

THE HIDDEN WORKFORCE BUILDING BRITAIN



Exposing exploitation and protecting
vulnerable workers in construction

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September 2011

Foreword

The construction industry is a hard and competitive industry where ‘rogue employers’ often try to gain a competitive (and financial) advantage – cutting costs by denying or abusing the employment rights of construction workers.

Like many of my colleagues in UCATT, I have fought all my working life to ensure that construction workers get a fair deal and are treated with dignity at the workplace. Yet today, there are still far too many workers who are exposed to preventable health and safety risks; who are paid below the National Minimum Wage; who do not receive holiday pay; who are unfairly dismissed from work; and, indeed, still too many construction bosses who continue to exploit workers through ‘bogus’ self-employment and dubious employment agencies.

It is timely then, whilst we await the outcome of the review of the government’s workplace rights compliance and enforcement arrangements – the ‘Davey Review’ – that we discuss the position of vulnerable workers in the construction sector and how we should both protect them and enforce their rights at the workplace.

In the first part of this publication (*‘Easy Pickings – Vulnerable Workers and Exploitation in the Construction Industry’*) freelance journalist Jamie Elliot (Community Links) provides evidence of the condition described above – capturing the ‘real-life’ experiences of migrant workers looking for employment or actually working in the industry. During his ‘action research’ he immersed himself with workers actively engaged in the ‘hidden’ parts of our industry and the personal narratives provided help to

expose the employment practices, working conditions and experiences of some of the sectors most vulnerable workers.

The second piece of research (*Regulation and the Vulnerable Worker: Enforcement Agencies in the United Kingdom*) by Professor Miguel Martinez Lucio (Manchester University Business School) neatly dovetails these personal experiences within the context of the current challenge and inconsistencies of employment regulation in the UK. The research briefly explores the trade union response (via the Union Modernisation Fund) to the concept of the ‘vulnerable worker’; discusses the traditional role of the various enforcement agencies; and examines the case for a more flexible and strategic approach to enforcement as a way of enforcing rights and regulating rogue or ill-informed employers. The publication ends with a broad set of overarching recommendations focussing on structural change; building alliances; pro-active investigations; and both construction specific and broader institutional recommendations.

UCATT’s involvement in the production of this research publication demonstrates our success in working collaboratively with academics, community organisations, enforcement agencies and, most importantly, those vulnerable workers who need our support. I trust readers of this publication will find it a useful reference-point in the debate around how we best protect, promote, regulate and ensure compliance of employment rights in the UK.



George Guy
UCATT General Secretary
(Pro Temp)

Introduction

This publication combines two pieces of complementary research and sets out the results of a collaborative research approach on vulnerable employment in the construction industry.

The research was commissioned by the Union of Construction Allied Trades & Technicians (UCATT) and carried out by Community Links and Manchester Business School, The University of Manchester, as part of UCATT's Round 3 Union Modernisation Fund (UMF) Project, *Building a Stronger Union – Responding to the Downturn, Preparing for the Upturn*.

The union's UMF project focuses on providing support to vulnerable workers in the construction sector and gave UCATT the opportunity to work in partnership with, and pool the expertise of, trade union, community and academic organisations. It provided an important learning experience for all those involved and assisted UCATT in better understanding how to represent and support vulnerable workers in the industry.

The research in this publication combines two types of research methodology. Firstly, a qualitative 'action research' based approach: *Easy Pickings – Vulnerable Workers and Exploitation in the Construction Industry* by Jamie Elliot, Community Links, setting out individual stories that seek to capture the day-to-day experience of vulnerable construction workers. Secondly, a piece of academic research based on interviews and a range of secondary data and sources looking at the role of regulation and the enforcement agencies: *Regulation and*

the Vulnerable Worker: Enforcement Agencies in the United Kingdom by Professor Miguel Martinez Lucio. Together, these reports highlight the everyday injustices, abuse and denial of rights experienced by vulnerable workers in the construction industry. They also set out a series of joint recommendations as to how the various enforcement agencies can better work together and with other organisations to ensure that 'rogue employers' do not flout the law in relation to workers' health and safety, pay and employment rights.

The denial and abuse of workers' employment rights throughout industry is a cause for grave concern for trade unions, community organisations and the individual workers themselves. Our combined approach to addressing the issues highlighted in these two reports can only help to be informed if we appreciate the problems and challenges and, consequently, the proposed solutions from the vulnerable workers' perspective.

In producing this publication, UCATT and Community Links are increasing our collective understanding of the 'multiplicity of vulnerabilities' faced by workers across the construction and related sectors in order to stamp out exploitation in the construction industry.

Organisations involved in this research



UCATT

UCATT is the only trade union dedicated to construction workers and organises throughout the UK and in the Republic of Ireland and has a steadily growing membership which currently stands at more than 120,000. The union negotiates with employers on behalf of its members on pay, terms and conditions of employment and represents its members in disciplinary and grievance procedures, on training, health and safety and other workplace-related matters.

The construction sector is one of the most dangerous industries in the UK, so improving health and safety on construction sites plays a key role in UCATT's daily work and ongoing campaigns. The union endeavours to ensure that employers comply with their legal obligations and make sure that workers know their rights at the workplace. Challenging the denial and abuse of employment rights and preventing the exploitation of vulnerable construction workers through 'bogus' or false self-employment and dubious employment agencies is also a key priority for the union.

UCATT's Union Modernisation Fund (UMF) Round Three Project, Building a Stronger Union – responding to the downturn, preparing for the upturn, has seen UCATT working in partnership with other trade unions, voluntary and community organisations and enforcement agencies in joint research and providing information, advice, guidance (IAG) and training for vulnerable workers (including migrant building workers) across the construction sector.

Community Links

Community Links is an innovative charity running community-based projects in east London, to support over 30,000 vulnerable children, young people and adults each



year. Projects include youth clubs and children's activities; working with young people excluded from mainstream education in their OFSTED registered school; welfare rights and benefits advice; support with housing and debt problems; and helping people get back to work. Most projects are delivered in Newham, one of the poorest boroughs in Europe. Community Links pioneers new ideas and ways of working locally and shares the learning nationally with other practitioners, and policy makers through its research, publications and campaigns.

Jamie Elliot is a freelance journalist and associate researcher with Community Links. His research has included highlighting concerns about health and safety at the 2012 Olympics athletes' village construction site; employers who are paying below national minimum wage in London; and the extent of cash-in-hand working and the informal economy. He is the author of *Easy Pickings - Vulnerable Workers and Exploitation in the Construction Industry*.

Manchester Business School



Manchester Business School at The University of Manchester is the largest campus-based business and management school in the UK. It is one of the leading business schools internationally and has a strong reputation in the area of People Management and Organisations, amongst others.

Miguel Martínez Lucio is Professor of Comparative Industrial Relations and International Human Resource Management at the Manchester Business School. The main focus of his research during the past twenty years has been concerned with the changing patterns of rights and regulation within employment relations and HRM in the context of globalisation and socio-economic uncertainty. Much of this work has a comparative and international perspective. He is involved in the Fairness at Work Research Group at the University of Manchester.

EASY PICKINGS

Vulnerable workers and exploitation in the construction industry

Jamie Elliot

A report by Community Links with UCATT

Purpose of this research

While several studies have highlighted the extent of exploitation of vulnerable workers in the construction industry, UCATT and Community Links wanted to get behind the statistics.

Trades unions and others have commissioned research investigating the number of people falsely self-employed¹, the number of new migrants working in construction², the impact of keeping the construction sector outside the remit of the Gangmasters Licensing Authority³ (GLA) and the number of vulnerable workers across all sectors⁴. Some of these findings are discussed below.

However, UCATT and Community Links wanted to look behind these bald statistics at the lived experience of vulnerable workers in Britain today. Why are people willing to perform hard physical work in return for the minimum wage or less? What is driving so many to work cash in hand, foregoing the rights and protection afforded by formal employment? What impact does poorly paid and insecure working have on an individual's confidence and capacity to improve their situation? What links are there between the experience of being a migrant or being homeless and exploitation in the construction sector? How does health and safety feature in the experience of vulnerable workers?



1 Salford Centre for Research & Innovation, May 2010 http://live.scri.salford.ac.uk/?page_id=2
 2 Building a new home: migration in the UK construction sector, IPPR, 2008 <http://www.ippr.org.uk/>
 3 Turning the Tide - how best to protect workers employed by gangmasters. Oxfam, July 2009
 4 Commission on vulnerable employment, TUC 2008 www.vulnerableworkers.org.uk

Community Links, UCATT and Vulnerable Workers

Over the last ten years Community Links has taken a particular interest in the informal economic activity of small businesses, the self-employed, and employees because the cash-in-hand economy has such a huge impact on the lives of the people it works with, and plays such an integral role in their experience of poverty.

The regeneration of east London was significant before the recession hit in 2008. There were 23 regeneration programmes in and around the London borough of Newham alone, totalling approx £15 billion. East London is one of the few areas in the UK where the construction industry has not ground to a halt.

Community Links and UCATT are working together, with support from the Union Modernisation Fund (UMF), to understand more about vulnerable workers in the construction industry.

This short piece of research seeks to understand further the experience of vulnerable workers in the construction industry. Manchester Business School has conducted a complementary piece of research examining the role of enforcement agencies in relation to vulnerable workers (see page 25).

What is a vulnerable worker?

We take our understanding of vulnerable work from the TUC Commission on Vulnerable Employment which said vulnerable was insecure and low paid with little chance of escape. Specifically it said: *'Precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship.'*

Methodology

This qualitative study is primarily a collation of individual stories that seeks to capture something of the day-to-day experience of vulnerable workers in construction.

We carried out in-depth interviews with people who had been engaged in vulnerable, insecure and low paid work and interviewed day labourers waiting for casual construction work outside a DIY store. The in-depth interviews included completion of a questionnaire which covered areas including health and safety, pay rates, working hours, contracts and employment status, holiday and sick pay and accommodation.

We accessed interviewees through organisations who support vulnerable workers and others. These were: Wellspring Healthy Living Centre, Bristol; The Dellow Day Centre (run by the charity Providence Row which provides help for homeless and vulnerable people in London); Barka UK (which provides help for excluded and vulnerable people from Eastern Europe); and Hackney Migrant Centre (a weekly drop-in for migrant workers and others).



Context

Downturn leaves workers more vulnerable

The construction industry is notorious for its short term contracts, complex sub-contracting chains and informal employment practices, all of which leave workers open to exploitation. But the economic slide which began in 2008 has hit the construction sector especially hard and made life even more precarious for many who work within it.

In 2009 alone there were 163,000 redundancies in the sector and nearly three thousand building firms went bust⁵. So jobs are now scarce, and fierce competition for contracts is providing an additional incentive for employers to cut labour costs.

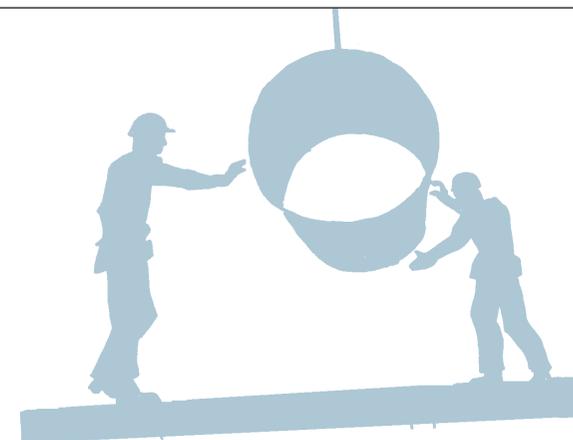
Below we detail cases where vulnerable people such as migrants and homeless people are being targeted by employers precisely because they are vulnerable and provide a ready source of cheap labour. They have little bargaining power and are unlikely to complain or alert the authorities to poor or illegal employment conditions.

We describe the experience of workers who are picked up on street corners by employers who pay them less than half the minimum wage to work ten-hour days on poorly managed sites. We also describe bosses who flout health and safety rules or slash an employee's pay once they learn he has problems with his immigration status.

A regulatory environment that encourages abuse

The last government's commitment to 'flexible' labour markets and light-touch regulation has left vulnerable workers especially open to exploitation.

For instance, employment agencies in construction are not required to register with the Gangmasters Licensing Authority (GLA), despite widespread and well documented



poor practice by employment agencies and others who recruit construction workers⁶.

In July 2008 UCATT revealed that a group of workers employed on a PFI Hospital site in Mansfield, were being paid a total of just £8.80 for a whole 40 hour week. In 2010, the union took a case to an employment tribunal where staff hired to work on another publicly-funded hospital building project were being paid just over £4 per hour, way below the national minimum wage (NMW). The employment agency who hired them, and which supplies staff to some of the UK's biggest building contractors, claims they were self-employed and therefore exempt from the legal minimum. The workers insist they were falsely classified as self-employed in order to cut their employer's costs.

Employment agencies are only required to register with the GLA if they are supplying staff to work in fisheries, food processing or packaging or agriculture. The resources of agencies such as Health and Safety Executive (HSE) and HM Revenue & Customs (HMRC), who are currently charged with enforcement in areas such as the NMW and health and safety, are too limited to effectively regulate an industry as large and diverse as construction. The GLA, by contrast, has been highly effective in curbing abuse by employers in the agriculture and fisheries sectors in which it operates.

⁵ The Evasion Economy, Salford Centre for Research & Innovation, May 2010
http://live.scri.salford.ac.uk/?page_id=2

⁶ Turning the Tide - how best to protect workers employed by gangmasters. Oxfam, July 2009

Whilst in power, Labour resisted calls from UCATT and others for the GLA's remit to be extended to cover construction. The coalition government has adopted the same position.

Tax rules that invite exploitation

The construction industry is covered by a unique tax regime – the Construction Industry Scheme (CIS) – which, according to UCATT and others has institutionalised self-employment and resulted in exploitation. The CIS scheme, its critics say, encourages employers to treat people as self-employed who are not really working for themselves.

Those hired on a self-employed basis have far fewer rights than employees or workers. Self-employed people are not for instance entitled to the NMW or covered by the Working Time Regulations.

Under the CIS scheme, employers deduct tax from self-employed workers and pass it on to the Inland Revenue. But they do not deduct employee national insurance or pay employer's national insurance contributions.

In every other sector self-employed people are responsible for paying their own tax.

All the people we interviewed for this piece of research were either falsely self-employed and working within the CIS system or working cash in hand.

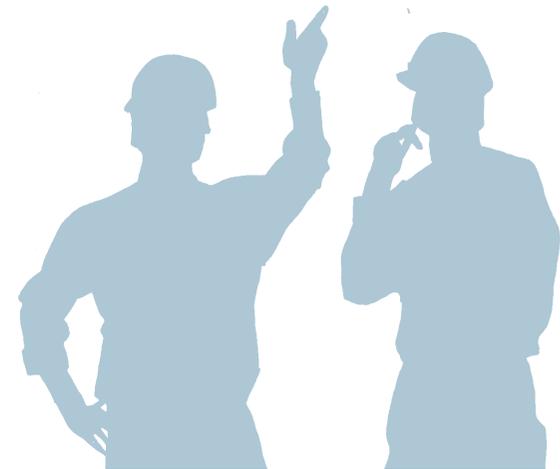
Some 11.9 million CIS self-employment identity cards were in circulation in 2007⁷. The CIS scheme, its critics argue, is a tacit recognition by government that many workers within the construction industry who are treated as self-employed do not in fact meet the criteria for self-employment. The scheme also ensures that the government incurs a minimal loss of tax income where bogus self-employment occurs.

Special rules make some migrants more vulnerable

Work restrictions affecting Romanian and Bulgarian migrants push people from these countries into either working on a self-employed basis – which deprives them of many employment rights, such as entitlement to the NMW – or into working cash in hand.

In order to be employed (as opposed to self-employed), people from Romania and Bulgaria must possess an Accession Worker Card. But they can only apply for this card once they have a work permit. And a work permit can only be applied for by an employer on their behalf, once they have a job offer. Few employers are willing to go through the bureaucracy involved in applying for work permits when they can simply employ someone who already has the right to work in the UK instead.

As a result of this 'Catch 22', many Romanians and Bulgarians work cash in hand, or become caught up in the widespread practice of 'bogus self-employment' (no Accession Worker Card or work permit are needed to work on a self-employed basis). Both these scenarios leave them open to exploitation.



Individual Stories

Homeless people are easily exploited

Michael, from Poland, speaks excellent English and can work legally in the UK, where he has lived for the past six years. But when the 32 year old became homeless, he was targeted by an employer who took advantage of his sudden change in circumstances.

“I became homeless in February 2009 and after two weeks on the streets was approached outside Burnt Oak tube station by a Welsh guy who had his own building firm,” Michael says. “I was dressed in old and dirty clothes and I think he could see that I didn’t have anywhere to live.

“He asked me if I was looking for work, and when I said yes, he offered me accommodation along with a job doing ground work and laying paving slabs. I was a bit suspicious at first and told him I didn’t want to go with him straight away, but I felt I didn’t have much choice as the other option was sleeping on the streets.

“I told a Polish friend of mine who was also homeless about this guy, and he said he would come with me. So the next day the Welsh guy met up with us and drove us both in his van to a caravan site near St Albans. Me and my mate were given an old caravan to sleep in – we had to use a shower and a toilet outside which we shared with other guys on the site. As well as caravans there was a draughty old barn where other foreigners the Welsh guy employed slept.

We had separate beds, but the heater in the caravan was broken and it was freezing cold, so we used to sleep with the gas cooker on.

The boss was very intimidating and did not like us going off the site on our own. He was always asking where I was going and what I was doing. I had no private life.

“The work was horrible. The boss was always rushing us and forcing us to do jobs really badly for private customers – block paving and driveways mainly. I hated doing a bad job – customers complained all the time – but he didn’t buy enough material. Sometimes if a customer paid up front the boss would make us up tools and leave before the job was finished properly.

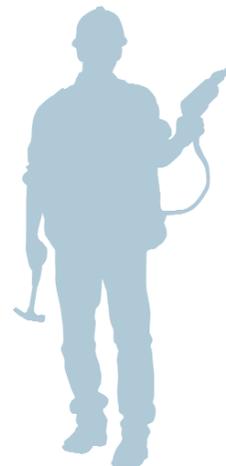
“To begin with he paid me £20 per day, cash in hand, plus lunch which was a cheap sandwich. After three weeks I asked for more and said I would rather have money than lunch, so he stopped buying the sandwich and increased my pay to £30 a day.

“Some days, if there were no jobs he told us to deliver leaflets door-to-door to advertise his company. We were each paid £5 for three to four hours of leafleting. I felt like a slave, but the boss said it wasn’t real work.

“I worked for this company from February 2009 until September the same year.

“In June the boss moved me and my Polish friend from St Albans to another caravan site, in Gloucester. There was no shower at this one so we used to go to a local gym and pay £1.50 every time we wanted to get clean.

“The boss was very intimidating and did not like us going off the site on our own. He was always asking where I was going and what I was doing. I had no private life. If I wanted to go to the local shop, he would insist on driving me there and back. He was threatening and would say ‘I’ll kill you’ or ‘I’ll beat you up’, half joking but in a frightening way. The next minute he would say we were



like members of his family. But he didn't treat us like that at all and warned us that if we left we would be homeless again. One of the Irish guys he employed was mentally ill and another one was fleeing the law. One guy worked for food and accommodation only.

"I felt like a virtual prisoner and wanted to escape from the situation but felt I couldn't. I had become very lonely and depressed and had lost a lot of confidence. I was ashamed of what was happening to me and did not even call my parents for three to four months because I felt so bad.

"After a few weeks in Gloucester my Polish mate suddenly disappeared without a word. I couldn't understand it because I was sure he would not have left without me.

"Then, in September, the boss told me there was no more work and bought me a train ticket back to London and gave me £30 and a mobile phone.

"When I got to London I found my Polish mate and he told me he had had a falling out with the boss who had driven him to Gloucester station and put him on the London train without a ticket and told him: 'Come back here and I'll kill you'".

I felt like a virtual prisoner and wanted to escape from the situation but felt I couldn't. I had become very lonely and depressed and had lost a lot of confidence. I was ashamed of what was happening to me and did not even call my parents for three to four months because I felt so bad.

At the time of writing Michael was living in a night shelter in Tottenham, north London, sleeping in one large space with 22 other people. He would like to start his own building firm but says he has never been able to save enough money to buy tools or a van. His more immediate plans are to get a job, find somewhere to live and get back together with an ex-girlfriend who recently contacted him via Facebook.

Day labourers have little protection

At 8am on a cold Wednesday in November, around 50 men – ranging from teenagers to those in their 60s – gather at the entrance to the Wickes DIY store in Tottenham, north London. They are looking for work from the small to medium size building firms who know this is a spot to find day labourers. When a car or van enters the car park and the driver starts to speak to the men, those nearby run towards it in the hope of being selected.

Most of the men are in groups of four to eight and seem to know each other. Others however, stand apart and do not interact with anyone.

The work on offer can last a day, a week or months. The men Community Links speaks to this morning say the daily pay rate for a nine or ten hour day ranges from £40 to £60, although they say there are people who are willing to work for less. £50 per day is the figure mentioned most often.

Most say they are paid cash in hand, although some say that certain firms employ them 'on the books' and deduct tax.

Most are labourers although some have specialist skills such as plumbing.

All the people we speak to are migrants – from either Bulgaria or Romania. They insist that no British people wait outside Wickes looking for employment.

There is little work around at the moment, according to

the men. One says he has been waiting all last week and this without a single offer of work. Between 8am and 9am we only see a couple of employers pull up with offers of work.

According to the Wickes security guard, men gather here every day from 6am looking for employment. On Monday mornings, he says, the crowd is much bigger than today, so big in fact that customers are unable to enter the car park. He says that other Wickes stores in London have now become gathering points for day labourers.

A 25 year old Romanian man, who has lived in London for three years, has a CIS number and all the paperwork needed to work in the UK, explains why he works for £50 a day or less.

"I'm always paid cash in hand and it's always less than the minimum wage," he says. "But I do it because I need to eat. I know it's bad but you have no choice."

The same man points out that the casual nature of the work makes it easy for employers to withhold pay.

"A guy picked me up here recently and told me he would pay me £40 for a day's labouring," he says. "At the end of the first day he only gave me £20 and said 'I will give you the rest tomorrow'. But he didn't come and get me the next day and I never saw him again and never got the money."

A Bulgarian man in his early 40s, who shows us his Construction Skills Certification Scheme (CSCS) card and says he also has a CIS number and everything needed to

I'm always paid cash in hand and it's always less than the minimum wage, but I do it because I need to eat. I know it's bad but you have no choice.



I went to the Job Centre and asked for an NI number, but they said I had to be in a job before I could get one.

work legally, claims competition for work is tough.

"I've never known it as bad as this," he says. "I earn £40 to £60 per day when there is work but I'll be going home with nothing again today. I only manage to live because my girlfriend is working."

A young Romanian man we meet, who can be no older than 20, has come to look for work outside Wickes because a two-week stint with a Turkish gangmaster has come to an end.

"The guy I was working for employs around ten people who are all foreigners, including Romanians, Bulgarians and Iranians. He took us to sites where we were usually painting and renovating houses," he says. "I was paid £50 for a nine to ten hour day with half an hour for lunch. He would buy us lunch which was usually a donner kebab."

The young man says he can't work legally because he does not have a national insurance number. *"I went to the Job Centre and asked for an NI number," he says, "but they said I had to be in a job before I could get one."*

Around 8.30am a police car pulls up and there is a mini stampede as the men run in the opposite direction. The men say this happens up to three or four times each morning. Within a couple of minutes the police have left and the men are back at the Wickes car park, hoping for an offer of work.

Illegal immigrants are especially vulnerable

Ade has worked illegally in the UK since 1994. For much of that time he paid tax and national insurance using a false national insurance number and was even a trade union

member. But he says that since immigration rules have been tightened he has had to turn to informal employment where he has faced exploitation.

“I work now and then for a bloke in Hackney who collects waste from building sites,” Ade says. “We collect rubble, old plasterboard and so on. He pays me £40 cash in hand for an 11 hour day. But the British guys he employs to do the same job get at least £60 a day.”

The work can be dangerous.

“There are nails in wood that you are picking up and you have to clamber over bricks and debris all the time.”

Ade wears no protective clothing to do this work, just jeans and trainers.

In 2006 he was taken on by a national flooring company, where he worked for two years laying flooring at large public and private construction sites across the UK, including at a new police station in the West Midlands.

For the first six months he was treated as an employee and earned around £350 per week before deductions for tax and national insurance, plus travel and accommodation expenses. Then, however, his employer discovered that he did not possess a work permit and took advantage of the situation.

“He told me he knew I was working illegally and said I could carry on working for him cash in hand, but that he would only pay me £200 per week.”



This arrangement meant that for 18 months Ade was earning just over £4.00 per hour.

Health and safety practices at the company were poor. Health and safety training consisted of a 30-minute briefing the day before he started work. Despite the briefing, Ade says he was exposed to harmful substances which put his health at risk.

“We had to use a special chemical that removes the glue that is used to stick carpet to floors,” he says. “Me and other people who used this chemical used to get nose bleeds and itching when we used it. No one warned us about the effects or told us what to do to protect ourselves. Some of the other guys left because of this but I stayed because it was hard for me to find work anywhere else.”



REGULATION AND THE VULNERABLE WORKER

Enforcement Agencies in the
United Kingdom

Miguel Martínez Lucio
(Professor, Manchester Business School,
The University of Manchester)

A Report for UCATT's Union
Modernisation Fund (UMF) Round 3
Project: *Building a Stronger Union –
Responding to the Downturn, Preparing
for the Upturn*

1

Introduction and Methods

One of the unfortunate ironies of modern Britain is the increasing levels of vulnerability within employment and work.

The increasing presence of hidden and undeclared work, the greater use of employment agencies and gangmasters who do not implement or adhere to basic worker rights, the ongoing problems of health and safety in many jobs, and the greater uncertainty in terms of employment contracts and length of service mean that one in five workers are considered to be 'vulnerable'¹. Whilst the last fifteen years have seen advances in terms of regulating working time, wage levels and health and safety issues through a range of new legislation, the implementation of this legislation has become a significant challenge. The continuing decline of collective bargaining as a means to regulate the basic terms and conditions of employment for many workers has exacerbated the problem. The current concern with vulnerable employment has meant that new forms of state intervention are required to deal with what some consider to be a more fragmented and 'hidden' workforce. Inspection and regulation find a more decentralised terrain of work structured in many cases through a range of employment agencies, gangmasters and forms of subcontracting. This has required a more focused and targeted approach to inspection and enforcement.

Bringing together a range of opinions

The report attempts to review some of these developments and bring together a range of opinions concerning the role of enforcement. On the one hand there is a view that the new enforcement agencies form an important support mechanism for ensuring that employers understand and fulfil their obligations. There is

a sense that such initiatives are novel, flexible and capable of monitoring employers and raising levels of awareness with regards to new forms of worker rights. However, there is also a set of views that argues that we are not yet seeing a fully functioning system of enforcement and that there are many obstacles which are not allowing a more coherent approach to emerge. The report therefore begins with an outline of vulnerable work and the background to regulation in the UK. It then discusses how enforcement has evolved since the mid 1990s as a consequence of a new set of individualised employment rights. The highly innovative features of the new wave of enforcement and related agencies are discussed as they form part of a relatively new approach to regulation. However, the report will end with a discussion of a series of concerns and challenges which exist in relation to such new forms of enforcement. As a consequence of this a series of recommendations are proposed – some more realistic than others – which are important for any serious, systematic and effective culture of enforcement to emerge. These are built on some of the best practices that emerge from studying the enforcement agencies.

Accessing a variety of sources

The research is based on a series of interviews and a range of secondary data and sources. The main interviews involved:

UCATT employees and project workers (National Project Worker Steve Craig, National Political Officer, Jim Kennedy, Project Worker, Laurence Hunt, Vulnerable Workers Unit (VWU) Project Co-ordinator, Melinda Roberts and VWU Project Worker Neil Rayner).

Organisations involved in asbestos-related issues at work; two leading individuals at the national and North West regional level of the TUC; TUC project workers making links with educational establishments and younger workers

¹ TUC Commission on Vulnerable Employment (2009) *Hard Work, Hidden Lives* London: TUC

in the Midlands; two Health and Safety Executive (HSE) employees (a senior manager and a project worker in the field); a leading civil servant at the Department for Business, Innovation & Skills (BIS) related to the Pay and Worker Rights Helpline and overall enforcement issues; a leading member of the Arbitration and Advice Organisation ACAS; and the Head of the Employment Agencies Standards Inspectorate (EAS).

Data was also collated through secondary sources on all the main enforcement agencies.

The research aimed at observing the development and impact of these bodies; but more importantly it invited views about their strengths, weaknesses and future roles from the interviewees.

2

From the Flexible Worker to the Vulnerable worker

Since the economic crisis of the 1970s the UK has undergone significant changes in terms of its stable and core employment patterns.

There have always been hierarchies within the workforce with some workers being less protected than others. However, the first wave of unemployment that began to emerge in the 1970s and early 1980s gave rise to a new experience of longer term unemployment. Whilst the 1980s saw new forms of employment generation in the service sector, the emergence of new forms of flexibility at work began to give rise to a more dualist and segmented workforce alongside a persisting level of low wages amongst key parts of the workforce.

In the first instance, whilst levels of temporary contracting have not been some of the highest in Europe, since the 1980s making workers redundant or dismissing them is

much easier to execute within the UK. Hence, the notion of permanent employment does not signify stable and long term employment. Rights to a stable job have therefore been steadily eroding. Secondly, we have seen in the past thirty years increases in part-time work such that it now constitutes just over a quarter of all employment. Much of this is involuntary. Thirdly, there has also been a substantial increase in the use of temporary agencies within the UK which has underpinned the development of more precarious and short-term oriented employment in various sectors as they are increasingly focused on temporary work.

A Weakening Regulatory Culture

Such changes need not in themselves mean that there is a downgrading of employment. However when combined with a decreasing trade union and collective bargaining presence (see below) they can facilitate a move to lower wages. The emphasis on facilitating redundancies and dismissals, combined with a weakening regulatory culture, make it easier for employers – in relative terms – to depress wages and lower working conditions. The 1990s saw such developments reinforced by a new wave of immigration which in some cases was used by employers to circumvent regulatory processes. Immigrants can in certain cases be less protected with regards to exploitative employer behaviour, especially in an environment where labour rights are being undermined. Yet alongside the mistreatment of immigrant workers emerged a realisation amongst many observers that the 1990s and 2000s saw a new wave of poorly paid older and younger workers who were also vulnerable to the consequences of a deregulated environment. The TUC's research² on the subject established a view that we must address vulnerabilities more generally: 'Vulnerable work is insecure and low paid, placing workers at high risk of employment rights abuse.'





Increasingly, many believe that we now need to stretch and broaden our understanding of what we mean by the term vulnerable worker:

The TUC categorised seven groups of workers in vulnerable employment. These were:

- agency workers;
- other 'atypical workers' (for example casual workers and some freelancers);
- young workers: who are not entitled to the same rates of the minimum wage as others and are more likely to face exploitation;
- industrial homeworkers: who are often denied even the most basic employment rights;
- unpaid family workers: who are employed across a range of businesses with no legal protection at work;
- recent migrants: who are more likely to face extreme discrimination, dangerous working conditions and a range of other abuses – including forced labour; and
- informal workers: who are working across many industries, with those already facing disadvantage the most likely to be exploited³.

³ Malcolm Sargeant (2009) 'Health and safety of vulnerable workers in a changing world of work' Working Paper ADAPT

These workers can face a range of vulnerabilities across the issues raised above, and can be exposed to a denial or abuse of their employment, social and even citizenship rights. The question of vulnerability can be understood in terms of workers being faced by a range of challenges in relation to securing relatively fair and decently paid jobs⁴:

- Lack of choice in jobs due to the economic necessity of accepting employment regardless of the nature of that employment;
- The difficult nature of the job in terms of the lack of support for development and enhancement in labour market and personal terms;
- The absence in the vast majority of cases of any clear representative or support mechanisms for raising concerns within the workplace; and
- The lack of external support networks of a robust and formal nature capable of addressing the issues in the first points within the personal time of the worker.

3

The Challenge of Employment Regulation in the UK

The United Kingdom is not considered to be one of the most regulated systems of employment relations in the European Union.

Emerging from a legacy and history of voluntarism where the state absolved itself from much of the areas of work and employment, there has always been less direct and indirect intervention in terms of worker rights. The tradition is one of case law and inconsistent legal decision making – and the absence of a positive framework of collective labour rights.

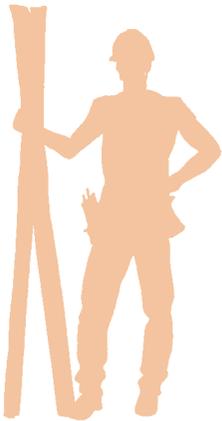
⁴ Martinez Lucio, M, Perrett, R., McBride, J, and Craig, S (2007) Migrant Workers in the Labour Market Research Paper 7 London: TUC

The 1970s began to see the regulation of key areas such as health and safety, trade union recognition and equality. The first legal developments and interventions in these areas marked a departure from the abstention of state regulation.

However, during the 1980s, 1990s and first decade of the 2000s – both during the Conservative and Labour governments – the emphasis was on developing ‘individual rights’ as opposed to collective rights. This has meant that questions of enforcement in terms of legal rights have been an ongoing challenge. The collective system of representation – what some would call regulatory reach – has been in decline for some time with membership levels in the labour movement falling from over 50% in the late 1970s to circa 25% in 2010. The reach of collective bargaining – in terms of how many workers are covered in the UK – has been under 50% since the late 1990s.

In addition to this, employers remain ambivalent or critical of extending collective forms of representation. There has been high level lobbying in the UK and the European Union (EU) with regards to this. What is more, whilst examples of good employer-union relations exist in terms of dialogue and agreements, they are in great part becoming an exception. Another challenge in relation to the extension of collective rights is the fundamental gaps that exist in relation to questions of employment rights within small and medium sized firms – especially micro businesses. These are often relying on bodies such as ACAS and other advice lines to inform them or guide them on issues such as pay on recruitment, for example.

Employers remain ambivalent or critical of extending collective forms of representation



The main challenges to the extension of legal and collectively-agreed rights to the workforce have been as follows:

- The absence of an extensive system of collective bargaining especially sectoral forms of bargaining and regulation;
- The declining impact of trade unions across the workforce;
- The ambivalence and sometimes even hostility of a large number of employers in relation to collective regulation;
- The concern and formal opposition of employer organisations to any extension in independent worker representation and concern with issues of enforceability; and
- Uncertainty in a large part of the small and medium sized employer sector as to the content, needs and demands of employment regulation.

These general challenges, in terms of enforceability, are exacerbated by the changing context of work in the UK in terms of the greater levels of hidden and undocumented work, greater short-term contracting and a new workforce. The new workforce is vulnerable in terms of features such as its migrant status, as explained above, and issues such as age, where questions of health and poverty combine to expose such workers to unfair treatment due to greater dependence, or perceived dependence, on an employer. Yet a key feature of their vulnerability is (a) the lack of knowledge of their employment rights and the duties of and obligations of their employers and (b) the lack of access to, or understanding of, organisations and bodies related to enforcing or protecting such rights.

4

The Response of Trade Unions and the Role of the UMF

Trade unions have begun to respond to the question of vulnerability within the workforce in a variety of ways.

Trade unions have steadily overcome internal and social barriers to address the needs of workers disadvantaged within the labour market – in the first instance female, immigrant, and Black and Minority Ethnic (BME) workers. Building on these changes trade unions have supported innovations and developments in relation to gender equality and equal pay, and started to address race discrimination issues through race awareness courses, black worker sections, and leadership development programmes during the 1980s.

In relation to recent experiences and developments in terms of migration and vulnerable employment trade unions have developed a range of strategies to try and connect with such communities.⁵ These have varied and address the different vulnerabilities to which workers are exposed. Advisory meetings to inform workers of their rights have been common through the use of community and religious centres. In some cases unions have begun to use 'like for like' representatives or organisers with a view to connecting and getting closer to BME groups who are working in vulnerable situations. This has been supplemented by a range of campaigns around issues such as the living wage campaign in London and the right to decent work. Not all of these strategies or activities have been rigorously developed and sustained. It is often the case that such initiatives are driven by activists and local officials.⁶ One area that has seen unions use funds and local centres in a more systematic manner has been the learning and skills agenda. Trade unions through internal

funds and external ones (such as the Union Learning Fund) have been offering a range of English language and basic skills courses to assist migrant workers, for example, in their attempt to understand and engage with their environment and the needs of the local labour market. The role of Union Learning Representatives (ULRs) and Learning Centres has been an important part of the work of trade unions in connecting with vulnerable employment issues.

The Union Modernisation Fund

The development of the Union Modernisation Fund (UMF) since 2004 provided unions with state funding that allowed them to pursue new and more innovative ways to connect with workers and members in particular. The initial wave of funding focused on a range of themes. UCATT had a project on organisational modernisation in round two which underpinned the development of its officer and knowledge systems. This led to a third round project based on engaging with a broader understanding of the workforce in terms of vulnerabilities through advice centres, new union strategies and new coalitions with social and policy-based organisations. However the second wave began to focus much more on equality in terms of equality representatives, worker networking and targeted learning, and equality training. This built on the equality stream and the innovations in that area which had been present from the start of the UMF. With the increasing public interest in vulnerable work, and the broadening of the view of who a vulnerable worker was in terms of migration, age and gender, the third wave of the UMF was very important in focusing the question of modernisation –

State funding allowed unions to pursue new and more innovative ways to connect with workers and members

⁵ See Miguel Martinez Lucio and Robert Perrett (2007) Social Inclusion and Representation Strategies in the Workplace and Community: BME workers and innovative trade union responses Bradford: University of Bradford School of Management/Yorkshire and Humberside TUC

⁶ Ibid

especially in terms of supporting harder-to-reach workers who were susceptible to being exploited at work.⁷ The projects in the third round addressed a range of issues and focused on a range of activities.

Engaging with the Community

However, within this latter stage there was a growing realisation that unions would have to start engaging with other organisations within the community to shore up and strengthen their attempts to link with vulnerable workers. This dovetailed with a growing interest within the TUC to begin to link more formally with community and local initiatives which were one way of connecting with workers who did not have a trade union presence in their workplace.⁸ In addition to this, a central feature of UMF Round 3 was the need to focus attention on working closely with the public inspection and enforcement bodies that had begun to emerge in the wake of a greater public realisation of the extensive nature of vulnerability and risk that existed in almost one fifth of the British workforce. Unions would have to work more closely with other organisations if they were to reach out to and represent the most vulnerable of workers.



⁷ See Mark Stuart, Miguel Martínez Lucio, Jennifer Tomlinson and Robert Perrett (2010) *The Union Modernisation Fund* London: BIS

⁸ TUC (2010) *Swords of Justice* London: TUC

5

The Traditional and New Roles of Enforcement Agencies

Background to Enforcement

The role of the state in the regulation of employment has been based on various initiatives. The most common is the role of employment law in defining the basic parameters of rights and responsibilities of workers and employers. There has also been the role of public sector employment in signalling standards and benchmarks of good employment practices to the private sector. Yet inspection has been one of the oldest and most established forms of state intervention in the lives of working people. The role of inspectors in ensuring that labour standards and legislation are adhered to forms a bedrock of the industrial relations system. As far back as the early 19th century with the formation of HM Factory Inspectorate, the image of the inspector, as someone who investigates and denounces infringements in relation to work and employment, has been central to the enforcement of employment legislation. With the greater development of health and safety legislation in the 1970s and the role of the Health and Safety Executive (HSE) came a more co-ordinated attempt to intervene and monitor key aspects of work in Britain. Alongside health and safety enforcement came other bodies focused on supporting a greater level of fairness and dialogue at work, such as ACAS. These formed an important vehicle for extending an awareness of employment rights. They survived the 1980s and 1990s when trade union rights and bargaining roles were questioned and rolled back.

Changing Context

However, the last twenty years brought new challenges to trade unions and the role of these traditional agencies:

- Greater decentralisation at work and of workplaces through increasing levels of subcontracting arrangements;
- Increasing levels of informal work and illegal employment;
- Increasingly marginalised groups of worker;
- Proliferation of agency work and employment agencies;
- Continuing poverty levels which forced people into less protected employment;
- Emerging culture of deregulation and legal avoidance; and
- Declining trade union capacity and organisational reach.

The need to develop the enforcement of worker rights – especially in the light of various aspects of legislation during the previous Labour administration – brought forth a rethink of the way work was to be regulated. The declining influence of trade unions in terms of collective bargaining coverage meant that many basic pay and working time issues were not being addressed and resolved. Large parts of the workforce have been increasingly located beyond the reach of collective bargaining and legal regulation. This has brought a range of new challenges to established enforcement agencies and the need to think through new forms and mechanisms of enforcement.

Getting witnesses to make statements about breaches of the law and major incidents at work is challenging

Enforcement in Practice: towards a flexible and strategic approach

The HSE has been confronted with major challenges in terms of enforcing health and safety legislation. The organisation needs to access a greater degree of worksites that are relatively hidden or with a workforce which has a greater level of employment turnover and are 'distant' in terms of linguistic skills and cultural attitudes with regard to the role of regulation and the role of enforcement. In addition, a range of employers make access difficult and awkward for such bodies. In such a context getting witnesses to make statements about breaches of the law and major incidents at work is challenging. The development of the Migrant Impact Fund in recent years is an example of an initiative which has allowed the HSE to develop a range of activities that have the potential to allow it to access hard-to-reach employers and workers. In relation to employers a range of audio-visual activities and material was developed with the aim of introducing basic issues in relation to health and safety, for example. The



most important aspect of this fund was the introduction of seven outreach workers who would work alongside inspectors in their work. These outreach workers were meant to have the necessary knowledge, cultural and linguistic skills to reach out to vulnerable workers and supplement the more formal work of the organisation. They came from Polish, Asian and Romanian backgrounds, for example, and at one point there were eight deployed in the field. This allowed for a greater targeting of difficult employers by:

- Talking to workers during a visit and gathering informal information alongside the formal work of the inspector;
- Engaging with potential witnesses and concerned individuals in relation to problematic matters in the workplace;
- Attending meetings within migrant communities in order to raise awareness about the HSE and general employment issues;
- Going to shops, places of religious worship and other events with the aim of circulating materials and engaging communities in their own language; and
- Providing the inspectorate with relevant information and insight into the working of local communities.

Such initiatives provide a flexible set of resources which can be deployed in what is an increasingly fragmented and decentralised pattern of work. Expertise amongst the outreach workers became a vital asset to the HSE. In 2011 funding for this project was planned to come to an end and with the pressure on internal resources further developments of this nature were unlikely. However, the project illuminated the role of new forms of information-gathering and flexible interventions in the field of work. It

highlighted the need to develop new innovative approaches in terms of inspection that linked it more closely to the workforce.

A new range of activities

The development of the National Minimum Wage Enforcement (NMWE) activities of HM Revenue and Customs (HMRC) emerged in 1999 as a new form of wage-related inspection. This brought a new range of activities which focused on linking public revenue generation with questions of low-wage employment and unpaid work. It was paralleled by developments related to working time enforcement in the HSE itself as a new remit was added to its work. NMWE initiatives were aimed at supporting initiatives regarding low pay. In one case a local campaign aimed at low pay in small textile related firms focused on the use of 'like for like' individuals visiting local community centres and spaces with the aim of raising awareness of pay-related rights amongst individuals working in small and often unregulated companies.⁹ Reaching within a migrant community, where the employer may also be drawn from that community, provides challenges given the sometimes socially-closed nature of the networks around the firm. However, there were cases that emerged within this specific context. What is more, a strategic link between unions, the NMWE, the local authority and the local press highlighted various aspects of the minimum wage and raised awareness within the area.

Reaching within a migrant community, where the employer may also be drawn from that community, provides challenges given the sometimes socially-closed nature of the networks around the firm

⁹ Miguel Martinez Lucio and Robert Perrett. "Meanings and dilemmas in community unionism: trade union community initiatives and black and minority ethnic groups in the UK." *Work Employment Society* 23, no. 4(2009) : 693-710

The death in 2004 of 21 cockle pickers in Morecambe Bay highlighted the role of gangmasters and poor inspection

This type of more strategic intervention has been important in establishing a more 'joined-up' approach to challenging resistant employers and accessing 'hard-to-reach' communities. However, funding has proven to be an issue for such planned and flexible approaches.

New challenges

Questions of pay and time-related rights at work were supplemented by new challenges in relation to employer conduct on more broader issues – especially in relation to small-scale employers and 'agencies'. A series of high profile incidences involving significant groups of unprotected workers alerted many to the emergence of a hidden labour economy. The death in 2004 of 21 cockle pickers in Morecambe Bay due to poor health and safety supervision and a lack of any basic awareness of rights highlighted the role of gangmasters and poor inspection. The use of child labour has also been an emergent theme in the past ten years. The realisation emerged in policy circles that inspection in relation to work needed to develop new forms and become more targeted in its focus. The Gangmasters Licensing Act in 2004 gave rise to a new agency in the form of the Gangmasters Licensing Authority (GLA). The aim was to target the very mechanisms and individuals who employ workers. The question of registration has been central to the role of the GLA. The impact of this new form of enforcement agency has been visible in the way in which organisations have emerged within smaller employers and 'agencies' aimed at raising awareness of labour standards. Whilst some of these organisations aim to try and lobby against the role of the

GLA on various issues (e.g. the Association of Labour Providers) what we have begun to see is this type of activity become the subject of scrutiny and debate. The agency has begun to regulate licensing and investigate incidents in a more effective manner. It has allowed a more detailed understanding of this type of intermediary activity to be developed through a network of inspectors. Resources have been an issue as regions of England may only have one inspector. The TUC in the North West of England has tried to link up with the GLA through meetings and providing information on local employment problems, although the absence of a regional structure and the presence of few inspectors have not really aided the development of a more localised and networked approach through other institutions as seen with the HSE, for example.

The Employment Agency Standards Inspectorate (ESA)

This increasing interest in regulating labour market intermediaries was further reinforced by the development of the Employment Agency Standards Inspectorate (ESA). The increasing use of employment agencies in the UK has meant that employment regulation is confronted by an ever more complex and fragmented set of bodies. Agencies assist not only with the recruitment of workers but in many cases their management and even their training.¹⁰ This blurs the boundary between agency and employer.¹⁰ The EAS has been able to develop a highly-focused team of inspectors deployed throughout the country. The focus of the work is based on implementing the Employment Agencies Act 1973. This includes ensuring payment for all hours worked, ensuring individuals do not, in general, pay for employment services, and ensuring that there are no deductions for payment for hidden extras. Hence, cases such as non-payment of work can lead to an Employment Tribunal case. The role of the inspectorate and larger scale, targeted activity is important. The organisation has



¹⁰ MacKenzie, R. and Forde, C. (2006) 'The myth of decentralization and the new labour market' In: Alonso, L. and Martinez-Lucio, M. (ed.) Change and Conflict in the New Economy, Palgrave MacMillan.

good links with the NMWE team. The organisation has employed inspectors from a range of backgrounds, and it is clear that such organisations benefit from an external labour market of inspectors with a strong set of skills and knowledge, who move between different agencies and gain various insights and links across the world of enforcement. The agency is also open to joint working with various bodies through protocol agreements and a sharing of information. This means that the organisation can respond to cases and problems that come through a broad network of sources. The development of a risk matrix which evaluates different types of breaches by counties has allowed resources to be targeted and patterns of vulnerable work and non-compliance in terms of the relevant law to be mapped. This helps the agency react in a more effective manner. However, the agency does not have a direct mechanism of intervention such as

The development of a risk matrix which evaluates different types of breaches by counties has allowed resources to be targeted and patterns of vulnerable work and non-compliance in terms of the relevant law to be mapped

employment agency registration and is very much at the behest of information and cases coming forward. There is no direct approach such as that seen with the GLA's approach in terms of the registration of gangmasters and their control.

Co-ordination is a major challenge

One of the challenges of establishing such new agencies and organisations is that they begin to create a relatively complicated and even fragmented terrain of enforcement.

the fear people have in bringing complaints against their management or employer especially in sectors where there is no clear union presence

Whilst the HSE remains the most dominant by virtue of its size, identity and its established role, the emergence of other agencies – including the Borders Agency – means that co-ordination is a major challenge. Many in UCATT are concerned that such agencies are not always as assertive and interventionist as they could be. Added to this is the main challenge to many of the agencies – the fear people have in bringing complaints against their management or employer especially in sectors where there is no clear union presence. This has meant that a gateway has been needed to link concerned workers with the body of support available for getting employers to comply with their legal obligations. To this end the Pay and Work Rights Helpline (PWRH) emerged out of the government level discussions around vulnerable work in 2008. It has built on the success of ACAS in relation to its public helpline by developing a similar service. This service has actually been assisted by ACAS in various cases due to the latter's highly established reputation and practices. The first tier of support is a basic helpline dealing with general queries and directing callers to the relevant bodies and services. There is a second tier of advice that deals with specialist issues and problems. The second tier begins to take direct responsibility for these enquiries and cases. ACAS tends to pick up the majority of the cases. The aim is to persuade people to follow up on their cases and bring complaints. Satisfaction rates with the service offered have been very high – 95%. The level of calls from the public has varied between 7,000 and 14,000 per month. One of the

interesting features of this specific service is that employers have been known to be supportive as it helps deal with the rogue employers who undercut wages and basic labour costs creating an unfair market advantage. The PWRH is also linked to many of the initiatives of the UMF Round 3 projects. Hence this development allows organisations in the field and enforcement agencies to be tied together and linked up through cases.

A source of information for employers

An interesting finding throughout the research has been that many employers are not familiar with their obligations and the content of relevant legislation. Many agencies have noticed that a not unsubstantial number of employers have been using these services to check on procedures and minimum rates. The enforcement agencies are not just there to enforce rights and compel employers, but also find themselves responding to the information gaps and poor understanding many have – especially smaller employers – in relation to their obligations. This aspect of enforcement agency activity has, in fact, developed with individual employers given the general orientation of employer and management organisations that have tended to question further regulation and enforcement activity. However, the recent securing of state funding for the PWRH has meant that it is seen as an important intervention and link within the area of enforcement.

Enforcement Agencies as a New Way of Enforcing Rights?

What does this new map or terrain of regulation mean? These developments give rise to a new form and more flexible way of targeting and regulating rogue or ill-informed employers. Such an approach brings new and innovative ways of reaching out to vulnerable workers and concerned employers:

- They are flexible and deploy resources in a focused manner. The resources can follow the specific problem and challenge;
- These agencies are based on dedicated and highly mobile teams of inspectors who develop an insight into their related issues and the environment they work in;
- They allow for attempts to link the inspectorate role to broader communication and support roles through outreach workers as in the HSE. There can be a range of supportive activities which strengthen the role of inspection;
- The role of the PWRH as a first stop for advice reinforces this supportive strategy – it is an acknowledgement of the need to provide bridges for workers into the world of enforcement. So there is evidence of attempts to co-ordinate activities and create alliances between agencies and between them and various social and economic organisations;
- On the plus side there are new spaces around which unions can relate and engage – highlighting breaches of rights for example. They form a background of support and consciousness-raising which allow for some partnering and cases of joint work to be developed. This potentially allows inspection to be grounded in terms of an array of local networks;
- There are embryonic networks of professionals sharing advice and passing on information across the agencies and taking a more holistic view. So this shows a degree of strategic thinking. There is a body of inspectors working across agencies which help them share best practice and innovations; and
- There is evidence that they have an indirect effect by forcing employers to ‘raise the bar’ in terms of their activities. They are actually informing employers in ways employer organisations do not.



6

Problems and Challenges

However, the research detected a range of challenges and issues in relation to enforcement agencies (EAs). Common concerns emerged from many of the interviews.

These challenges emerge not from the internal workings of the EAs but from the manner in which they have evolved and, in particular, the questions of resources, remit and support.

First, the logic of EAs and their development are interesting but it is a piecemeal process that has evolved at critical moments in relation to different aspects of vulnerable work. This in turn has required a more systematic strategy and slightly more careful approach to planning by the state in the past few years as the space of EAs becomes 'crowded' in terms of the range of agencies if not their actual presence. There are now different interests at work within particular agencies and varying view points. Indeed, co-ordination amongst agencies has improved but it remains an issue both horizontally and vertically. There are projects to overcome this and clearly the focus is much more on vulnerability but there is a problem of segmentation and problem-focus dominating over a people-focus approach.

Secondly, traditional and even new EAs tend not to see certain workers as being more vulnerable than others. The outreach work of the HSE is quite exceptional and is not replicated in many of the agencies that have been studied, which rely on the sole inspector operating in the field in many cases. Some workers have particular problems and issues due to culture, language and racist attitudes to them. Linking to these workers requires proactive strategies and support. Within the construction industry

there are major issues in terms of gangmasters, undocumented workers and serious safety hazards which mean that it is a sector where the work is physically dangerous and extremely vulnerable. Yet construction as a sector remains outside the remit of the work of the GLA.

Thirdly, a major challenge is that the scale of many of these agencies is such that their regional and local level is very weak. There may be one or two inspectors per region, who do not have time to link into the regional level of employment relations activities such as ACAS regional forums, regional development activity, large local council networks etc. In effect, they are disconnected from this level of activity although it does need to be said that regional tiers of governance are under-developed in the UK, especially in England. Hence developing regional strategies and co-ordination amongst public agencies is a continuing problem. This issue of co-ordination is an ongoing concern in many studies of enforcement and all interviewees expressed concern about questions of co-ordination. What is more, the regional organisation of employers is weak, meaning that including them in a broader dialogue is challenging. The demise of the regional development agencies has also exacerbated the problems of co-ordination at this level.

Fourth, relations with trade unions show signs of improving – in great part due to the role of the UMF. However, the level of awareness amongst trade unionists is very low.

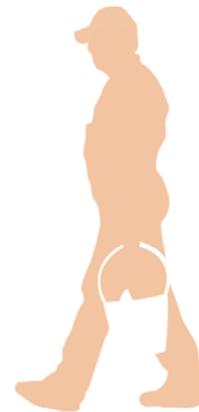
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Many EA initiatives have been cut and there are real resource issues emerging as with funds for outreach work

Beyond the work of the HSE many trade unionists and employers are still not familiar with the agencies outlined above. Research in various other projects regarding the question of migration has shown that unions rarely speak of or mention these bodies in relation to their strategies or activities. Trade union education has only now begun to map much of the work of these agencies and the positive roles they play. The role of unions as a form of inspection (and for example the health and safety representatives as the 'workers' inspectors) is central for many of these agencies yet a greater dialogue and awareness raising exercise would facilitate such roles.

Fifth, the role of the Border Agency (BA) is also highly ambivalent in terms of worker rights and can undermine the work of the other enforcement agencies and their links to worker organisations. Whilst information is shared with the BA and there is evidence of joint working in some cases, the manner in which immigrants are treated through arrests, strong-arm tactics – and the way rogue employers sometimes use the threat of the BA intervening at their workplace as a way of getting employees to accept poor working standards – tarnishes much of the work of the enforcement agencies.

Sixth, during the course of this research many EA initiatives have been cut and there are real resource issues emerging as with funds for outreach work. The ongoing uncertainty is creating new tensions and effecting longer term planning due to the the public spending cuts set out in the Comprehensive Spending Review. The inspection body of most agencies is small and whilst providing value for money – which is clear from their annual reports and



their general impact – there is a possibility that they may be constrained in terms of their impact in future. The TUC and UCATT have been highlighting this issue for some time.¹¹ The question of decreasing resources in the HSE (with the removal of the helpline for example) and the reduction in the scale of the Equality and Human Rights Commission has led to a major set of proposals to cut the telephone call centres and help-lines and to reduce direct contact with the public in the form of workers and employers. In addition highly successful developments, such as the Migrant Impact Fund and others that have supplemented the role of the traditional inspection with a more 'hands-on' approach and added a social dimension allowing more information to be gathered from sites and working communities, are being undermined by the public spending cuts.

A real problem facing the EAs, and those wishing to work with them be they employers or unions, is that the lack of interest from employers organisations such as the CBI, the chambers of commerce, and bodies such as the Chartered Institute of Professional Development (CIPD). These have not really raised the profile of the EAs within their relevant constituencies. In part this is due to the negative or ambivalent attitude to regulation and enforcement. Many interviewees felt that employers were a missing link in much of the discussion on obligations, rights and enforcement.

Finally the public policy debates around how these EAs are to co-ordinate amongst themselves and develop a new form of working has brought major concerns. There is a realisation that any change might dilute the regulatory power of these agencies. Registration may be replaced by voluntary 'sign up' and 'codes'. This would undermine the effective agencies such as the GLA. The problems facing the project and emergence of EAs as a key feature of new employment relations is that they may become 'toothless' not just due to public service cuts, in terms of the number of inspectors and the provision of a range of services such as helplines, but because they become bodies relying on voluntary codes.

¹¹ TUC Commission on Vulnerable Employment (2009) *Hard Work, Hidden Lives* London: TUC

Conclusion and Summary

The changing nature of work and the new challenges that are emerging for a range of workers, who are on the edges of our society and labour market, have brought forth a serious questioning of government policy.

Deregulation and greater marketisation have led to almost one in five workers being classified as vulnerable in one form or another. The reality of deteriorating living standards and working conditions has brought to the fore the need for political and social responses.

One stream of action has been the emergence of new types and forms of labour rights enforcement. The last ten years has seen a range of bodies emerge entrusted with the objective of raising the standards of workers in terms of pay, health and safety and other working conditions. There is a major set of new institutions populating the legal dimension of employment relations. These represent a novel and flexible way of inspecting, reporting and enforcing labour standards in a range of 'hard-to-reach' sectors. They are using novel and innovative forms of intervention in terms of knowledge management and detection. In effect they represent a new set of actors and agents with a more open and engaged view of work – in many cases they are working alongside trade unions and social organisations.

However, there are concerns. Issues of funding are paramount. In a context where funding is being questioned we find that these new forms of intervention are being restrained just as the problem of vulnerability is increasing amongst workers. What is more, there is a real dilemma in terms of their visibility and the absence of large parts of

employer engagement. Many unions feel that these communities need to be supported through such enforcement agencies if fair and more democratic labour standards and a more effective and socially-oriented approach to employment and work are to be developed.

This new and innovative 'experiment' in regulation offers an opportunity to develop a more focused and targeted approach to labour rights. They form part of a more informed and IT-developed focus which can, through a piecemeal range of strategies, raise standards and set benchmarks for work and employment in the UK. They cannot be easily judged due to their newness and their apparent novelty. They form a new wave of developments which require further steps in terms of co-ordination, coalition building and funding. One thing is clear – the problem they respond to is not going to disappear so lessons need to be internalised and acted on if enforcement is to take further steps as a feature of our employment system.

What is more, the new role of agencies has become vital for the safety and rights of workers who are highly vulnerable. The agenda must now focus on how we develop them and reinforce their effectiveness and strengths. The current context we are witnessing in terms of vulnerability is not solely about raising labour standards, providing decent work and protecting individuals from major health and safety risks. It is also about countering and even combating the increasingly organised criminal element that has emerged in the area of employment and employers.

Overarching Recommendations

1. Structural Change

There should be a renewed, independent labour inspectorate for the UK.

It should be a single organisation which would have a co-ordinated strategy, joined-up resources (budgets, staff, common training, materials and one database etc). It should have a clearly recognisable brand and have a single point of access for members of the public.

It should have a recognisable Head, like the Chief Inspector of Prisons, who should publically report on a regular (quarterly) basis, and have a board and advisory panel (like the tripartite advisory council for ACAS or the Low Pay Commission) to support governance and provide expert advice respectively. The Gangmasters Licensing Authority (GLA) would be a good reference point to build on given its impact.

2. Building Alliances and Working with Society

New and existing inspectorates must increase their reach. If additional funds cannot be found, though we highly recommend that they are, then increased partnership work must be developed with unions, the voluntary sector, advice groups, local authorities and business groups - forming alliances to reach and support more vulnerable workers and prosecute exploitative employers.

The inspectorate could achieve this by establishing on-the-ground partnerships, organically at first and formalising them as they progress, rather than imposing them from on high (which would cost more). Increasing alliances should be a key objective for the new labour inspectorate and they should be measured accordingly. This would help reach current targets, and boost future targets, by providing more 'ears and eyes' on the ground and

therefore greater intelligence for inspectors.

For example, the ACAS Regional Forums may be one way of creating greater dialogue between local inspectors and between inspectors and trade unions and employers.

In addition, the HSE developed a project based on using outreach workers to support inspectors in their work and to connect with local migrant communities. This has allowed the inspectorate to provide more effective forms of investigation and to raise the profile of its work with employers and workers. It also underpins the understanding of rights people have in relation to their conditions of work. In various parts of the United States (US) the inspectorate has begun to form clearer links with migrant communities by opening dialogue with worker centres and using them on occasions to raise the profile of people's rights at work and mechanisms for addressing these rights.

3. Pro-active Investigations

The new labour inspectorate should be carrying out more proactive investigations. We acknowledge that this will of course require additional resources which will be difficult to find in the current economic climate. However the cost of not increasing the number of pro-active investigations will continue to be extensive in terms of lost tax revenue for the state; stunting growth of businesses and therefore the economy; breaking employment law; and increasing the vulnerability of workers and preventing some from being able to leave the benefit system.

Making this third recommendation work would need the right structure to operate from (see recommendation 1) and the right alliances to work with (see recommendation 2).

The image, legitimacy and visibility of the inspectorate must be enhanced and this can come from having direct links with organisations and information centres that allow the inspectorate to connect with social issues and have

more organic links with communities and social organisations. In various countries within the European Union, for example, inspectorates have begun to extend their links with social organisations and create networks with local advisory bodies within the union and local communities.

Specific Recommendations

1. Increase tax revenues for UK plc by ending the unique Construction Industry Scheme (CIS) tax regime.
2. Stop undermining the legitimate construction industry by:
 - a. Increasing the resources for statutory enforcement agencies (funding and staff); and
 - b. Widening the Gangmasters Licensing Authority (GLA) remit to include the construction industry.
3. Remove the 'Catch 22' for Romanian and Bulgarian workers by removing the Accession Worker Card requirement.
4. Increase safety on construction sites by increasing the provision of English as a Second Language (ESOL) classes for newly arrived migrant workers.
5. Encourage legitimate working by increasing local provision of ESOL and information, advice and guidance (IAG) about health and safety and employment rights.

Broader Institutional Recommendations

1. BIS (or the new inspectorate), in partnership with the CBI and TUC, should run a national publicity campaign to raise the awareness within unions and employers on the link between employment rights and enforcement agencies. This could include linking into educational establishments with younger workers through schools and Further Education (FE) colleges, as many young people do not know about their rights and responsibilities at work.
2. Trade unions should increase knowledge of enforcement agencies, ie who they are and what they do, through their own organisations. This could be built into staff inductions, internal development and training and communications.
3. BIS and research and academic institutes should fund and conduct more research into vulnerability at work. Much of the work of enforcement agencies should be supported by a greater link into the industrial relations academic community. Much of the work tends to be on traditional health and safety issues. A systematic attempt to broaden the remit of that research would assist the work of the enforcement agencies.

There is a broad body of work on migration, gender and age which would serve to inform and support enforcement agencies. We would be happy to share this with enforcement agencies.



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