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Labour market exploitation: Emerging empirical evidence

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**Labour Market Exploitation:
Emerging Empirical Evidence**

Edited by Linda Dickens and Guglielmo Meardi

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Editors' Foreword

The Warwick Papers in Industrial Relations series publishes the work of members of the Industrial Relations Research Unit (IRRU) and people associated with it. This paper publishes extended abstracts from a workshop on Labour Market Exploitation that IRRU organised at Warwick with the Gangmasters and Labour Abuse Authority (GLAA) on the 10th of May 2017. The workshop was held at a time of major change for the Authority, which is described in the first piece in the collection.

The issue of labour market exploitation was presented by Margaret Beels, Chair of the GLAA, in her 2017 Warwick-ACAS Lecture on Industrial Relations in memory of Sir Pat Lowry, which has been published as Warwick Industrial Relations Paper no 107. This issue is gaining political prominence across countries with different employment relations regimes, from Scandinavia to Southern Europe, which appear to be struggling with preventing ever-changing forms of labour abuse. In the UK, this prominence has been strengthened by Prime Minister Theresa May, who had already launched the Modern Slavery Strategy as Home Secretary in 2014.

Our workshop, in line with the established industrial relations traditions, examined both supply and demand factors behind this phenomenon, with a focus on specific economic sectors. We invited contributions from a range of academics doing original research of relevance to understanding labour market exploitation and the policy issues which arise in addressing it. The presentations summarised here looked at workers, forms of employment and sectors/business models which could be described as 'high risk' or 'potentially vulnerable' to labour market exploitation.

A major cross-sector issue emerging from these studies is the complex interaction between migration and labour market policies. It is also apparent that more voice mechanisms for vulnerable workers are needed. Labour market exploitation is both a classic and a new theme, and an integrated industrial relations approach covering the areas of this collection can contribute to its deeper understanding and to well-informed policy recommendations.

Guglielmo Meardi and Linda Dickens

Contents

Another 'A' for the GLA in enforcing labour rights and preventing exploitation <i>Linda Dickens</i>	3
Beyond Employment Tribunals: Enforcement of Employment Rights by EU-8 Migrant Workers <i>Catherine Barnard, Amy Ludlow and Sarah Fraser Butlin</i>	8
Road-Side Hand Car Washes in the East Midlands: "Permissive Visibility" and Informal Practices in Employment <i>Ian Clark and Trevor Colling</i>	13
The Construction Industry: a suitable case for treatment <i>Linda Clarke and Janet Druker</i>	17
Unacceptable Forms of Work and Precarious Migrant Status <i>Judy Fudge</i>	21
Reducing Precarious Work: Protective Gaps and the Role of Social Dialogue in Europe <i>Damian Grimshaw, Mat Johnson, Jill Rubery and Arjan Keizer</i>	23
The Role of Market Dynamics and Labour Standards Enforcement in UK Fast Fashion <i>Nik Hammer</i>	26
The Practices of Enforcement Bodies in Detecting and Preventing Bogus Self-Employment <i>Jason Heyes and Thomas Hastings</i>	27
Workplace Safety of Migrant Workers in Food Manufacturing <i>Benjamin Hopkins</i>	30
Why some employers risk sanction by employing undocumented migrants <i>Sonia McKay</i>	31
Agents of Transition? Young People's Experiences of Using Temporary Work Agencies in Three Midlands Cities <i>Phil Mizen and Arlene Robertson</i>	33
Working in the gig economy, parcel delivery and the degradation of work in the logistics sector <i>Kirsty Newsome and Sian Moore</i>	38
Non-Compliance and the National Living Wage: Case Study Evidence from Ethnic Minority and Migrant-Owned Businesses <i>Monder Ram, Paul Edwards and Guglielmo Meardi</i>	40

Another 'A' for the GLA in enforcing labour rights and preventing exploitation

Linda Dickens¹

On 30th April 2017 the Gangmasters Licensing Authority (GLA) became the Gangmasters and Labour Abuse Authority (GLAA). The changed name, with the additional A, signifies an expansion of remit and powers of the GLA, a non-departmental public body set up in 2005 following the shocking deaths by drowning of 23 Chinese cockle pickers at Morecambe Bay the previous year. A licensing regime was introduced for particular sectors making it a criminal offence for a labour provider ('gangmaster') in those sectors to operate without a license, or for employers in the GLA regulated sector to use temporary workers supplied by a non-licensed agency. The GLA Act 2004 also made it a criminal offence to obstruct a GLA officer or have false documentation. This licensing regime continues under the GLAA covering agriculture, horticulture, shellfish gathering, and associated processing and packing.

To obtain and retain a GLAA license, labour providers need to comply with a range of minimum standards, some of which are deemed 'critical'. Inspections are undertaken to ensure compliance. The standards include being a 'fit and proper' person; paying appropriate tax and national insurance; complying with various employment rights and regulations including those concerned with health and safety, working hours, the national minimum wage, discrimination and contractual arrangements. Other standards relate to accommodation and travel, where provided, and such matters as withholding of wages, restricting movement, debt bondage and retaining worker identification documents. There are currently around 1000 licence holders. In 2015-16 the GLA issued 142 new licenses, refused 9 and revoked 14 (GLA 2016).

Minor infringements, for example oversights leading to underpayment of wages, may be dealt with through direct informal intervention. This has proven to be an effective and proportionate way of rectifying problems and ensuring affected workers (numbering almost 3000 in 2015-16) receive what is due to them. Where appropriate GLA has worked collaboratively with other bodies and agencies such as the National Minimum Wage team of HM Revenue and Customs and the Employment Agency Standards Inspectorate (which comes under BEIS) to identify and prevent erosion of worker's rights. As discussed below, this collaborative working has been underpinned with the transition to GLAA.

Administrative/agency inspection and enforcement has various advantages when contrasted with the individualised complaint-driven approach characteristic of Britain. These include an educative role which can assist in proactive improvement and prevention of exploitation as well as potential partnership working with stakeholders, harnessing the voluntary regulatory capacity of key actors (Dickens 2012). These features have been seen in the case of the GLA which, for example, has provided training and worked with employers in its regulated sector to raise awareness of risks,

¹ Emeritus Professor of Industrial Relations, University of Warwick. Although I am a non executive director on the board of the GLAA, I write here in my academic capacity. It should not be assumed that other board members or GLAA staff share any views expressed here.

including within their supply chains, which they can then address. This activity serves also to increase the flow of information from responsible employers within the industry, recognising the role licensing plays in ensuring a level playing field for business. This assists the Authority in identifying abuse and non-compliance and can help direct its formal interventions.

The licensing regime facilitates the identification of unlicensed gangmasters, whose activity may include fraud, and of organised crime groups involved in labour exploitation/trafficking and modern day slavery. In relation to this kind of criminal activity the GLA has worked closely with the National Crime Agency and with law enforcement bodies. A joint operation by the GLA and police forces in East Anglia, following a call to the GLA, resulted in the first use of a new measure, the Slavery and Trafficking Prevention Order introduced by the Modern Slavery Act 2015.

Originally responsible to Ministers through DEFRA, the GLA was transferred to the Home Office in 2015, coming within its Crime, Policing and Fire Group. The Modern Slavery Act 2015 included an obligation on the government to review the role of the GLA. In the event this was incorporated into a wider consultation on tackling labour market exploitation. The government's response, published in January 2016, indicated the change of GLA to GLAA (BIS 2016).

The renaming of the GLA as GLAA comes with a package of measures whose purpose was stated as *'to improve the effectiveness of the enforcement of certain employment rights to prevent non-compliance and the exploitation of vulnerable workers'* (Home Office 2016). The Immigration Act 2016 provided a legislatively convenient (albeit in some ways unfortunate²) vehicle for introducing the changes.

The political impetus to tackle the horror of modern day slavery in the UK and internationally - reflected among other things in the appointment of an Independent Anti-Slavery Commissioner in 2014 and in Prime Minister May establishing a high level Modern Slavery Task force in 2016 - can be seen as an important factor in the development of the GLAA. However it comes with a risk that attention, resources and external evaluation of 'success' get focussed towards extreme, criminal behaviour rather than embrace the whole exploitation continuum including preventing and tackling 'lower level' non-compliance with labour standards (Beels 2017:2).

Extending and developing the existing licensing regime could have helped balance this, ensuring compliance with minimum employment standards as well as assisting in identifying, preventing and penalising extreme exploitation. It is clear that exploitation occurs in more sectors than currently covered by GLAA licensing and there is support and longstanding advocacy for extending licensing whether in general or to specific sectors such as social care, hand car washing or construction (e.g. Donaghy 2009). The government response to its consultation on Tackling

² The GLA reforms were introduced into the Immigration Bill as government amendments during its passage through the House of Lords. The Immigration Act is concerned with cracking down on illegal migrants and there is risk that GLAA may be perceived as concerned with the immigration breaches rather than seeking to protect workers from exploitation regardless of immigration status. This may reduce likelihood of certain victims coming forward. Further, the location of the GLAA changes and the creation of the post of Director of Labour Market Exploitation in a measure and debate concerned with illegal migrant workers may tend to obscure fact that labour market exploitation is much wider than this, is experienced also by UK and EU nationals and has wider causes.

Exploitation in the Labour Market recognised ‘licensing can be a valuable tool in tackling non-compliance and labour exploitation and that an effective licensing regime is one that can respond to, and pre-empt the risks of, exploitation’ (BIS/HO 2016 para 111). Nonetheless it would appear that de-regulation arguments which are familiar in debates around employment rights and worker protection (but muted in discussion around tackling modern day slavery) held sway. However although the licensing regime has not been extended to other sectors, the Immigration Act does introduce some flexibility for Ministers to extend or reduce the coverage and nature of licensing, with the DLME tasked with advising the Secretary of State on this. It remains to be seen what this might lead to in practice.

The employment rights enforcement landscape in Britain is fragmented, uneven and incomplete, reflecting historical accident rather than a set of principles. There are various bodies adopting different philosophies of enforcement, which enforce different employment rights, with rights falling under the responsibility of different government departments and not adding up to a coherent system. The predominant mechanism for rights enforcement in Britain remains the Employment Tribunals (a form of labour court) acting on complaints brought by individuals alleging their rights have been infringed. State enforcement through agencies and inspectorates has increased but in an ad hoc manner, often - as in the case of the GLA - as a response to an immediate problem. This approach is limited in scope when compared with the kind of general labour inspectorate found in other countries. Proposals for a single, comprehensive enforcement agency (e.g. Brown 2006, CAB 2004) to overcome problems experienced by individuals in relation to ETs and provide greater coherence have not been taken up.

As indicated above, a certain amount of joint working and information sharing had developed between the GLA and other bodies. The Immigration Act seeks to further this with the creation of a new post of Director of Labour Market Enforcement (DLME) to provide greater strategic coherence, and promote co-operation and co-working between three enforcement bodies (GLAA, the NMW team of HMRC, and the EAS Inspectorate). The DLME will develop an information/intelligence hub and provide an assessment of labour exploitation to inform his labour market enforcement strategy to be endorsed by Secretaries of State in BEIS and Home Office which will guide the operation of the enforcement bodies. The first DLME was appointed on 1 January 2017 and intends to publish his initial strategy in the spring of 2018-19³.

The Act gives GLAA new powers and sanctions to deal with labour exploitation and non-compliance across all sectors of the labour market, covering all workers and not just temporary labour. It introduces a new type of GLAA officer - ‘Labour Abuse Prevention Officer’ (LAPOs) who have been given police-like powers under the Police and Criminal Evidence Act 1984 to assist in investigating offences under the Modern Slavery Act 2015 (relating to forced or compulsory labour), the National Minimum Wage Act 1998, the Employment Agencies Act 1973 and the Gangmasters (Licensing) Act 2004.

³ An introductory report and summary of the issues were published in July 2017 (Metcalf 2017)

A further innovation introduced by the Immigration Act 2016 is an enforcement tool for use against employers who persistently or willfully breach labour law regulations designed to protect workers. The new Labour Market Enforcement Undertakings (LMEUs) and Labour Market Enforcement Orders (LMEOs) came into effect in November 2016 and are available to all three enforcement agencies in any sector of the labour market. Where it is reasonably believed that a trigger offence has been committed a business may be requested to enter into an Undertaking to take steps to prevent further non-compliance. Where it refuses, or where the LMEU is breached the enforcement body may apply to the court for a LMEO which requires the business to take specified steps. Breach of an Order is an offence punishable by an unlimited fine or imprisonment.

The conferring of a wider remit and new powers, together with some increased resources at a time of austerity, testify to the State's favourable assessment of the GLA's effectiveness⁴.

Pro-active state funded agencies and inspectorates offer advantages in rights enforcement over the individualized private law model which leaves individuals to enforce their rights - requiring an individual to be in a position to complain, to have knowledge of rights and capacity and willingness to enforce them and which offers redress to only the individual complainant rather than effect wider improvement.⁵ However certain conditions need to be in place for the advantages of state agency enforcement to be realised. These include the need for high visibility and credibility; sufficient appropriate powers; effective sanctions likely to deter non-compliance and to provide redress for those affected, with a will to resort to them if other forms of intervention (advice, persuasion) fail or are deemed inappropriate. It is also essential that there are adequate resources. This has not always been the case. Reductions in resourcing of the Health and Safety Executive, for example, severely reduced the likelihood of inspections in that field, while the Low Pay Commission expressed its concerns about resources for enforcing the NMW in various annual reports and demonstrated how increased funding in 2016 had led to significant increases in investigations (LPC 2016). Its observation that increased resources need to be sustained rather than a one-off injection applies equally to the GLAA operating in a labour intensive area where there are significant training costs.

The GLA experienced budget reductions in spending reviews from 2010 along with other bodies. The GLAA has received additional funding. The budget allocation for 2017-18 is £7.78m, representing an increase of £2.81 m from 2016-7. This is primarily to fund the LAPOs. Staff numbers are increasing from around 70 to around 120. In the context of the increased remit and scale of the problem to be addressed, however these resources still appear modest.

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⁴ The title of this piece 'another 'A' for the GLA' as well as being descriptive also alludes to the general high regard in which the GLA(A) is held among stakeholders of all kinds (e.g. BIS/HO 2016 para 43)

⁵ C.Barnard and A.Ludlow (2016) discuss limitations of the ET system in the context of EU migrant workers.

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Beyond Employment Tribunals: Enforcement of Employment Rights by EU-8 Migrant Workers

Catherine Barnard, Amy Ludlow and Sarah Fraser Butlin, University of Cambridge*

Many EU-8 migrant workers work in low-skilled, low paid jobs, particularly sectors such as food processing and agriculture. Our interest lies in the experience of those migrant workers in the UK and specifically what happens when they are denied their employment rights. In earlier work, we have already shown that there was a significant underuse by EU-8 migrant workers of Employment Tribunals (ETs). In our paper for the IRRU workshop we were concerned, firstly with why so few EU-8 migrant workers enforce their employment rights before ETs and to what extent legal, economic, political and cultural landscapes, as they are experienced by migrant workers, constrain or enable enforcement action. Secondly, do these migrant workers use alternative enforcement mechanisms (such as the Gangmasters' Licensing Authority) and how effective are these other enforcement processes and institutions in protecting the rights of migrant and similarly vulnerable domestic workers. And thirdly, what might be done to improve the enforcement of employment rights for EU-8 migrant workers and for other vulnerable workers on the UK labour market, including non-EU migrants, especially in the light of the recent legislative developments around labour market exploitation (LME). The focus of this short paper is on this last issue and proposes alternatives to current reform¹. We argue that the establishment of a Pay and Work Rights Ombudsman might help address some of the problems experienced by EU-8 migrant workers and other vulnerable national workers.

There are multiple, and often inconsistent, narratives at play in the migration policy field: on the one hand, a narrative of exclusion that increases vulnerability by preventing migrants from accessing social security benefits and, on the other hand, a narrative of inclusion and protection through employment law and enforcement reform to give migrant workers rights and ensure that mistreatment is not left unchallenged.

Our data suggest that EU-8 migrant workers perceive and experience the current enforcement landscape as exclusive and exclusionary. Many EU-8 workers bring with them from their home countries ideas about work, what constitutes mistreatment and appropriate responses to mistreatment. Many also have distinctive personal ambitions for their time in the UK that can conflict with regulatory protection. These imported experiences, beliefs, and ambitions can militate against individuals enforcing their employment rights at all. These twin factors are distinctive to (EU-8) migrant workers and perhaps explain the considerably reduced numbers in our data who go to Tribunal, and the data of others that indicates that non-UK-born workers are more likely to do nothing at all when faced with employment problems. Nevertheless these two

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¹ This paper was extracted from the longer article by Linda Dickens with permission of the authors.

issues operate in addition to the practical and legal obstacles faced by many EU-8, and domestic, workers undertaking low paid jobs in precarious employment contexts. For those who want to take action in the face of apparent mistreatment, the practical and legal obstacles to using ETs often prove insurmountable, making Tribunals unlikely forums in which migrant workers can vindicate their rights. This is despite evidence that Tribunal judges go to great lengths to ensure that migrant workers receive a fair hearing once they are through the doors.

Our exploration of enforcement bodies beyond Employment Tribunals, which are less dependent upon the initiative of individual workers to take action, suggests that these bodies currently play a limited role in enforcement, focusing their efforts, in light of resource constraints, increasingly on the most egregious examples of exploitation that may trigger criminal law responses including under the 2015 Modern Slavery Act. Knowledge of employment enforcement agencies' roles and powers among advisers and workers is low. Save for the GLA, whose operation many people told us was unhelpfully limited to specific sectors, the work of employment enforcement bodies beyond Tribunals, seems to have little impact upon compliance.

Will the latest reforms in the Immigration Act 2016, centring on the creation of a Director of Labour Market Enforcement (DLME) and closer working between agencies help? The DLME coordinates and brings together HMRC, the EASI and GLA. The HSE has not been included.² The aim is to address illegal immigration and 'the businesses who exploit cheap labour from overseas' which damage the labour market and 'push down wages' for others.³ The reform was also motivated by concerns about uncoordinated enforcement that can impose excessive burdens.⁴

How might this change to the employment landscape affect EU-8 migrant workers in the UK? We would suggest that some of the same confused thinking that we described at the start of this article persists. In the Government's January 2016 response to the consultation on labour market exploitation,⁵ a distinction is at first drawn between exploitation and deliberate non-compliance with labour standards. These ideas are later discussed interchangeably in terms of businesses struggling to 'compete against rogue employers, distorting competition and reducing levels of employment over the longer term. Illegal levels of pay and conditions for exploited workers can depress or hold back pay and conditions more widely in the sector locally'. There is a lack of clarity about the problems that these new reforms are seeking to address. This seems likely to limit the positive effects that could result from this reform.

The consultation and subsequent response suggests that the task is to 'investigate breaches of the NMW/NLW, regulation of employment agencies, the proposed new aggravated labour market offence and other relevant criminal offences – where they are in connection with labour market

² See now s.3 Immigration Act 2016.

³ <https://www.gov.uk/government/speeches/pm-speech-on-immigration>. The link between the creation of the new agency and illegal immigration was repeated by Theresa May in the House of Commons on 28 May 2015, when she said its aim was 'to crack down on the exploitation that fuels illegal immigration'. Hansard 28/05/15 column 211.

⁴ See e.g. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52049/13-530-recruitment-sector-legislation-consultation-on-reforming-regulatory-framework.pdf with the Government response https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212084/13-1021-reforming-the-regulatory-framework-for-the-recruitment-sector-government-response.pdf.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491260/BIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf.

exploitation'⁶ and seek to tackle 'high harm, low volume cases of exploitation falling short of those tackled by the National Crime Agency'.⁷ However the ACAS helpline would remain the point of contact for people to report 'day to day' infringements. While the increased coordination is to be welcomed, as is the expansion of the GLA's remit, this represents a further example of the criminalisation of conduct of employers and fails to recognise the impact of frequent 'day to day' infringements, leaving this to the ACAS helpline and by implication, to the Tribunals.

An alternative

What emerges clearly from our data is an enforcement gap that needs to be plugged by readily enforced employment law: a gap comprised of cases of 'everyday' mistreatment at work (as opposed to modern slavery), and of workers (whether they are migrants or not) who are vulnerable within the Department for Trade and Industry's 2006 definition as people who are at high risk of being denied their rights and who do not have the capacity or means to protect themselves. There has been too little joined up thinking about the combined effects on enforcement of the difficulties in accessing ETs, including the introduction of fees and cuts to local authority funding and the closures of free legal advice services that have resulted, and the legal environment that facilitates hyper-flexibility through the use of agency work and zero-hours contracts.⁸ To draw on Bridget Anderson's language, we would argue that the role of the state in producing vulnerability has become 'invisibilized' in favour of its role as an apparent protector. As Anderson argues, 'Rather than rescuing people because we know best, it might be better to regard migrants as sovereign selves who are driven, by state laws and practices, into excessive dependencies, on individuals who can thereby do them harm.'⁹

While the various enforcement bodies do help some of these workers there is still a considerable gap in protection for those EU-migrant workers (as well as non-EU workers and other vulnerable national workers).

Thus, while our data suggest that the current LME reforms may have some promise to improve the enforcement of employment rights for EU-8 migrant workers, they add complexity to a system that is already experienced as impenetrably complex. There continues to be no single point of contact for workers who believe that they are being exploited or mistreated; the expanded role of the new GLA is muddled and overlapping HMRC; and there has been no reconsideration of the appropriate balance between worker-led responses to mistreatment and proactive state-led monitoring and enforcement, or between criminal and civil law responses.

The added complexity entailed by these reforms is also in stark contrast to the direction of reform to civil litigation and the civil court process. Lord Justice Briggs' report of the Civil Court Structure Review emphasises the importance of improving the civil court system's efficiency, flexibility and

⁶ Para 114.

⁷ Para 116.

⁸ See e.g. *Pulse Healthcare Ltd v Carewatch Care Services Ltd and Others* (UKEAT/0123/12/BA) and Z. Adams and S. Deakin 'Re-regulating Zero Hours Contracts' (London: The Institute of Employment Rights, 2014).

⁹ B. Anderson 'Where's the harm in that? Immigration, enforcement, trafficking and the protection of migrants' rights' (2012) 56(9) *American Behavioral Scientist* 1241-1257 at 1254 and 1255.

accessibility.¹⁰ He has recommended the creation of an Online Court to resolve claims worth up to £25,000 where the process would be automated, save where disputes had to be adjudicated.¹¹ In his interim report, there was a suggestion of streamlining the civil courts system by, for example, incorporating the Tribunal system within the County Court structure.¹² However in the final report he decided not to make any recommendations and to leave this question to others who were more qualified to propose detailed solutions. Streamlining is inadequately addressed in the recent employment enforcement reforms and there is a general lack of coordinated thinking between the employment and broader civil court context.

Most significantly though, our findings suggest that a key piece of analysis is missing from these enforcement reforms, namely the social, practical and legal obstacles that migrant and similarly vulnerable domestic workers face when they try to enforce their rights. Although Lord Justice Briggs highlights the extensive work being done to support Litigants in Person, there is little recognition of the complexities involved in getting to a Tribunal in the first place and little exploration of the importance of enforcement mechanisms that are not solely worker-initiated, in light of those complexities and the fundamental powerlessness in the employment relationship of low paid and mostly unrepresented workers.

This problem is particularly acute in the case of (EU-8) migrant workers who do not bring claims, despite there being prima facie cases to answer. Many of these claims concern pay (unpaid wages or holiday pay). Importantly, although many EU-8 migrant workers perceive these claims to be complicated, they are not inherently complex claims: they are standard employment law problems that would be classified as 'short track' cases within the ET system, requiring minimal administrative and case management input.

We have some practical suggestions about what might be done to address this enforcement gap to the benefit of both migrants (and national workers). First, there is a clear need for a single point of contact to which workers can go when they think they may have a straightforward claim relating to wages and holiday pay. This could be either through ACAS or through the Ombudsman that we suggest below. The point of contact needs to be low or no cost. It also needs to be accessible with very simple, multi-lingual, easily understood information and have strong, swift enforcement mechanisms. Enforcement mechanisms need to secure an individual remedy for the complainant as well as triggering broader investigation for systemic breaches through integrated working with other enforcement bodies including HMRC and the GLA.

While improvements could be made to the current Tribunal system, we consider that a more coherent and effective, albeit more radical, solution would be to create a Pay and Work Rights Ombudsman. The Financial Services Ombudsman (FSO) provides a helpful model. The FSO was set up by Parliament with specific statutory authority to determine consumer credit disputes by making an award for 'such amount as the Ombudsman considers fair compensation for loss or damage' and a 'direction that the respondent take such steps in relation to the complainant as the

¹⁰ <https://www.judiciary.gov.uk/publications/civil-courts-structure-review-final-report/>

¹¹ Originally proposed by Richard Susskind and presented to the Master of the Rolls, in the 'Online Dispute Resolution for Low Value Civil Claims' report by the Online Dispute Resolution Advisory Group in February 2015.

¹² <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/CCSR-interim-report-dec-15-final-31.pdf>

ombudsman considers just and appropriate'.¹³ We see the benefits of creating an Ombudsman in these circumstances as threefold. First, complaining to such a body is likely to be less intimidating than making an application to the court. Second, an Ombudsman would be a single gateway for dealing with straightforward claims, and third, the ability to direct that a respondent take remedial steps would enable issues to be resolved across a business rather than on an individualised basis, thus helping to remove the focus on the individual complaints led model.

The Financial Services Ombudsman's work is tied explicitly into the work of the Financial Conduct Authority, such that both organisations are required to work together closely to ensure that their common functions are fulfilled effectively. Similarly the work of a new employment Ombudsman could be strongly tied into the work of a single enforcement agency. A single enforcement agency, replacing the HMRC (for minimum wage enforcement), HSE, GLA and EASI would be preferable to a focus primarily on collaboration and better coordination between agencies under the strategic direction of a DLME. Further, a single enforcement agency might operate more effectively if it were independent of the Home Office and focused solely on workers' rights rather than immigration status. Thus the combination of an independent Ombudsman working closely with a single enforcement agency that was only concerned with employment rights would represent a significant step towards filling the enforcement gap that we have identified.

The establishment of a Pay and Work Rights Ombudsman, as a one stop shop to deal with some of the more simple claims, is no magic wand but this may be a practical step in the right direction. More fundamentally, our work points to a focus on job quality and job security. We concur with Bridget Anderson's argument that 'Concerns about the impact of immigration on "British workers" may ultimately be a conjuring trick, a masterpiece of public misdirection, when what merits attention are issues of job quality, job security and low pay.'¹⁴

¹³ s229(2) Financial Services and Market Act 2000.

¹⁴ B. Anderson, (2010), n.55 above at 314.

Road-Side Hand Car Washes in the East Midlands: “Permissive Visibility” and Informal Practices in Employment

Ian Clark, Nottingham Business School and Trevor Colling, King’s College London

Introduction - The Growth and Diffusion of Hand Car Washes (HCWs)

In 2013 approximately 18,500 car washes operated in the UK covering regulated and unregulated outlets (CWA, 2014). Of these 10,000+ use informal business and employment relations practices and their presence has grown from virtually none in 2004.



1. How to Research and Report on HCWs?

Between April 2014 and June 2016 we categorised and codified HCW sites in two east midlands cities. Forty-six interviews provide empirical support for our focus on HCWs. In this paper we draw on twenty-four interviews at HCWs (where we secured interviews in half of each type of HCW that we categorised); nine full interviews with sector stakeholders and eleven interviews with stakeholders and those who held regulatory power over HCWs. We exclude though discussion of the ‘space’ which HCWs occupy, a detailed review of employer use of informal strategies or a review of the largely American literature on HCWs. Detailed material on these aspects are reported elsewhere (Clark and Colling, 2016) and summarised at

http://www.futureofworkcommission.com/technology_work_and_employment_in_the_21st_century

2. What Did We Find?

We found 20 permanent HCWs in one city and 26 in the second. Twenty of these were operating on former petrol station forecourts where we secured interviews at ten sites; we found three trolley washes in the car parks of national brand supermarkets and secured interviews at two of these sites. We mapped ten car washes in former pub car parks and secured interviews with a worker from five of these sites. We found three HCWs operating on waste ground in alleys adjacent to open petrol stations and interviewed workers from two sites. We also found ten HCWs

operating on still open national brand petrol stations alongside open or redundant mechanized car wash units where we interviewed workers from five of these sites.



2.1 'Employment Relations'?

We found widespread denial of employment status, avoidance of the minimum wage, and working time regulations. Our efforts to discuss wages and terms and conditions proved difficult in all interviews and sometimes resulted in termination of the interview or aggressive responses. Eight interviewees across three forms of HCW (excluding trolley washes) stated that their wages were less than the national minimum wage rate (which we provided to them as a list). For workers engaged on former petrol stations and those on former pub car parks which were not subsistence operations we found that for a 9 hour day (including sustained periods of down-time) HCW workers can earn £50 where typical wage theft for these workers was around £42 per week or approximately 14% had they received the then adult minimum wage. This figure is consistent with American studies where HCW workers typically suffer wage theft by employers which translates into 15% of earnings (Theodore et.al. 2012:210-214).

We found no union presence but did find significant pressure from USDAW on national supermarkets. Beyond this pressure single-site HCW employers are effectively insulated from regulatory compliance because worker grievances are unlikely to be mobilised into activism, this is particularly likely at trolley washes and subsistence operations. The permissive regulatory environment maintained by local authorities and private sector bodies such as water companies, landlords, supermarkets and consumers make it unlikely that informal practices deployed in HCWs will be challenged.

Initially we viewed all HCWs we surveyed as businesses, however, at some (those operating on former pub car parks, in alleys adjacent to open petrol stations and most pop-ups) both workers and owners reported them as subsistence operations not ones based on accumulation. Further still at these and other HCWs based on 'employment' both owners and workers argued that 'their' HCW was part of a country of origin extended network formed by family and kinship relations not capitalist production relations based on accumulation.

2.2 The impact and reach of informal practices beyond HCWs?

A first impact beyond HCWs is the status of HCWs that use informal business and employment relations practices as legitimate business's holding a lease to operate on a property. However, across both cities regulatory capture is permissive; employment, environmental, electrical, plumbing, water and ground works regulations are minimal and often not enforced. Supermarket car park trolley washes represent a second impact beyond HCWs. Trolley washes appear professional where operatives use professionally manufactured equipment trolleys and wear liveried high visibility jackets and waterproofs. Trolley wash teams earn more than those in road-side HCWs and we observed one team over an hour securing five wash deals at £6 per wash. We were unable to secure information on what rental trolley wash teams paid the equipment owner or intermediary who secured the sub-contract from the supermarket. The supermarket manager too declined to discuss this issue with us.

Beyond subsistence operations a third impact of informal business and employment relations practices beyond HCWs is the formality of business presentation; signage is professional mimicking that in regulated mechanized car washes on BP, Esso and Shell petrol stations. Similarly some sites had professionally manufacturing rolled steel awnings and cited visa and master card payment facilities but we found that all 46 sites were cash only businesses which provide two types of service; outside washes or an outside wash and an inside clean. Some workers too wore protective gloves and footwear which was often liveried but this was not universally the case.



Discussion and Conclusion

Hand car washing is a lawful activity, however, the presence of informal practices is manifest as a failure to observe both employment and environmental regulations. It is the case too that surrounding and related businesses unwittingly or knowingly support the use of informal practices

in roles such as trade suppliers or landlords. Similarly consumers support these businesses. The HCWs we surveyed and workers and owners we interviewed are both clearly visible and less visible at the same time; visible at the road-side and in terms of embeddedness and familiarity but less visible in terms of regulatory enforcement.



Our findings advance understanding of informal business and employment practices reporting as they do the spread and the visibility of these which flows from a growing tolerance of them amongst the population, those with regulatory capture and more formal regulators too. Precarious and vulnerable evidently migrant labour provides a further competitive advantage but at the cost of pronounced labour exploitation and long hours. Employers make a strategic choice to take advantage of exploitative labour practices to gain competitive advantage over mechanized car washes. Therein a low-cost business model disciplines competition to usurp higher productivity mechanized car washing.

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The Construction Industry: a suitable case for treatment

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“The remit of the Gangmasters Licensing Regulations (GLR) should be extended to include construction” (Donaghy, 2009: 12)

This paper builds on the Donaghy report (2009) by recommending that the GLR encompass construction.

The paper provides: -

- 1) An overview of the construction industry
- 2) Examples of abuses, affecting the construction workforce
- 3) Evidence of practices that have raised standards.
- 4) Recommendations for change

1. Overview

The UK construction industry is mobile and international. The industry is fragmented and, since 2005, the total number of firms has increased by 50 % (ONS 2016a). Large firms no longer employ operatives, who instead are engaged through tiers of sub-contractors, with labour agencies and umbrella companies diluting labour standards. Almost half of the 2m construction workforce is classified self-employed, one of the highest rates in the European Union (EU) (Farmer, 2016: 17).

Vocational education and training (VET) is weak and numbers, including of apprentices, at a historic low (CITB 2016), although technological innovation requires more skill. Women and black and minority ethnic applicants are significantly under-represented.

2. Abuses

False self-employment

False self-employment, is used by contractors or sub-contractors to offload risks and employment responsibilities, including both voluntary and statutory obligations e.g. for the national minimum wage (NMW), for paid holiday entitlement, sick pay and pensions (Seely, 2015). Many of the abuses identified below link to the question of employment status and the use of false self-employment.

Earnings

Pay in construction is marginally higher than the all industry level and sections of the workforce (ONS 2016b), receiving only the National Minimum Wage or the National Living Wage are subject to abuses when holiday pay or overtime pay are withheld. A ‘pay when paid’ approach leads on occasion to delayed and non-payment to workers.

Agency labour and umbrella companies

Agencies and umbrella companies sometimes deny workers their entitlements to paid holidays and charge workers (who pay both employer’s and employee’s National Insurance) for paying them. Initiatives to control agencies and umbrella companies have not ended abuses.

Abuse of migrant workers

Migrant workers, who are over-represented in lower skilled work, are particularly vulnerable (Chan et al, 2010; Buckley et al, 2016). Posted workers have faced wage dumping whilst discrimination against the recruitment of UK-based labour has been aggravated by the government's inadequate transposition of the EU Posted Workers Directive.

A Crisis in Training

There is a crisis in VET with continued reductions in the number of trainees. This is a structural problem, since large firms employ few operatives, smaller firms have difficulties providing the experience and mentoring required, whilst the self-employed, constituting at least half the workforce, are in no position to train. Lower productivity and increasing dependence on migrant labour result.

Health and safety standards

Construction sites are high risk with construction workers four times more likely to suffer a fatal accident than workers across all industries. Occupational health risks are also terrifyingly high and can be grouped under three main headings: -

- Occupational cancers (HSE suggest maybe 3,700 deaths per year)
- Hazards – including dusts, chemicals, paints, fumes and vapours
- Physical health risks – e.g. back injuries and upper limb disorders.

(HSE, 2015).

The revised Construction (Design and Management) Regulations 2015 (CDM 2015), clarifying responsibilities, from designer through principal contractor, for effective management of health and safety on site.

Blacklisting and victimisation of union activists

Anti-union activities including blacklisting – the attempt to avoid employing a known trade union activist by compiling or referring to an information database – has damaged union organization (Druker, 2016).

3. Raising standards

Some initiatives have mitigated these abuses.

Collective agreements

National, multi-employer collective agreements have survived, although weakened. The agreements, varying in terms of coverage, scope and impact, include the Construction Industry Joint Council (CIJC) agreement covering building and civil engineering, agreements covering electricians, mechanical engineers and plumbers and the National Agreement for the Engineering Construction Industry (NAECI).

Where collective agreements are implemented, sites tend to be safer and to make better provision for training. Wages and employment conditions, including provision of paid holidays, tend to be more regularly observed.

Major sites

Some large projects such as Heathrow Airport's Terminal 5 (Clarke and Gribling, 2008; Deakin and Koukiadaki 2009) and the London 2012 site (Druker and White, 2013) have set clear employment and training standards. Project level initiatives set: -

- Direct employment and the avoidance of false self-employment, as principles to be cascaded through the contractual chain
- Opportunities for trade union representation and involvement
- Provision for skills training, the engagement of local labour and opportunities for non-traditional entrants into the industry,
- Auditing of tier 1 contractors to ensure that labour standards are upheld.

The Construction Skills Certification Scheme (CSCS)

Launched in 1996, the CSCS, supported by trade associations, employers and unions, has (with partner schemes) nearly 2 million cardholders. It requires individuals to i) achieve occupational qualifications, normally linked to an NVQ, ii) pass a Health and Safety (H&S) test, owned and managed by the CITB.

The CSCS is voluntary and the principal (tier 1) contractor decides if it is required. It is less likely to be used on smaller sites and by smaller contractors or sub-contractors.

Whilst the CSCS has imperfections, it offers a basis from which construction could be more carefully regulated if the scheme were mandatory. This would ensure that there are clear qualification criteria for entry, with benefits to productivity, to health and safety, training and employment relations.

4. Conclusions and recommendations

More effective controls in the construction industry are urgently needed.

- The scope of operation of agencies and payroll companies should be limited.
- The VET system requires review. Certification of qualifications could ensure quality and productivity and improve health and safety practice.
- The enforcement of principal contractor responsibility is key if the avoidance of false self-employment is to be cascaded through the contractual chain. Their role is already recognized on the better managed sites, through the (2015) CDM regulations and in the delivery of the voluntary CSCS scheme.
- The industry would benefit if CSCS were extended and made mandatory.
- Where clients set clear standards, restrict the tiers of subcontracting, and ensure principal contractor responsibility for auditing, it is more likely that statutory employment rights will be delivered, health and safety management and skills training, including for non-traditional entrants improved.

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Unacceptable Forms of Work and Precarious Migrant Status

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The International Labour Organization's defines 'unacceptable forms of work' (UFW) as work performed in 'conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of extreme poverty'. In 2015, I co-authored a report proposing a Multidimensional Model of UFW, which is designed to capture the complexity of modern working life and to be used as a diagnostic tool by local actors (governments, social partners, and civil society organizations) to identify and target UFW for the purpose of labour regulation and enforcement (Fudge and McCann 2015). This model identifies how a worker's social location interacts with labour market regulation and institutions in a specific context to result in unacceptable forms of work.

The term 'social location' refers to the demographic characteristics of workers who are disproportionately found in UFW *and* it is linked to processes of marginalization that undermine social cohesion. Key worker attributes, often identified as vulnerabilities, related to UFW work include age, family status, youth, immigration status, linguistic group, and skill and ability levels. Ascriptive characteristics such as sex, race, ethnicity, caste and place of origin are often used to channel people into UFW. These attributes take on significance in specific labour markets, which are, in turn, shaped by the broader social context.

Social context, especially regional and local product markets as well as governance regimes, shapes how different groups of workers are positioned in local labour markets in ways that increase the risk of unacceptable work. In the UK, sectors such as hospitality, construction, agriculture, retail, personal care and cleaning are associated with job instability, low income, the absence of trade union representation, the absence of job-related benefits, and ineffective or non-existent labour regulation. Some forms of work arrangement predominate in certain sectors: for example, bogus self-employment in construction, seasonal and casual work in agriculture and hospitality, mediated employment relations (via employment agencies) in social care. Women are over-represented in social care, whereas men predominate in construction, and Black, African and Caribbean are disproportionately found in low-paid mediated employment relationships. Self-employed workers such as couriers, often have no access to labour and social protection in addition to frequently confronting profound risks to their health and security.

Guided by this approach to identifying how best to target regulation and enforcement, the concepts precarious legal status and conditionality (Goldring 2014, 220) are more helpful than migrant status in identifying workers who are likely to be found in unacceptable forms of work. Precarious legal status is defined in opposition to permanent residence and citizenship, and typically includes: sponsorship by a specific employer; restrictions on changing employers; temporary residence or permanent residence dependent upon sponsorship by a third party such as an employer or family member; the lack of social rights available to permanent residents; and the inability to sponsor the residence of family members. It consists of a complex 'chutes and ladders of legal status' in which a migrant can become more precarious by losing the right to work or to reside, and, alternatively, become less precarious by gaining permanent residence. A key advantage of this conception of precarious status, which focuses on the legal rights and

restrictions imposed by the state, is that it captures the dynamic and contingent nature of migrant status.

However, the problem with stressing legal status as the key to understanding the precariousness of migrants is that it offers a formal, rather than substantive, understanding of what makes migrants precarious, and it ignores the role of actors other than the state in creating (or alleviating) precarity. The social location – sex, age, ethnicity, country of origin, skill and language – of migrant workers and the broader sectoral and institutional context combine with legal status to amplify or ameliorate migrants' experience of precariousness. Moreover, while states establish immigration policies, increasingly temporary *and* permanent migration is employer-driven. Employers select temporary migrants by offering them employment and obtaining work permits for them, and, under certain programs, they are able to go on sponsor these workers as permanent residents. Thus, employers play an important role in determining whether or not migrants are able successfully to navigate the chutes and ladders of legal status.

The concept of conditionality captures both the substantive conditions and actors that shape whether or not a particular migrant status is precarious. Through its simultaneous focus on the formal conditions of precariousness (including restrictions on employment opportunities through tying migrants' visa to an on-going relationship with a specific employer or by restricting migrants' hours of work) and substantive factors (such as labour market practices and their interaction), the concept of conditionality illuminates the mechanisms that shape the labour market experiences of migrant workers.

Using the concepts precarious legal status *and* conditionality to identify migrant workers who are in unacceptable work arrangements avoids using blunt indicators such as race, nationality and ethnicity, which are protected characteristics under the Equalities Act 2010, and provides a more focused approach. Restrictions (either formal or substantive) on freedom to change jobs, access to benefits or barriers to accessing a complaints procedure (such as language or literacy) combined with low pay, accommodation dependent upon the employer, mediated employment relationships and isolated work, rather than migrant status per se, are associated with unacceptable forms of work. Focusing on migrant status, rather than the social context and social relations that make some migrants vulnerable to exploitation, misidentifies the source of vulnerability and makes targeting enforcement measures more difficult.

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Reducing Precarious Work: Protective Gaps and the Role of Social Dialogue in Europe

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The overall objective of this project, a two-year research programme involving experts in six countries - Denmark, France, Germany, Slovenia, Spain and the UK- was to investigate the role social dialogue can play in different European countries in reducing precarious work. In order to understand the nature of precarious work the project started by identifying risks from poor working conditions and insecurity related to four types of 'protective gaps' in the system of economic and social protection. These include gaps in employment rights, in social protection, in representation and in enforcement of rights. The national teams documented the extent and form of protective gaps in both standard (full-time, permanent) and non-standard forms of employment (variable and part-time hours, temporary and subcontracted work, including false self employment) and considered how they interact to generate patterns of both more inclusive and more exclusive labour markets. To identify how precariousness may be reduced through innovative forms of social dialogue we identified case studies of social dialogue at sector, workplace and supply chain levels in the six countries.

The results of the project involve first lessons about 'protective gaps' and how some countries have progressed more than others in reducing the risks of precarious work, and secondly lessons from effective forms of social dialogue at company and sector levels to reduce precarious work.

Lessons from protective gaps:

a) Employment protection gaps (access to minimum wages, job security and working time standards)

The evidence suggests that workers are less exposed to precarious conditions the more that employment protections over pay, job security and working time are set at a decent level and extended to all workers regardless of employment contract. The project found: decent protective standards in some countries have already been extended to some workers with part-time and short tenure contracts; the same regulation may have both *inclusive* and *exclusive* features-e.g. a minimum wage may be fixed at a low level (exclusive) but have high coverage (inclusive); interactions between legal regulations and collective bargaining vary across countries; and reducing precariousness associated with a type of employment contract may require policies that take an unequal or targeted approach.

b) Social protection gaps (access to unemployment benefits, maternity pay and pensions)

Precarious work may deprive individuals of access to decent social protection and at the same time increase the need for governments to pay income supplements to those in work. Where precarious employment is low paid and/or exempt from social contributions it may create problems for the funding of social protection. There are feedback effects also as some welfare rules are incentivising the use of precarious work, especially variable hours and insecure self employment.

c) Representation gaps

There are few specific provisions to assist in the organisation and representation of precarious workers. Despite many initiatives key challenges remain: part-timers are still under-represented, in part due to working in sectors with low coverage; there are dilemmas as to whether the goal is to represent workers in non-standard employment or to reduce the use of such contracts; and variations in collective bargaining strength and employment conditions across sectors complicates strategies to protect precarious workers –for example, work may be outsourced to other sectors that have lower collectively agreed wages.

d) Enforcement gaps

Enforcement gaps reflect the complex relationships between legal protections and systems of social dialogue in different countries and in different sectors. The six countries can be categorised into three broad types of enforcement regime, each giving rise to particular problems such as awareness gaps, power gaps and coverage gaps.

Lessons from case studies of social dialogue:

The case studies generated four important and inter-related results as follows. First, localised action through social dialogue to stabilise working hours and earnings can potentially have a positive impact on social protections by increasing hours and earnings. Trade unions were instrumental in ending the use of zero hours contracts in the UK local authority care work case, and local collective agreements set longer working hours for both care and retail workers in France and subcontracted catering workers in Spain. Similarly, unions have been at the forefront of efforts to stabilise working hours in the retail sector in Slovenia.

Second, social dialogue can prevent employers from exploiting ambiguities in employment status. In Slovenia, around 250 freelance media workers at RTV were transitioned onto permanent contracts following a management-union agreement, with support from the Slovenian Labour Inspectorate. Legal reform in Spain around economically dependent self employment (TAED) reduced ambiguities in legal status and reduced precarity. However, the case studies caution that while some employers switch formerly self employed workers to better protected TAED status other employers push workers with a standard employment contract into false self employment to reduce employers' costs.

Third, case studies in Denmark, Germany and the UK found social partners in the public sector have recently been incorporating 'social clauses' into public procurement contracts. In all three countries, subcontracted workers risked being covered by a less generous collective agreement (than workers in the public sector client organisation) or none at all. The new clauses extended better protections for precarious subcontracted workers.

And fourth, several case studies documented trade unions' innovative efforts to improve representation gaps and strengthen rights of vulnerable workers to employment protection and social protection. At a fish processing company in Northern Jutland Romanian workers had approached the trade union (3F), despite fears of being fired by their employer, and together started a lengthy and successful process of building trust with local union representatives and then the local company.

Overall the project revealed promising mechanisms for advancing social protection rights, reducing ambiguities in employment status, closing enforcement gaps, negotiating social value procurement rules, and giving voice to vulnerable workers. The combined research evidence contributes to policy debates by demonstrating both the potential for European regulatory regimes to promote or mitigate precariousness at work and the scope for social dialogue to create more inclusive labour markets in contradiction to the perception that social dialogue always protects those in stronger positions in the labour market- the so-called insiders.

The project was funded by the European Commission, DG Employment, Social Affairs and Equal Opportunities VP/2014/004, Industrial Relations & Social Dialogue. For more information see: <http://www.research.mbs.ac.uk/ewerc/Our-research/Current-projects/Reducing-Precarious-Work-in-Europe-through-Social>

The Role of Market Dynamics and Labour Standards Enforcement in UK Fast Fashion

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Changes in lead firm buying power in UK apparel have accentuated asymmetries within the apparel value chain and displaced pressures in the lead firm-supplier relationship to suppliers-manufacturers and even further to manufacturers-subcontractors. This has been driven by the fast fashion sourcing practices of new actors such as discounters, supermarket own brands, online brands and retailers that challenged more established clothing brands and retailers. The renewed growth in the UK is largely based on fast fashion, that is, the exploitation of quick response production and speed-to-market advantages: brands are able to sell items in their stores 10-14 days after placing their order. However, gains from this model are not necessarily shared in a sustainable way across the supply chain, that is, between brands, suppliers, manufacturers, and labour. Near-sourcing is very often based on relatively small orders, trials and repeats, that increase the pressure on manufacturers to maintain continuity of production.

In this context, manufacturers have resorted to largely informal subcontracting and employment relations resulting in a going wage rate around half the National Minimum Wage (NMW)¹. The enforcement of labour standards, e.g. of the NMW as well as health and safety, has become more difficult in a fragmented industry, even more so as the relevant agencies have adapted to a reduction in resources through more selective practices of monitoring and enforcement programmes. The decline in formal industrial relations has also been mirrored in declining monitoring and support by NGOs and community organisations on low pay issues, mostly due to lack of funding. Labour standards enforcement has not adapted to these changing power relations in the value chain and focuses predominantly on the locus of standard violations as opposed to their organisational and economic drivers.

Crucially, for policy this means that labour standards enforcement is necessary but insufficient unless power asymmetries between firms as well as capital and labour are addressed. It is argued that labour standards enforcement is certainly necessary but unlikely to be sufficient in achieving compliance on its own. A similar point can be made for supply chain transparency. Joint liability for labour standards violations in supply chains could form a core basis for enforcement. However, policy will also need to put economic relations within the supply chain on a more sustainable footing, and support capacity building of actors, employers as well as workers, that are currently under-represented in debates about the industry and value chain.

¹ Hammer, N and R Plugor (2016) [Near-sourcing UK apparel: value chain restructuring, productivity and the informal economy](#), *Industrial Relations Journal* 47:5-6, 402–416

The Practices of Enforcement Bodies in Detecting and Preventing Bogus Self-Employment

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The presentation was based on a report written for the European Platform on Undeclared Work (Heyes and Hastings, 2017). The report examines the practices of enforcement bodies in EU Member States in relation to the prevention and detection of bogus self-employment (BSE). The OECD has described BSE or 'false' self-employment as consisting of 'people whose conditions of employment are similar to those of employees, who have no employees themselves, and who declare themselves (or are declared) as self-employed simply to reduce tax liabilities, or employers' responsibilities'. The report combines a review of the available academic and policy literature on BSE with case study research in eight EU countries - Greece, Ireland, Italy, Latvia, the Netherlands, Romania, Spain and the UK – which included targeted literature reviews and interviews with national stakeholders. The findings were supplemented by interviews with representatives of European social partner organisations and other stakeholders.

The main findings presented in the report are as follows:

- Although most countries collect and publish information on the number of self-employed individuals, estimates of the scale and extent of BSE are rare. In some cases, NGOs and social partners have attempted to make estimates in their particular areas of interest. Key barriers to estimating the scale of BSE include its low visibility, the limited sharing of information between authorities, and the lack of a common definition of self-employment. However, the Netherlands has attempted to estimate the scale of BSE, and produced findings at the sectoral level.
- The drivers of BSE are commonly recognised as including high levels of cash payment, the opportunity to avoid tax and social security payments, inadequate monitoring and inspection, a culture of acceptance amongst some workers and limited alternative employment opportunities. In the case study countries additional factors reported included the rise of the 'gig' economy, unintended consequences of efforts to promote entrepreneurship, the use of extensive sub-contracting chains and a lack of clarity over the legal distinction between employment and self-employment.
- BSE is traditionally found in labour intensive, manual sectors. However, the phenomenon is spreading outside the more traditional areas.
- Legislative measures relevant to BSE are found across the fields of labour law, taxation and social security, although amongst the case study countries legislation rarely related specifically to BSE. Some of the case study countries had reformed their tax and social security regulations to reduce incentives for BSE. For example, in Romania, changes to the tax system requiring all self-employed workers to pay social contributions were intended to reduce the fiscal incentive to employ workers on a BSE basis.
- The main enforcement bodies involved in detecting and preventing BSE in the case study countries are those with responsibility for labour law, taxation and social security. However, BSE tends to be addressed as part of each body's general enforcement activities,

rather than being the specific responsibility of a single authority. This means that data on the scale and nature of resources specifically directed towards addressing BSE are not readily available.

- Enforcement bodies often cooperate with each other in addressing undeclared work, including in relation to sharing information and, in some cases, joint inspection activity. However, little evidence was found of cooperation between authorities in the specific context of BSE, although in the Netherlands, for example, closer cooperation and joint working between agencies was reported to have improved the prevention and detection of BSE.
- In general, the emphasis amongst the case study countries is towards deterrence rather than incentive measures, although this varies. For example, in Italy enforcement bodies are inclined towards detection and sanctioning, whereas the Netherlands has made efforts in relation to both deterrence and incentivisation. Less direct approaches were also identified, which seek to alter the behaviour of the wider population indirectly by encouraging them to view BSE and undeclared work as illegitimate practices. The UK government's strategy, for example, includes the use of information, awareness-raising and nudge techniques.
- In addition to telephone and on-line approaches to raising complaints about BSE, some countries (for example the UK and the Netherlands) provide workers and businesses with on-line tools to check their employment status and their compliance with regulations.
- Barriers to efforts to address BSE amongst the case study countries commonly included the limited capacity of enforcement bodies, although the low priority afforded to BSE, worker complicity and difficulties obtaining proof of BSE were also mentioned.
- Cross-border cooperation by enforcement bodies is common in efforts to address undeclared work. However, there is little evidence of cooperation amongst the case study countries focussed specifically on addressing BSE.
- Actions taken by the social partners included efforts to increase their members' awareness of BSE, undertaking research, advising trade unions and government on BSE and organising events, and consultation with stakeholders across the EU. Cooperation between national administrations was seen as key to formulating responses to BSE, and continued campaign activity focusing on transferable best practice.

The report provides recommendations for governments and enforcement bodies. These included:

- There is a lack of accurate information about the extent of BSE, which must be addressed if enforcement activities are to be more effective. Where necessary, the remit of enforcement bodies should be expanded so as to enable them to take action in respect of BSE.
- Detailed analyses of existing datasets, and in-depth studies of specific sectors, to provide up-to-date in-depth analysis of the prevalence and character of BSE and enable more effectively targeted enforcement activities should be considered.
- To prevent BSE, legislative frameworks should provide a clear distinction between self-employment, employment and dependent self-employment. Drawing on these distinctions,

enforcement bodies should develop tools that enable inspectors (and others) to determine workers' employment status.

- Governments should review national legislation relating to employment rights, tax and social insurance to determine whether it creates incentives for BSE, and if so examine ways of reducing any such incentives.
- Consideration should be given to ways in which cross border cooperation on BSE might be strengthened, and governments should consider the potential for social partner organisations to support the activities of enforcement bodies.

See full report at:

Heyes, J. and Hastings T. (2017) *The Practices of Enforcement Bodies in Detecting and Preventing Bogus Self-Employment*. Available at:

<http://ec.europa.eu/social/main.jsp?catId=1299&intPageId=4875&langId=en>

Workplace Safety of Migrant Workers in Food Manufacturing

Benjamin Hopkins, University of Leicester

On 1 May 2004 the A8 countries of Central and Eastern Europe acceded to the EU. Over one million migrants from the A8 nations registered on the Worker Registration Scheme to work in the UK during the seven years that the scheme was in operation, the majority of these taking low skilled jobs. Two key problems are dominant in leading these migrant workers into low skilled roles; lack of portability of qualifications, and low levels of English language skills. Migrant workers are found to have higher qualification levels than UK natives, but managers report a lack of understanding of the value of these. Additionally, low levels of English language proficiency see migrants moving into lower-skilled roles that are not customer facing, frequently on non-standard contracts and crowded into a small range of sectors. As a result, migrant workers are also likely to be agency workers.

In-depth studies of safety training in the food manufacturing sector have found that agency workers face particular problems related to their workplace safety, and that this is compounded by also being a migrant worker. For example, safety training at induction has been found to be different for directly employed and agency workers. At one factory, permanent workers would receive a 3-4 hour induction and, if necessary to the department that they were working in, would also be shown videos about allergens and contamination. Agency staff, by contrast, received no company induction, with some operations managers not sure who was responsible for safety training for new starters, and assuming that this training was given by agency representatives. Interviews with agency workers themselves, however, revealed that this was not the case.

Additionally, the case study organisations were attempting to increase the differentiation of their agency workers from their directly-employed workers, for example with different personal protective equipment (PPE). Workers who took a job through an agency reported that they were often given different PPE to the permanent or directly-employed temporary workers. In many cases, this was not felt to offer the same levels of protection as that given to directly employed workers. For example, at one factory the agency workers were provided with blue plastic overshoes rather than white protective shoes with steel toe caps. These were felt to provide less protection, and also to increase the possibility of a slip or fall as they did not provide as much grip. Unlike permanent workers, agency workers in another factory would share communal wellington boots rather than being provided with their own new pair, and the soles on these boots were sometimes worn down and slippery. Managers were aware that the protective equipment that they were providing did not afford as much protection to agency workers, but continued to use this anyway, citing cost concerns as the key factor.

A further problem noted by managers was that, because of their low levels of English language skills, some migrant workers did not understand the safety instructions that they were being given. Given the high risk nature of the manufacturing environment, this in-depth study shows that poor levels of safety training impact not only on these migrant workers, but also potentially on their co-workers, and the consumers of the food products being manufactured.

Why some employers risk sanction by employing undocumented migrants

Sonia McKay, Visiting Professor, University of Greenwich and University of the West of England

On 1 May 2004 the A8 countries of Central and Eastern Europe acceded to the EU. Over one million migrants from the A8 nations registered on the Worker Registration Scheme to work in the UK during the seven years that the scheme was in operation, the majority of these taking low skilled jobs. Two key problems are dominant in leading these migrant workers into low skilled roles; lack of portability of qualifications, and low levels of English language skills. Migrant workers are found to have higher qualification levels than UK natives, but managers report a lack of understanding of the value of these. Additionally, low levels of English language proficiency see migrants moving into lower-skilled roles that are not customer facing, frequently on non-standard contracts and crowded into a small range of sectors. As a result, migrant workers are also likely to be agency workers.

Why some employers risk sanctions

Employer sanctions have become a key element in government responses to undocumented migration. Originally introduced under the *Asylum and Immigration Act 1996*, under the *Immigration Act 2016*, employers now risk imprisonment (in addition to a fine of £20,000) if there is 'reasonable cause to believe' they have been employing illegal workers and cannot rely on their lack of knowledge of a worker's immigration status. The number of employers fined has been rising and now stands at more than 1,000 a year¹.

The current focus of government, on what it calls 'illegal work', is on sanctions as an attempt to counter the exploitation of vulnerable labour. However this fails to take account of a number of other factors discussed in this paper. Its focus is on one small sub-set of employers, those in minority ethnic enclaves, as the sanctions regime and the accompanying raids on employers, appear to work on an assumption, that minority ethnic employers are the main 'culprits'².

Labour market exploitation is only one of many factors that form decision-making processes leading to the employment of those without documents (Bloch and McKay, 2016³). While all employers balance risks against benefits, for those in minority ethnic enclaves this balance may involve assessing one's own position in the community, together with the requirement for mutual support and obligations to that community, against the risk of being caught. There are four key conditions.

¹ <https://www.gov.uk/government/publications/civil-penalties-issued-under-section-15-of-the-immigration-asylum-and-nationality-act/civil-penalties-issued-under-section-15-of-the-immigration-asylum-and-nationality-act-2006-from-2008-to-2013>

² Where the data exists it suggests that as high a proportion of those businesses raided are minority ethnic owned, see: Bloch, A. McKay, S. and Kumarappan, L. (2015) 'Employer sanctions: the impact of workplace raids and fines on undocumented migrants and ethnic enclave employers.' *Critical Social Policy* 35, no. 1(2015): 132-151. eScholarID:236551 | DOI:10.1177/0261018314545600 ..

³ Bloch, A. and McKay, S. (2016) *Living on the margins – undocumented migrants in a global city*, Policy Press. See also: Bloch, A. and McKay, S. (2015) 'Sanctioning employers does not prevent exploitation and unfree labour - beyond trafficking and slavery', *Open Democracy*, 8 December 2015.

1. Labour and skill shortages

Restrictions on entry for work by lawful means have resulted in labour and skill shortages. Minority ethnic employers in the hospitality sector have been asserting for some time⁴ that staff shortages are damaging to future business. There is also a widespread belief that product authenticity, particularly in relation to the preparation of foods, requires that workers have knowledge that can only be acquired in countries of origin. In addition, whereas previous generations from minority ethnic communities may have assumed that their children would succeed them in the business, this lineage has been ruptured, and the generation born in the UK is less willing to follow their parents into what they perceive (particularly for those in small minority ethnic businesses) as hard work that is relatively poorly rewarded.

2. Family and kinship ties

Undocumented migrants are hired even in sectors where there are no skills or staff shortages, as, despite the risks, other imperatives will persuade employers to hire. Most significant are family and kinship ties. It is unlikely that employers will refuse to offer work to individuals who need it, where family and kinship ties are called upon. Even in those cases where employers have a general policy of not employing those without permission to work, this policy is tested where it involves the employment of family members. The loss of standing within the community over a refusal to help others in need will always operate as a strong counterbalance to any policies aimed at preventing such employment.

3. Solidarity

At least some employers will identify with the predicament of those without documents, particularly where they or family members have had similar experiences. Individuals may also feel obligated by political solidarities that require them to offer support to less fortunate comrades who need help. Individuals will find justification for decisions to hire, responding to their own codes of honour and humanity. The sanctions regime fails to take account that such solidarities exist and of their relevance to decisions to employ. Furthermore the need to offer support to those whose situation is more vulnerable than one's own is an identifier of our own humanity and of a functioning civil society. If the legislation seeks to break down such solidarities, its consequences are to impoverish society as a whole.

4. Employment relationships and trust

Employers who may also have been subjected to racism and discrimination may also, through a lens of trust, seek to employ others 'like themselves'. Co-ethnic solidarities can both be based on trust but also represent an absence of trust of the majority community. In a political climate where migrants are problematized it is inevitable that individuals from minority ethnic communities believe that they can only be assured of trust within their own communities.

Agents of Transition? Young People's Experiences of Using Temporary Work Agencies in Three Midlands Cities

Phil Mizen (Aston University) and Arlene Robertson (University of Warwick)

Below is a brief summary of data examining young workers' uses and experiences of private work agencies¹ in the transition from education to employment. Its context is the growth of insecure, part-time and temporary (mainly service sector) working among young people, as part of the explanation for the relative resilience of the youth labour market in recent years. Young people's 'struggle' (Gregg & Gardiner, 2015) to find secure, full-time employment has intensified since the turn of the century and private work agencies are playing an increasingly significant role in effecting young people's entry into work. What this means for young workers is less clear, however.

In what follows we briefly consider the growth of private employment agencies and their importance to young workers. This is then followed by a brief summary of young people's uses and experiences of using agencies, drawing on emerging findings from a larger research project examining young people's transitions into precarious employment in three Midlands cities.

At the Sharp Point of the Triangle?

Part of the story explaining the resilience of the UK labour market is explained by the growth of insecure, part-time and temporary employment in the service sector, especially among young people under 25 years old. The growth in employment among this group 'has been disproportionately skewed towards insecure forms of work' (Gregg & Gardiner, 2015, p. 32), often brokered by the growing presence of private work agencies. Now 'a stable component of the regulatory infrastructure of the labour market' (2006, p. 181), agency working in the UK is at record levels. The industry claims that 1.155 million workers occupy agency placements 'on any given day' (CIETT, 2015, p. 10). Three quarters of these are low or medium skilled assignments, primarily in the service (52%) and manufacturing (36%) sectors; 51% last for under three months and one in three less than one month. There is also 'an intense relationship' between young workers and agency and temporary working' (Nunez & Livanos, 2014, p. 45), with a 'long-standing role [for] the industry in placing student workers and providing an entrance point into the labour market for younger workers' (ILO, 2009, p. 24).

As private work agencies have grown in size and significance, so too have they created an employment relationship often described as three-way (Cantwell & Power, 2016), tripartite (Fu, 2013) or triangular (Håkansson, Isidorsson, & Kantelious, 2012). Focus on the agency-employer vertex of this triangle reveals how, on the one hand, agencies have benefited from employer demands for cost control and flexibility. On the other hand, they have actively sought to deepen employer dependence on their services through the provision of screening and selection, management, and labour force planning services (Theodore and Peck 2013). Attention to the employer-worker vertex of this triangle further reveals 'a paucity of research examining [agency] employment' (Knox, 2010). Research that does exist suggests a 'secondary' status for most UK agency workers (Grimshaw, Johnson, Rubery, & Keier, 2016) through short tenure placements,

¹ For present purposes, reference to private work agencies includes non-public agencies providing temporary work where a worker is employed by the agency but then hired out to perform work at a user company; and/or that provides services matching job-seekers to vacancies or information that does not involve specific vacancies or job offers (ILO 2009)

unspecified contracts and unpredictable assignments (Forde, 2001). Employers require agencies to supply 'warm bodies' (Parker 1994, p.53) ready and willing to tolerate poor-quality work, low wages, fewer benefits and a willingness to tolerate the tensions arising from working alongside permanent staff (Cantwell & Power, 2016; Knox, 2010).

Given the low quality and insecure work available through agencies, it is less clear why workers use them in such large numbers and what the experience of this involves. This is especially significant given the high levels of anxiety among agency workers 'stemm[ing] from the strategies adopted by the agencies to generate a surplus of workers "on the books" to meet client demands' (Forde, 2001). Being 'on the books' further heightens this insecurity through a *de facto* triage system, where agency staff consistently allocate assignments to those workers most willing and able to respond at their beck-and-call. For these reasons it seems intuitively logical to extend the conclusion that most agency and temporary working is 'involuntary' (Morris & Vekker, 2001; e.g. Nunez & Livanos, 2014) to workers' use of agencies themselves. This picture may be complicated by an awareness that the screening and recruitment functions of agencies can and do counter employer resistance to workers who carry a stigma, such as the long-term unemployed (Gray, 2002). Yet, here too, worker resort to agencies can be high-risk, since the expeditious entry into work may come at the cost of occupational down-grading and the normalisation of sporadic, low status and poorly paid work.

Gray's contribution is also interesting because it highlights a political economy of private employment agencies that prioritises their supposed capacity to redistribute employment opportunities from 'insiders' to 'outsiders' (Gray, 2002). Governments actively underwrite agencies because they increase the proportion of temporary work within the aggregate stock of vacancies, and so promote a form of 'work sharing' as labour turnover increases. In more recent political discourse, it is the instrumental rationality of workers that explains the appeal of agencies. Here, worker preference is a prime driver for the growth of agencies from workers 'seek[ing] for themselves the best possible working conditions and wages even while upgrading their skills or setting up a business for themselves' (Friedman, 2014, p. 173). Regarded as such, agencies become a *de facto* means of personal autonomy and freedom within the rise of the 'gig economy', as they deftly respond to the re-scheduling of worker preferences for employment allowing experimentation and alternative career paths, self-improvement, work experience, up-skilling and enhanced employability; or which sits comfortably alongside the needs of family and friends (see also Cochrane & McKeown, 2015). 'Young workers are especially said to want to break free of the confining restraints of traditional jobs' (Friedman, 2014, p. 173).

Research

We explore these themes through drawing on emerging findings from a large research project examining young people's transitions into precarious employment in the Midlands of England². This project examines a broad range of standpoints on precarious working through sub-projects that cover the perspectives of employers, university graduates and a comparative historical analysis of youth employment policy. The data presented here comes from a fourth sub-project examining the experiences of young people aged 16 to 25 and who have no intention of entering higher education. For this particular sub-project, two years of fieldwork ending comprised: first, 10 group discussions in Birmingham (3), Coventry (4) and Leicester, and involving 108 participants drawn from local colleges, employer/training providers, employer organisations, community youth groups and organisations working with 'hard to reach' young people; second, individual interviews

² Young People's Precarious Pathways to Work project, Economic and Social Research Council Ref: ES/M500604/1

with 80 participants, including 29 young people who had participated in the group discussions; and third, follow-up interviews six to 12 months later with 22 young people from the first interviews. The final sample was fairly equally distributed across the three cities, was attentive to their diverse ethnic populations and involved approximately equal numbers of young women and men.

Agents of Transition?

First, resort to agencies is now the norm and young people's contact with private work agencies is routine, frequent and widespread, but they are often considered the least-preferred option. Approaches to agencies typically result from the failure to find work by alternative routes, such as direct applications to employers, the distribution of CVs by-hand and word-of-mouth contacts. Young people use agencies with both an online and physical presence, with the former particularly popular. Clicking through the results of search engines to employment agency websites is followed by easy registration and efficient communication, and above all ease of application. 'And click. That's all I do', is how one respondent summarised it.

Following registration respondents describe receiving numerous – often very frequent – emails, automated SMS alerts and/or telephone calls. The speed and efficiency of these responses is again valued, as is the perception that agencies raise their visibility to employers and simplify job applications. The possibility of finding work without an employer interview is also valued, particularly where previous interview experiences have been negative. There are a number of problems, however. The communication of potential assignments often pays little regard to their skills, qualifications and personal qualities, let alone their self-defined needs and aspirations. Agencies are also commonly held to inflate the number of 'real' opportunities available 'out there', post or advertise 'fictitious' vacancies, routinely engage in 'false advertising', or recycle the same vacancy so that 'half the time you're applying [to different agencies] for the same job'.

Second, work is available through agencies and the speed and efficiency of this is appreciated. Agencies can work well when someone 'needed a quick job' because work is available 'on the spot' or 'a start date [can be given] then and there'. Agency work can also help garner the work experience that they are told they need to 'update their CV' or to counter the impression that they are 'young and inexperienced'. Where agencies fall short is their inability to address engrained barriers to work: their relative youth, perceived deficiencies of work experience, combining paid work with part or full-time study, and difficulties of location and commuting.

Third, many are uncertain about their status as agency workers. It is common for a young person to assume they are direct employees, only finding out about their agency status from other workers or when their assignment ends. A number also enter assignments not knowing that they had agreed to zero-hours contracts and this, too, emerges only when an assignment has ended or, more often, when work hours are reduced. Others learn of their agency status, and the precariousness it involves, when a promised 'temp-to-perm' assignment does not materialise, if their job disappears or they are told they 'have to apply for that job again'. Broken promises, and confusing and inaccurate descriptions of assignments are also held responsible for finding themselves 'stuck in a job you really don't want' or, possibly worse still, 'being let go'.

Fourth, agency work can involve degrees of permanence, but this is rare. Some young people recalled agency jobs lasting weeks, months or longer, and in one or two cases assignments led to offers of permanent employment; although none were accepted because they were poor quality, low paid and lacked relevance to their longer-term aspirations. Much more likely are short, poor quality assignments that are punctuated by frequent spells of unemployment or attempts to

combine work and education. In a number of instances, assignments could also mean significant cost for a young person. Examples of unpaid trials lasting a few hours, a day, or in one instance a complete week, were not uncommon. Also encountered were examples of young people travelling to take up a promised day or night assignment but who were not selected because of insufficient work or a surplus of agency staff. In a small number of cases agencies had actually cost them money, where door-to-door selling or fundraising failed to pay enough to cover their outlay on travel and subsistence.

Fifth, these limitations were not lost on many participants. There existed considerable suspicion about agencies, where they were felt to be 'self-interested' and 'more bothered about the money' than the needs of their worker-clients. The lack of long-term assignments was explained as a strategic or business decision: 'they're employing you as an investment' or 'it's just to make money, [it has] nothing to do with sorting people out or helping them'. The difference in their hourly rate of pay and other workers was equated with 'robbery' and 'paying the employee less ... it's like slavery, isn't it?'. Alongside the top-slicing of hourly pay, some felt that agencies self-consciously time-limit contracts to maximising their profits. Some also knew that they gained additional employment rights after three months and believed this explained why agencies rarely offered longer contracts. Many spoke of how, as three months approached, text alerts or phone calls would dry up, or hours would peter out or stop completely. This is 'cos they wasn't making no money off us ... then they just find another couple of Tom, Dick and Harrys, yeah, who are hungry for a job'. 'That's why normally they get rid of agency staff ... it makes it cheaper and then they get someone else for three months'. 'Just say that you're about a week away from that three months, the agency'll stop phoning you, 'cos what are you making them really, you're not making them nothing, 'cos before that three months you're making them like £4 for every hour. Now you're not making them nothing, and they'll not phone you ever again'.

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Working in the gig economy, parcel delivery and the degradation of work in the logistics sector¹

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Theresa May, in her inaugural speech as Prime Minister, heralded a new direction for her government: hard pressed workers would be given a voice on company boards and the excessive earnings inequalities that have become an entrenched feature of our workplaces should be reined-in. Though May's speech was short on specifics, the overall tone was suggestive of a more compassionate and inclusive Conservatism. Whether or not this will materialise - and her voting record in office does not bode well - she was right to fix on the plight of the voiceless, low paid workers that have become an entrenched feature of twenty first century Britain. Subject to a daily diet of routine, high pressured, and closely monitored tasks, millions of workers experience minimal discretion, autonomy and dignity at work. Parcel delivery workers, currently in the spotlight because of the exponential rise of internet shopping, highlight many of the salient issues.

The volume of parcel deliveries in Britain has exploded, accounting in 2016 for more than 1 billion home deliveries. Britain, the biggest online shopping market in Europe, boasts a growing army of workers engaged in the connected activities of logistics, distribution and delivery. Transformations in the logistics function and parcel delivery have been directed at securing more exacting, demanding and time critical levels of service delivery at minimum cost. The 'last mile of delivery' at the end of the supply chain is said to be the key to competitive advantage. The application of increasingly complex IT systems which track and trace the movement of parcels under the gaze of the final customer is paramount. This reconfiguration in turn has fuelled a burgeoning logistics infrastructure and a myriad of subcontracted supply chains and relationships. The result is an increasingly competitive market for parcel delivery companies. Amazon and other large retailers entice their customers with 'free and immediate' delivery which relies upon the supply of flexible labour services at minimum cost.

Technology is critical to the successful coordination and control of product movement. The application of algorithmic optimisation techniques and routing software has revolutionized logistics, speeding the circulation of commodities through the annihilation of space by time on the one hand, and affording closer monitoring and surveillance of worker effort on the other. The introduction of hand-held Personal Digital Assistants (PDA) have been crucial. These devices render the supply chain transparent by affording senders and their recipients 'sight' of an item's progress and expected delivery time. The efficiency gains made possible however must be set alongside the costs for labour. Workers may be subject to labour intensification (more labour input per unit of labour time) and dehumanizing patterns of control that render them literally appendages to digital devices. Whether or not they are depends on their location within the sector.

There are three main interconnected tiers. The first constitutes large parcel delivery companies, in which employment relations are framed by extant collective agreements with a history of

¹ Previous version of this paper published in *Open Democracy: Free Thinking for the World* August 2016.

² The research was funded by a British Academy small grant.

bargaining over terms and conditions. The latter may be renegotiated in the context of the pressures brought by service level agreements, but provide some guarantee of protection for a long-standing organised workforce. The second, based in depots and working alongside directly employed drivers, are the 'self-employed' owner drivers on piece rate pay. A third tier is populated with home-based so called life-style couriers, also technically self-employed, but using their own vehicles without close organisational ties or a fixed workplace. Sometimes all three sources of labour power may be present within a single enterprise.

Where collective agreements continue to prevail, our research found a higher ratio of directly employed workers with normal workloads of 70-80 drops a day. By contrast, 'owner-drivers' and 'life-style' couriers on zero-hours contracts face a typical workload of 100-120 daily deliveries. Bearing the costs of fuelling, maintaining and insuring their own vehicles, these workers are paid only for the goods they deliver (non-delivery attracts zero pay). Perhaps more crucially are the implications for the utilisation of the new technology. In the former case, collective agreements have been negotiated to include restrictions on the application of digital devices for the purpose of surveillance and discipline. Monitoring of work pace and performance takes place to be sure, but the agreements specify the limits to the intensity of work. By contrast, as noted, the self-employed and life-style couriers are afforded no such protection. The payment system, linked to the number of successful deliveries, acted acts a powerful anonymous force for coercion.

These contrasting experiences highlight three issues. First, 'self-employment', so often celebrated as a route to personal liberty, masks a variety of work practices and experiences. In parcel delivery self-employment means the removal of basic rights, safeguards on hours, holiday and sickness entitlements, and for 'lifestyle couriers' decent pay. Second, the advance of science and technology does not necessarily confer positive gains in workers' material, physical and mental well-being. For those that too readily link the digital economy with more creative and autonomous forms of working, the evidence from parcels offers a sobering and far from unique case the scope for degraded work patterns. Digitalisation may lead to greater life chances and prosperity for some, but for vast swathes of the workforce it merely serves to intensify the pressures of work.

Third, and connectedly, collective regulation can be shown, historically and with reference to the contemporary changing world of work, to be the *sine qua non* of decent work. Under competition from the unregulated parcel delivery companies, it is likely that the reach of collective agreements will diminish as the sector slide towards a free for all. In this context, the boardroom level representation that May speaks of must be judged a longer term aspiration that can only be meaningful following a root and branch transformation of workplace representation.

Non-Compliance and the National Living Wage: Case Study Evidence from Ethnic Minority and Migrant-Owned Businesses

Monder Ram and Paul Edwards, University of Birmingham, and Guglielmo Meardi, University of Warwick

Aims and objectives

This study, completed for the Low Pay Commission in 2017, examines how small firms respond to the National Living Wage (NLW), focusing in particular on the issue of non-compliance. The Low Pay Commission¹ estimates that about half a million workers are not receiving the national living wage of £7.50/hour introduced in 2017, and that this occurs in particular in small and medium enterprises, but little is known on how non-compliance occurs.

We investigate the concrete ways in which small firms in the ‘informal economy’² operate, particularly in respect of non-compliance with the NLW and other employment legislation. The study has two components: a) long established firms in low paying sectors, and b) business owners and workers from new migrant communities. We focus on the experiences of small firms in four low paying sectors: clothing, food manufacture/processing, restaurants, and food retailers. We examine the characteristics of small firms in relation to the composition of the labour force, the pay structures in place, and key features of work organisation.

Insights from previous research on minimum wage legislation

Previous research on the impact of legislation suggests that informality – in relation to the way business is run rather than participation in the informal economy - is deeply embedded in the day-to-day operations of many small firms. It encompasses features like the employment of family and kin, diffuseness over who exactly is a worker in the firm, imprecise recording of hours and discretionary approaches to pay and rewards. We can expect the NLW to arrive in a context of continuing informality and a considerable amount of ambiguity as to whether the existing National Minimum Wage was or was not being paid. It is likely that just what constitutes an hourly wage will be inexact. The flexibility of small firms that arises from informality means that they may be able to absorb some costs of the NLW; but labour-saving innovation and long-term cost reduction seems unlikely.

Researching the NLW in non-compliant (and compliant) small firms

We conducted a total of 24 case studies of small businesses and their workers, split evenly between a) long established firms in low paying sectors (clothing, food manufacture, and restaurants), and b) businesses owned by new migrant communities (primarily in retailing).

Part One: Compliance and non-compliance in depth and over time

The 12 case studies of long established small firms: are drawn from clothing, food manufacture/processing, and restaurants; occupy different competitive positions within these sectors; comprise non-compliant (eight) and compliant (four) firms. Five of the 12 case study firms

¹ Low Pay Commission, 2017, *Non-compliance and enforcement of the National Minimum Wage*, September.

² We define the informal economy as paid activity that is legal in all respects other than it is declared to the authorities for tax, social security or labour law purposes (See Williams, 2014, *Confronting the Shadow Economy*, Edward Elgar, Cheltenham.)

were investigated by members of the research team in previous studies on the impact of minimum wage and other employment legislation on small firms.

Part Two: New migrant business owners and workers

The second element of the research comprises 12 case studies of migrant business owners and workers. These firms were studied in 2010 by members of the research team as part of a broader study of the business practices of recently arrived migrant employers and their workers. All firms were non-compliant with the NMW in 2010; but we find that three firms are now complying with the NLW. This element of the study is therefore also longitudinal; and it features firms that are compliant and non-compliant with the NLW too.

Detailed qualitative interviews were conducted with the owner and a worker in each firm for both phases of the study, amounting to 48 interviews. The interviews established the competitive position of the firm and covered issues such as the impact of the NLW on pricing, profits, productivity, and staffing decisions. Workers were interviewed to obtain a complementary perspective on the impact of the NLW on working practices.

Patterns of response to NLW

Our findings are necessarily inconclusive because many firms are still grappling with ways in which they can absorb the costs of the NLW and the impact it is having on different aspects of the business (for example, recruitment and retention). Economic uncertainty further compounds the competitive position for many firms, with Brexit identified as a cause for concern by many business owners. Nonetheless, we can indicate three broad patterns of response.

Firstly, we find that firms that complied with the NMW continue to pay the NLW. Compliance for these firms is often seen as a necessary feature of operating in a particular market niche; and it is also instructive that the owners of such firms are often intent on pursuing strategies of firm growth rather than steady-state survival. But it appears that the NLW is proving more difficult to accommodate than the NMW because of the rate of the increases and the tough competitive environment.

We also find firms that are struggling to comply and are having to make changes to recoup the cost of the NLW by finding savings elsewhere in the business. There are instances of firms that have removed overtime payments, reduced staff and cut training budgets. Owners in this group find few benefits in paying the NLW and are uncertain of how they will cope with upratings in the future.

Thirdly, many firms in both parts of the study do not comply with the NLW. The boundary between compliance and non-compliance is blurred. One factor is the ambiguity over the status of workers in many firms. Firms appear to employ some workers at the NLW; but many also engage 'helpers' at below the NLW as and when the firm requires them. These helpers are integral to the operation of these firms. This structure of employment is one reason why non-compliance continues to exist. A second reason is that the risks of being penalized are felt to be low, not least because employers have little fear of complaints from workers. None of the business owners were aware of the measures that HMRC have taken recently to step up enforcement and deter non-compliers. A third factor is the reluctance of workers to report non-compliance, largely because of

the nature of their relationship with the businesses. These relationships are often based on strong personal ties, which serve to militate against overt resistance by workers. Acceptance and accommodation therefore characterise employment relationships in these firms, rather than overt exploitation. Fourthly, there continues to be a supply of labour, of illegal or undocumented workers, and such supply may become increasingly important if the pool of legal migrant labour is restricted after Brexit.

The evidence from our case studies shows awareness of the NLW, but very little awareness of new enforcement mechanisms. While this can change, the depth of non-compliant business practices suggests that for large-scale improvements of wage compliance SMEs may need more specialist support and more peer pressure, for instance through business associations, HR experts and a perception of higher compliance among competitors.