee preferences and the extent to which employees are able or required to join a union’. Reflecting this explanation, the typical Korean branches gave subcontracted workers limited opportunities in terms of supply-related aspects. The difference in union membership between the two unions is explained by historical embeddedness and the issue of articulation between levels of union. This study found that the legacy of enterprise unionism encouraged Korean branches to consider subcontracted workers as ‘others’, which was coupled with the national level of the union having little control over branch membership provision.



The structural difference in turn affected variations in union branch governance. The UNISON branches with subcontracted workers amongst their members operated a joint branch secretary system by appointing two branch secretaries with responsibility for direct employees of the hospital trust and employees of private companies respectively. Furthermore there was no barrier for members employed by private companies to attend or to speak at members' meetings to elect or to be elected as branch representatives. In contrast, the three typical Korean branches had no experience with subcontracted workers within branch governance and not surprisingly, no presence of these workers in representative positions.

#### *Strengths and weaknesses of institutionalist approach*

This section has so far discussed how far the institutional factors considered explain the variations in union responses between the two countries. The different institutions in each country were useful to help understand the differences in union responses by reinforcing and complementing each other, which Hall and Soskice conceptualise as 'institutional complementarities' (Hall and Soskice, 2001a: 9). The findings suggest that the distinctive features of national and sectoral institutions play a key role in shaping a particular union's behaviour by refracting the pressures associated with the rise of subcontracted workers. For this reason, as Wailes and colleagues (2003: 617) comment on the institutionalist view, the institutionalists predict that this form of diverse patterns of industrial relations would continue. This is because they see that 'institutions possess a remarkable degree of resilience even in the face of powerful market pressures' (Kelly 2011: 64), which reveals a strong degree of 'path dependency' when institutional changes occur. If this view is

convincing, it would be the case that the less favourable and less adequate institutions in Korea for representing the interests of subcontracted workers would continue to preclude unions from actively representing these workers.

However, the data collected showed a different picture since there were two KHMU branches that presented similar responses to those of UNISON, which means that even under different national and sectoral institutional arrangements union behaviour can be similar. With institutionalist arguments, it is hard to explain both why unions with different institutional contexts behaved in a similar way and why unions under the same context acted in a different way. The findings clearly show that institutional accounts have trouble accounting for these phenomena, as Pontusson (1995) points out. The evidence of this study suggests that there is a need to develop theoretical understanding further in comparative industrial relations. For this reason, this study seeks to identify non-institutional factors to contribute to similarities between countries and differences within a country in the following section.

### **8.3.2 Non-institutional factors**

This study, as mentioned above, found variations in branches' responses not only between but also within countries, which required an explanation beyond institutionalism. This study thereby argues that union strategies are influenced by institutions but the latter is far from fully determining them, which is in line with the argument of Kelly and Frege (2004: 182). Furthermore, it shows that despite national and sectoral context, unions at branch level can have an independent voice in responding to emerging subcontracted workers. Drawing on empirical evidence

presented in Chapters 5, 6 and 7, it now addresses which non-institutional sources encouraged these two union branches to adopt inclusive policies similar to those in England. Much of the explanation seems to lie in the role of leaders who mobilise organisational resources, and in the attitude of subcontracted workers.

First, it pays a great attention to the role of the leadership. Union representatives of the two KHMU branches adhered closely to their ideological position of representing the interests of subcontracted workers and did something different from other branches by organising these workers through amending their rulebooks or collaborating with a separate branch for subcontracted workers. Given common difficulties across the board in operating a union branch such as lack of facility time for branch representatives, limited financial resources available, a deep seated enterprise consciousness, and other unfavourable conditions caused by employers' hostility towards unions, the importance of the leaders' role in the two branches becomes much clearer. Leaders made good use of ideological and organisational incentives (Cerviño, 2000: 9-13), despite the risk of paying costs such as losing their existing membership, which might weaken a branch's collective power against the counterpart, the employer. As clearly shown in the experience of Branch K5, existing members are likely to withdraw from the union whenever they do not feel satisfied with the branch. Representatives of the branch have managed this challenge by arguing for the need to work with subcontracted workers over time, which eventually helps existing members to understand that this is the way to enhance not only their rights but the interests of the working class as a whole. Branch K4, with a very low density in the Korean context standing at around 10 percent, made use of this unfavourable situation in terms of collective power and influence caused by low

unionisation level as an opportunity in order to boost its organisational capacity. The challenge of the low density for the branch mirrored the opportunity to organise subcontracted workers. There were expectations of an increase in membership among full-time permanent workers, though there had not been a marked improvement in unionisation by the time of the study.

Interestingly, in implementing this inclusive strategy towards subcontracted workers, these two branches were not properly supported by the national union, despite the latter's importance of organising contingent workers including subcontracted workers. This analysis more supports the agency account of union behaviour than the articulation account (Heery, 2006). Nevertheless the importance of articulation between national leadership and branch organisation should not be neglected (Kelly and Heery, 1989: 210) because workplace activities alone are less likely to be sufficient to expand membership among unorganised groups of workers (Cunningham and James, 2010: 39).

Second, in this process, the attitude of subcontracted workers also played an important role. The intention of these workers to join a branch was, to some degree, timed with the willingness of union representatives. Borrowing the argument of Cerviño (2000: 11-12), the active attitude of subcontracted workers provided an appropriate context to develop each branch's inclusive strategy. This is well contrasted with Branch K1 where when asked about union membership by subcontracted workers, branch representatives left a regional or national office with this issue. Furthermore, unionised subcontracted workers accelerated organising those under the similar conditions and, as seen in the case of Branch K5, underlined

the importance of the principle of 'like recruits like' (Gumbrell-McCormick, 2011: 302).

Third, it is worth mentioning distinct characteristics of the area in which the two Hospitals K4 and K5 are located. Given the feature of the health service which has, to some degree, a geographical limit, the climate of industrial relations within the area and the reputation of the hospitals, as discussed in Chapter 5, are likely to affect actors' behaviour. Both areas have witnessed industrial actions including strikes against precarious work with increased frequency and intensity, which provided circumstances propitious for unions to unite with allies within the community and adverse for management to unilaterally ignore unions' demands. This finding is in line with Milkman's findings (2006) from union campaigns in southern California arguing that successful organising of low paid migrant workers rests on the extent to which unions made concerted efforts to build supportive community. For management of the hospitals, in particular, this geographical limit was directly related to their market share within the area in which each hospital mainly operated so that management tended not to be hostile to unions for preventing the situation where patients left for another medical service.

Apart from three factors mentioned above, this study also considered the role of material interest (Wailes *et al.* 2003) throughout the research but found out that it was premature to say whether or not data collected supported this view. According to interest-based theorists, material interests are likely to contribute to variations in policy preferences, as workers may have different policy preferences depending on whether they are skilled blue-collar or white-collar workers, and whether they work

in trade-affected industries or sheltered industries such as the public sector (Rogowski, 1989; Swenson, 1991). Applying that approach to this study, it can be argued that different features of the hospital industry in the two countries, in terms of government-led versus market-driven, might have generated distinct interests of unions and their members on the issue of subcontracted workers, which resulted in turn in differences in union responses. But, with interest-based accounts it would not be easy to explain in what ways policy preferences contributed to a certain policy outcome and rather, as Wailes *et al.* (2003: 623) point out, is in danger of a reductionist or instrumentalist explanation. Furthermore, it would be almost impossible to explain differences in union strategies without considering the importance of distinct institutional arrangements in each country. Despite the importance of this view, there is difficulty in explaining the similarities found between countries. It is hard to explain how similar interests, causing policy preferences, are generated in such contrasting contexts.

### **8.3.3 An integrated approach**

An integrated approach, which includes a role for institutions as well as some non-institutional factors in shaping union responses to subcontracted workers, can explain both differences and similarities in patterns of union responses in UNISON and KHMU. As discussed above, while England and Korea shared different institutions of industrial relations, when faced with a similar challenge, the emergence of subcontracted workers, union responses between the two countries presented not only differences but similarities. The findings underline that although union strategies were largely affected by institutional differences underpinning

different policy preference, there was scope for unions to have an independent voice. For this reason, if this study considers only the role of either institutional or non-institutional factors, it would provide a partial explanation.

#### **8.4 Concluding summary**

It is widely accepted, as Kelly (2011: 71) argues, that institutions can refract market forces in a way which either attenuates or amplifies such forces, and although actors' strategic choices play a role in this process, there is a limit to their power. Scholars in comparative industrial relations have stressed the principle that institutions matter, whilst relatively little attention has been paid to competing approaches, which emphasise on the role of interests and of other non-institutional factors.

As shown in this study, the findings show that institutions alone are not sufficient to explain variations in union responses and underline the need to consider non-institutional factors alongside institutional ones. Three non-institutional factors – the role of leaders, the attitude of the represented, and a favourable for uniting with allies in a community – were accentuated throughout this study. Given that one of the challenges facing comparative researchers is to identify precisely 'the conditions under which each of these set of 'factors' is more or less effective' (Kelly, 2011: 71), this study adds evidence through the integrated approach with the comparison of union branches' responses between UNISON and KHMU. Furthermore, as presented earlier, this study contributes to the debate on union responses to contingent workers by suggesting a link between unions and subcontracted labour as a form of triangular employment relationships.

As such, this study contributes to the field of comparative industrial relations research in three ways. First, it extends the scope of research on union responses to contingent workers by investigating how unions have responded to subcontracted workers. In doing so, it enhances the possibility of applying Heery's typology (2004) to the study of union responses to subcontracted labour as well as those in the Korean context. Second, this study goes beyond classifying union responses by presenting underlying dynamics of union responses. Third, this study challenges existing ways of conducting comparative industrial relations studies predicated upon the staple proposition that 'institutions matter'. By investigating union responses to subcontracted workers between countries with different institutional settings, England and Korea, this study provides support for a claim that institutional factors alone are not sufficient to examine the complex dynamics of union behaviour and then suggests the need to integrate institutional and non-institutional factors into a single analytical framework.

The next chapter includes a review of what has been achieved in this research. It contains the summary of findings and analysis, the implications and discussion of the potential contribution, and finally, the suggestions for further research.



## **Chapter 9 Conclusion**

This concluding chapter summarises the key findings and arguments of the thesis and offers suggestions for future research. This study examined the ways in which unions have responded to subcontracted workers and which factors have contributed to patterns of union responses. The emergence of subcontracted workers has provided unions with a new challenge of triangular employment relationships. Subcontracting leads to separation of employers and places existing union structure and resources, and traditional collective bargaining systems subject to two parties involved under strain. A study of subcontracted workers in relation to union representation is important because it can tell us about how unions deal with more complex employment relationships. This also enables us to understand whether existing union representation structures and functions are capable of incorporating the interests of emerging subcontracted workers employed by a third party.

A comparative study was conducted of eight branches of the largest unions in the health sectors in England and Korea, UNISON and KHMU. This study employed qualitative case studies using fifty-three semi-structured interviews with union officials, observation of union activities, and document analysis. Evidence shows that these two unions are operating in different institutional settings in terms of the source of restructuring, legal provisions, collective bargaining systems, and union structures. This study found as follows: the typical responses of union branches between the two varied, but there were two outlying cases in Korea, showing similar responses to those in England. Drawing on empirical evidence, it is argued that despite the importance of institutions in shaping union responses, they are not

sufficient alone to explain variations in union responses. It is necessary to consider both institutional and non-institutional factors in a single analytical framework to understand the dynamics of union responses.

## **9.1 Key findings and argument**

Prior to the analysis of underlying dynamics of union responses, this study examined first how union have responded in order to identify whether there were differences and similarities between and within countries. Heery's typology (2004: 435) was used which characterises four responses distinctively, each comprising a combined policy on agency workers and on agency suppliers. The typology was designed for union responses to agency work, but it was useful for this study because it explicitly pointed out the distinctiveness of the triangular employment relationships.

This study found that the three UNISON branches studied (E1, E2 and E3) included subcontracted workers into their representation domain and accepted subcontractors as counterparts in their collective bargaining unit. In contrast, the three typical branches of KHMU (K1, K2 and K3) neither included subcontracted workers nor accepted subcontractors as counterparts. However, interestingly, this study identified the two outlier branches of KHMU (K4 and K5) whose behaviour was similar to that of UNISON branches. As such, the typical union responses differed between the two countries but similar responses were also found.

Throughout this study, the questions of why typical union responses differed, why similar responses were also found between countries with different institutional

settings, and which factors have contributed to similarities and differences were examined. These questions were analysed in Chapters 5, 6 and 7.

First, these questions were analysed in relation to the source of restructuring and legal regulations in Chapter 5. This study found that government-initiated restructuring encouraged more centralised and practical responses in England, while that driven by employers in Korea caused fragmented responses at branch level. Legal regulations that were designed to reduce, to some extent, the gap in conditions of employment between workers on different employment contracts, and to secure the continuity of employment and collective rights for subcontracted workers helped branches organise and represent these workers, in the English case.

Second, the ways in which collective bargaining systems have contributed to union responses were examined in Chapter 6. More centralised bargaining structures in England contributed to unions' inclusive strategy which encompassed bargaining agenda for subcontracted workers by negotiating with not only a user company but also with subcontractors. The bargaining structures in the Korean health sector, classified as 'disorganized centralisation' (Lee, 2011c: 768), was less capable of incorporating the interests of subcontracted workers.

Third, regarding the issue of which interests get represented within unions and how, results presented in Chapter 7 show that the English union branches had represented the interests of subcontracted workers by allowing them to join unions, to participate in union activities, and to elect and to be elected as representatives. In contrast, the

limited membership provision of the typical Korean branches made it almost impossible to get these workers' interests represented.

Lastly, throughout the research, this study found that despite opportunities and constraints under a given institutional setting, unions can make a difference in their representation towards subcontracted workers. As clearly shown in the two outlier branches in Korea, union responses differed from those in the same setting as well as were resembling those in different institutional setting. The process of constructing union responses was closely related to the way in which collective interests of a branch towards subcontracted workers were formed and implemented.

As such, differences in the institutional contexts of the source of restructuring, legal regulations, collective bargaining systems, and union structures explain some major differences in how unions have responded to subcontracted workers. However, the findings revealed that union responses were also influenced by some non-institutional factors such as branch leadership, the attitude of the represented and effective working with allies in the community. The findings highlighted the importance of an integrated approach between institutional and non-institutional factors in explaining union behaviour.

Drawing on the empirical evidence, on one hand, it is the case that institutions matter in shaping union responses. The institutionalist approach asserts that the way in which social actors behave is strongly affected by their national and sectoral institutional arrangements (Allen, 2004; Pontusson, 1995). According to this approach, however there remains little scope for social actors to shape outcomes

towards their own aims. Despite the importance of this approach, institutions are not sufficient to explain both similarities and differences in union branches' responses to subcontracted workers, as shown in the two outlier cases in Korea. Rather, the role of leaders and willingness of the represented to act played an important role in shaping different responses of these two branches from the other Korean branches. Hence it is necessary to consider both institutional and non-institutional factors in a single analytical framework.

This study contributes to the field of comparative industrial relations research in three ways. First, it extends the scope of research on union responses to contingent workers by investigating how unions have responded to subcontracted workers. In doing so, it extends the possibility of applying Heery's typology (2004) to the study of union responses to subcontracted labour as well as beyond the English context to those in the Korean context. Second, this study goes beyond classifying union responses by presenting underlying dynamics of union responses. Third, this study challenges the existing ways of conducting comparative industrial relations study predicated upon the staple proposition that 'institutions matter'. By investigating union responses to subcontracted workers between countries with different institutional settings, England and Korea, this study provides support for a claim that institutional factors alone are not sufficient to examine the complex dynamics of union behaviour and then shows the need to integrate institutional and non-institutional factors into a single analytical framework.

## 9.2. Suggestions for further research

This study suggests several important implications for further research. With regard to generalisation of the findings, different features of sectors need elaboration. Compared to manufacturing or other service sectors, the health care sector is relatively sheltered from international competition (Lee, 2011c: 787), and thus, the bargaining power of industrial unions in the health sectors in both countries was relatively stronger when compared to those in other sectors within each country. Although union density in the Korean health sector was much lower than that in England, standing at 10 percent, KHMU played an important role by taking the lead in union renewal by a move towards industrial unionism in Korea where enterprise unionism had – and still in many other sectors and in terms of unions' real activities – dominated. A comparison with union responses to subcontracted workers in other sectors, such as the car industry, may reveal greater cross-national variations in union behaviour. This is because there would be differences in bargaining systems, union structures, the power and influence of unions, workforce composition, and legal regulations, compared to those in the health sector.

As mentioned in Chapter 3, this study paid attention to the representation functions of unions subject to the fact that unions were mainly composed of regular full-time workers. Other actors that might have influenced union behaviour, in particular management and subcontracted workers were not considered as main source of the analysis. Instead, this study explored how unions have interpreted these other actors' behaviour so as to adopt their own strategies. This reflected the fact that this study was designed to investigate *what* unions have done, *how* and *why*, when faced with

the emergence of subcontracted labour which posed a challenge of triangular employment relationships. Nevertheless, further empirical evidence could be supplied by other actors who might have played a role in shaping union behaviour. This would help enrich the understanding of union representation.

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