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Preventing Labour Exploitation

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Editor's 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 the text of the sixteenth Warwick-Acas Lowry Lecture, given to an invited audience at the University of Warwick on the 3rd of April 2017. The annual lecture is jointly organised by IRRU and the Advisory Conciliation and Arbitration Service (Acas) in honour of Sir Pat Lowry. A former chair of Acas, Sir Pat was for many years an Honorary Professor at the University of Warwick, a long-standing member of the Business School's Advisory Board, and a source of valued counsel to IRRU in its work. His outstanding contribution to the practice of industrial relations commenced when he joined the EEF in 1938. He went on to become the Federation's Director of Industrial Relations. He left in 1970 to join British Leyland as Director of Industrial Relations. In 1981, Sir Pat was appointed as Chair of Acas. He stepped down six years later with Acas' reputation for impartial and constructive advice enhanced, in the face of an often turbulent industrial relations landscape.

This year lecture was given by Margaret Beels, Chair of the Gangmasters and Labour Abuse Authority (GLAA), on the topic of 'Preventing Labour Exploitation'. In the 2017, the GLAA has taken on, and expanded, the role of the Gangmasters Licencing Authority, which was established in 2005 in the aftermath of the Morecambe disaster in which 23 Chinese migrant workers lost their lives. The GLA and now the GLAA represent an interesting regulatory experiment in the comparatively flexible UK labour market, and the reflections from Margaret Beels are therefore extremely instructive. The complex and increasingly concerning problem of labour market exploitation proves that the labour market does not automatically lead to satisfactory equilibrium. This paper identifies factors such as (false) hope and fear that may severely distort the relationship between employer and employee, as well as business models that are conducive to labour market exploitation. There is no doubt that these are extremely topical issues, for research as well as for policy-making, as confirmed in the UK by developments such as the creation of a Director of Labour Market Enforcement, the government's Review of Modern Employment Practices, and the extension of the GLA/GLAA role itself.

Guglielmo Meardi

Preventing Labour Exploitation

Thank you for the invitation to deliver the 2017 Pat Lowry Lecture.

I am very aware that I am following in a long line of distinguished speakers. I hope my lecture today will provide useful insights and stimulate energising discussion.

My topic is “Preventing Labour Exploitation”.

I will start by talking about what constitutes labour exploitation and **why** does it happen? **Where** does it happen? **How** should we go about preventing labour exploitation? And who, in this context, is **“we”**? As the world of work continues to evolve, **what are the trends** as regards potential new forms of labour exploitation? **What new tools** might be needed in the tool kit?

In raising these questions, I am conscious that we have here a room full of experts. For my part, I would not claim to be such. As Chair of the Gangmasters Licensing Authority or ‘GLA’ for the last five and a half years, I have learned a good deal. But there are others here those who have been in this field for decades. My lecture will raise ideas and pose questions which I hope will provoke interesting responses and discussion.

You will recall that the GLA was formed after the Morecambe Bay disaster in which 23 Chinese cockle pickers were drowned in the dark by the incoming tide. The government’s response was to adopt a Private Member’s Bill to create a licensing system for labour providers or ‘gangmasters’, operating in the agriculture, food packing and shell fish industries. Licensing standards, in essence, enforce agency workers’ employment rights - whether or not the worker has the right to work in this country. Not having a licence in the GLA sector is an offence. Using an unlicensed labour provider is an offence.

Those who operate in the GLA sector report that employment standards in that sector have much improved in the 10 years since licensing was introduced.

The GLA has a core mission which is: ‘Working together to protect vulnerable and exploited workers.’

We have three priorities:

Prevent worker exploitation,

Protect vulnerable workers and

Pursue those who exploit others for their work – financially, physically or through coercion and control.

‘Prevent’ has been and will remain the GLA’s first priority

So what do we mean when we talk about labour exploitation?

Rightly there is a lot of attention given to more extreme forms of labour exploitation given the current focus on modern day slavery and human trafficking. (Prime Minister's Task Force, Appointment of the Independent Anti-Slavery Commissioner.) There is no disagreement about the need to address such exploitation and the fact that the Modern Slavery Act provides for sentences of up to life imprisonment emphasises the government's intolerance of such crimes.

But it is clear there is a continuum of labour exploitation. What starts as failure to pay holiday pay may expand into underpayment of basic pay, pay being withheld, non-payment or underpayment of overtime.

Unfair deductions are made from wages covering work finding fees, transport to work, accommodation, protective clothing, personal accident insurance. Work related accommodation may be very substandard. Working conditions may be unsafe. Identity documents (e.g. passports) may be confiscated. Bank accounts may be controlled. Workers may be held in debt bondage. They may be required to work excessive hours.

The nature of labour exploitation varies as between direct employment and employment via agencies. The most common form of exploitation for direct employees is non-payment of National Minimum Wage / National Living Wage. In this context, size of business is also relevant. According to the Low Pay Commission, microbusinesses are three times more likely to offend. (3% rather than 1%). Offences are often concealed through payments being made in cash.

Offences in relation to agency workers relate both to non-payment of NMW/NLW and also unfair deductions.

When the abuse is then backed up with threats – physical or psychological – then again there is unanimous condemnation.

Condemnation is sometimes rather more muted where the “only” offence is “not quite paying the national minimum wage”. But if you are a worker on the national minimum wage or the national living wage the failure to be properly paid, the failure to receive correct overtime, the failure to receive proper holiday are real issues. For low paid workers, not receiving holiday pay is rather more serious than not being able to go on the annual family ski-ing holiday to France.

In the GLA we focus on manual workers, but clearly exploitation of workers is not just a blue collar issue. But at what point does employment of an intern change from giving an individual good work experience to exploiting the desire of a young graduate to get on the job ladder? The enthusiastic intern works long hours in their own time to finish a report or prepare a campaign. Is that labour exploitation?

Does the long hours culture – supported by the ever chirping backberries and smart phones - amount to labour exploitation?

There is perhaps an assumption that higher skilled workers can look after themselves. If necessary, they can take the matter up via an industrial tribunal. My impression is that this is an imperfect route with high entry barriers both as regards cost but also the concern by complainants – whether acting on their own – or even with union support - about prejudicing future employment.

Labour exploitation is often fuelled by **hope**. - the hope that the pay backlog will be addressed. That holiday pay will be received in the end. That my long hours at the desk will be noticed and I'll be offered a permanent job, that I will get that promotion.

And it is fuelled by **fear** – fear of losing the job, fear of being deported without the sponsorship of the current employer. So, workers don't complain.

Some workers may be happy with their situation because they believe they are better off than they might otherwise have been. And this is not just a feature as regards migrant workers.

The perception of a worker that they are receiving as much reward as they 'deserve' can be related to mental illness.

In some cases workers agree to arrangements because they think that the only victim is the state. So they agree to having a "self – employment" status with more cash in their hands than they think they would receive if they were on the payroll. Citizen's Advice Bureau estimated that 10% of those who claims to be self-employed are actually bogus self-employed – with the attendant short fall in NI contributions and risk of failure to have proper pension arrangements in place.

Workers who agree to "informal" employment arrangements can find themselves landed with large tax bills having, wrongly, assumed they were having tax deducted at source. Again payments in cash may be a feature.

The GLA's focus on manual workers reflects our legacy. Whenever government bureaucracy gets me down – which does happen from time to time - I remember the 23 faces of Chinese cockle pickers drowned in Morecambe Bay. These workers were the epitome of vulnerability. They were non-persons - that is to say there was no record of them anywhere on any UK system. They had almost no English, they had no knowledge of their rights, they had no understanding of the dangerous working conditions and the criminality lay behind their employment.

What circumstances lead to labour exploitation?

Ignorance - of employment and other rights – maybe based on working experience elsewhere e.g. in Eastern Europe

Lack of Language skills – workers don't have the vocabulary to ask questions or challenge or report issues

Cultural issues – there may be acceptance of a hierarchy of family control with a fear of wider social consequences if working arrangements are challenged

Lack of representation – unions or workers councils

Lack of visibility – workers hidden in the fields or in factories or on building sites

Vulnerable individuals - individuals who may have experienced family breakup mental health issues, substance abuse issues – and I include in this grouping homeless people

From the employers point of view the temptation to ‘cut corners’ may arise when margins are squeezed, when demand is seasonal and hard to predict

The GLA has recently undertaken its **first national threat assessment** by UK region. We intend to publish this shortly. Sectors we know to be higher risk of labour exploitation are care homes, cleaning, construction, fishing, hospitality, food processing hand car washes, nail bars, restaurants and take-aways.

As a nation we expect food to be cheap. We go to the cheap car wash. We think that someone else will be making sure that the law is being followed.

Are we, as consumers, part of the problem?

Within the GLA we refer to four ‘business models’ that can lie behind labour exploitation

The Chancer – This refers to someone who sets up a business and knowingly or unknowingly fails to pay workers properly – or give them their basic employment rights. They may start out with good intentions. They may come under pressure to reduce their margins or lose a vital contract

The GLA, working with the Association of Labour Providers, publishes guidance on indicative minimum charge rates between labour providers and labour users. Any cost of labour figure significantly less than the published rates raises concerns of non-compliance. Labour Providers assure us that they are regularly under pressure to charge less than the GLA guidance.

The Chancer protects the margin of their own business by passing on an unfair share of the commercial pressure to their workers.

The Employer – This is the business model whose employees are part of a social network – for example an extended family. The 1129 workers killed in the Rana Plaza disaster when the building in which they were working collapsed in April 2013 fell into that category.

But you don’t have to go to Bangladesh to find this model. It is alive and well in the clothing industry in the Midlands and in East London today.

Here the workers are not paid properly but perceive that their obligations to their employer are not governed by employment law but by family practice or community allegiance.

The Intermediary – This is the model where a group of workers are managed by someone with the same ethnic background and language. The intermediary acts as the “Go between” between the employer and the workers. But their activities may extend, in essence, to imprisonment - holding passports for the workers - opening and controlling their bank accounts – colluding with landlords in the provision of substandard accommodation and providing sometimes unsafe generally overpriced transport to work.

The Organised Criminal – Labour exploitation is a profitable business and criminals follow the money. A feature of the labour exploitation business is that victims can be moved around and exploited again and again. Often working with “Intermediaries” organised criminals will be also parties to serious financial fraud, including tax evasion, money laundering and human trafficking.

I recently attended a Seafish meeting when there was a presentation by Interpol which touched on the work they have been doing worldwide on the fishing industry. When worker exploitation is encountered the simplest option is to arrest the skipper, impound the boat. But the same criminal guiding hand can be found owning boats, owning fish packing and processing factories on an international scale. Bringing these criminals to justice is a slow and difficult task, especially if relevant authorities have been corrupted.

Preventing labour exploitation has to involve understanding why it happens

Some of what GLA comes across concerns individuals who are gratified by displaying threatening and bullying behaviour – or from physically attacking those less able to defend themselves. In the main, though not exclusively, these people are agents of the real criminals.

The real criminals are simply in it for the money – though they are not averse to kicking their victims – literally – when they are down or threatening them or their families.

Let us go back to our four business models to reach a view about what needs to be done to prevent labour exploitation.

The **Intermediary model and the Organised Criminals** need the full force of legal enforcement. They are consciously and systematically breaking the law.

The **Chancer** may be prevented from exploiting labour by understanding what a responsible employer has to do.

The Chancer also needs to believe that by doing the right thing by his or her employees the business is not going to be at a competitive disadvantage

[A couple of months ago I received a letter from a lady running a cleaning company in London. She said:

The reason I am writing to you is that in order to address the issues in the cleaning sector, there has to be an awareness of the fundamental reasons why so few companies operate in what I would say is a legitimate way. If these issues are not addressed you will be putting fingers in the hole of the damn and the water will still flow.

When I set up my company, I did so with the commitment to draw a line in the sand and ensure that any worker that was employed by the company would be looked after and protected with full employment rights, including holiday pay, sick pay, maternity pay, whilst also paying a fair wage. I also commit to hiring the best staff (I test every candidate on their cleaning at interview and I know there is no other cleaning company in either domestic or residential that does this) and I train them to our standards in both cleaning and health and safety.

All of this comes at a price and the main one being that because I am legitimate I have to charge VAT on the service which pushes my prices higher than my competitors and also means that I need to keep my net price as low as possible which also means that margins are low. The vast majority of my competitors operate as agencies and take a fee. They make lots of money. I do not. It means that the black and grey markets can flourish by competing with lower rates to the consumer and higher rates to the worker. Workers' rights and health and safety are completely ignored. It's a precarious contractual arrangement with no legal framework and it is the worker that is exposed. If I had to guess I would say that 90% of households that hire the services of a cleaner, do so in this way.]

Finally, the **Employer** model. This was the business model where employees are part of a social network where working arrangements are governed by what the worker believes is expected of them rather than by employment law.) Here we may be facing cultural and social issues that cover-up the problems. Would licensing , with the associated inspection regime, assist with visibility – and hence compliance with employment law?

As I mentioned in my introduction, **the world of work continues to evolve.**

The government has asked Matthew Taylor to conduct a review of trends in future employment. The government is keen to maintain the UK's reputation for having a flexible labour market. Part of this flexibility relates to the existence of three categories of employment – being employee, worker and self-employed. The rights and obligations as regards each of these categories are different. But flexibility can create opportunities for the unscrupulous employer.

Zero hours contracts have attracted a lot of attention. For some they match their preferred work pattern. For others they amount to persistent uncertainty about income and job security.

With 15% of those working in the UK's labour market now self-employed, there has been a rise in the number of people doing 'gig' work – short-term, casual work that is sought by people through mobile phone apps when they want to work. These roles can include driving, delivering items and DIY tasks. Again – for some it is the ideal employment model. But that's not true for all.

We can be sure that there will be also be new business models potentially seeking to defraud both government revenue and the workers future rights. Matthew Taylor wants to find ways to ensure fair and decent work for all regardless of their status. His review will consider the implications of all new forms of work on worker rights and responsibilities - as well as on employer freedoms and obligations. Paul Broadbent, the GLA's CEO is a member of the panel working with Matthew Taylor. Paul is specifically looking at future risks of labour exploitation. We await Matthew's report, due in July, with interest

And what about **the impact of Brexit** on the risk of exploitation of workers?

The GLA operates two liaison groups to keep in touch with its stakeholders. One is the Labour Provider/Labour User Liaison Group and the other is the Worker/NGO Liaison Group. The latter is chaired by Prof Linda Dickens, one of our Board members, who is with us today. Indeed it was Linda who proposed I give this lecture.

The LP/LU liaison group provides the industry perspective in relation to how GLA licensing is operating; the Worker/NGO group helps us to understand better the experience of workers – notably, workers who experience exploitation. Both liaison groups have flagged to us that, since the Brexit decision, workers in the GLA sector have felt uncertain about their status. They have told us that uncertainty about immigration status will hold workers back from contacting the GLA about possible exploitation issues.

We are being told by our industry stakeholders that uncertainty one of the factors contributing to a shortage of labour in the GLA sector. (Another factor is also the decline in the value of the Pound against the Euro.) Although the Brexit White Paper is clear that for as long as the UK is part of Europe, EU workers will be free to work here, that message has not been universally understood, including amongst employers.

It is welcome that, within the proposals for the Brexit negotiations, both the UK Government and the EU authorities have placed priority in resolving the long term status of EU nationals working abroad.

Whatever these arrangements are, ensuring they are well communicated will be a key factor in reducing the risk of exploitation since uncertainty amongst workers as to their rights will create scope for exploitation, both in the run up to Brexit and under the successor arrangements, whatever they may be.

Thought is being given to some sort of post Brexit successor to the Seasonal Agricultural Workers Scheme. This was the scheme which governed the supply to the UK of labour from Romania and

Bulgaria to agriculture and horticulture prior to these countries' accession to the EU. GLA is keen to ensure that any successor arrangements match GLA licensing standards.

GLA is aware that the present difficulties in sourcing may lead to labour providers looking beyond the EU for their workers. For exploitative employers this may include attempting to source workers who do not have the right to work in the UK currently, and who thus would be prone to exploitation

Many statutory rights of workers have come through EU legislation. Last week concern was expressed by Frances O'Grady (Gen Sec TUC) that a 'Great Repeal Bill' with the use of so called 'Henry VIII powers', will create an environment in which workers rights are less secure by virtue of them being enshrined in secondary rather than primary legislation. I do not believe that the government has any hidden agenda here. But those who seek to exploit workers will take advantage of any loopholes or gaps they can find in successor legislation.

As I mentioned at the start of the lecture **the toolkit has for addressing labour exploitation has been expanded.**

You will all be aware that the Section 54 of the Modern Slavery Act 2015 requires companies to prepare and publish a statement setting out the steps that they have taken during that financial year to ensure that slavery and human trafficking are not taking place:

- anywhere in their supply chains;
- in any part of their own business.

The Act applies to all organisations with a turnover, or group turnover of £36 million or more which are either incorporated in the UK or carry on a business in the UK.

The requirement to publish an anti-slavery statement applies for financial years ending on or after 31 March 2016. The statements are now becoming available.

The rationale is that shareholders and consumers will put pressure on companies to demonstrate that they have systems in place that would detect slavery and that as businesses they will not deal with other businesses that employ slaves. But companies will be compliant with the Modern Slavery Act by making the statement that they do not have any processes to detect slavery in their supply chains. What difference will the Modern Slavery Act provisions make to the non-compliant?

Part of the new tool kit has been the creation of the new post of the Director of Labour Market Enforcement. Professor Sir David Metcalf was appointed on 5 January 2017. He is charged with preparing an assessment of labour exploitation across the entire UK labour market and with preparing strategy that will address the worst excesses. The GLA, the National Minimum Wage Team at HMRC and the Employment Agency standards team at the Department for Business Energy and Industrial Strategy are directed to act in line with the Director's strategy. The three

agencies are being encouraged to work even more closely together. The Director will have an Information Hub into which data from the three enforcement bodies will feed.

I know that David Metcalf is keen to engage with a wide range of stakeholders, most notably those with data and insight that will help inform his strategy. GLAA looks forward to working with him and his team

The Government has also introduced new measures to provide a more coherent framework for identifying and preventing abuses of labour market legislation and to strengthen the enforcement response. This includes powers to apply Labour Market Enforcement Undertakings (LMEUs) and Labour Market Enforcement Orders (LMEOs). These are intended for more serious or persistent offenders where this type of intervention is judged appropriate to prevent further offending. These provisions took effect from 25 November 2016 and can be used by all three agencies

The GLA – has been renamed as the Gangmaster and Labour Abuse Authority. GLAA will have new powers to investigate Modern Slavery Act offences of forced and compulsory labour in any sector. We have been granted powers under the Police and Criminal Evidence Act to gather evidence and interview suspects.

This enhanced investigatory function will seek to protect all workers, regardless of employment status and will not be restricted to temporary workers. (Exiting GLA legislation only applies to temporary workers.)

Funding for the GLAA has been increased from £4.3m in 2015-16 to £4.96m in 2016-17 to £7.775m in 2017-18. On this basis GLAA is in the process of recruiting an additional 55 staff – 40 for the front line and 15 in support of the front line, including additional intelligence gathering posts.

The Immigration Act 2016 allows the Secretary of State, on the advice of the Director of Labour Market Enforcement to ‘Dial up’ or ‘Dial Down’ the scope of GLA licensing. GLA has always argued that licensing helps to prevent labour exploitation and to create a level playing field for business.

Based on the representations that GLA receives from non-GLA sectors, there is, we believe, more of an appetite to introduce licensing in other sectors than the de-regulation enthusiasts believe.

Who needs to be involved if labour exploitation is to become a thing of the past?

GLAA is proactive in working with **business partners**. Two years ago, working with Derby University, we set up the GLA Academy. This provides a training programme to enable businesses to identify labour exploitation, non-compliance with the GLA Licensing Standards, to support businesses fulfil the[r] transparency in the supply chain requirements . Importantly, the training also ensures that any business which identifies issues of labour exploitation knows when and how to report concerns. The courses have all been oversubscribed – which is encouraging. The widespread engagement with the ‘Stronger Together’ initiative is also very good news

Clearly **worker representation** is a key part of the toolkit in preventing labour exploitation. Trade unions have achieved a great deal in terms of creating and preserving workers' rights. However, within the GLA sector – and I would guess within the other sectors which we have flagged as high risk – union membership is low. Major construction sites will have recognised unions with whom they deal, but the same will not be true if a row of rundown ex-council houses is being refurbished.

Can established communication routes amongst unionised workers be used to get information across to a wider range of workers? How do we reach the less visible workers?

GLAA will be keen to continue to do all it can to prevent labour exploitation by ensuring that **workers are well informed of their rights**.

What might be the role for **NGOs** – and for **faith groups**? Many have distinguished records when it comes to looking after victims. But how can they help to prevent the victimisation in the first place?

Is there a role for **schools** so that young people enter the world of work knowing what good employment terms look like?

As **regulators** we need to be more joined up and work smarter. For example, CQC measures the quality of care in care homes but has no role as regards the workers. Of course well treated workers will promote quality care – so how might regulators, working more closely together, help to prevent labour exploitation?

But regulators can only achieve so much.

Enforcement, targeted at the worst offenders, has to be the iron fist behind the velvet glove. GLAA works closely with the police and the National Crime Agency – with the Independent Anti-Slavery Commissioner.

The unholy alliance between the customer who wants cheap products and those who deliver bargain basement prices while making money out of exploiting workers is a difficult one to crack. Rana Plaza manufactured clothes for a number of leading UK high street brands.

Can **customer power** be part of the toolkit in rooting out labour exploitation?

Do those who purchase cheap clothes, cheap food, cheap services really care whether workers are being exploited to deliver the goods?

Being a responsible consumer is not easy. All of us, as customers end up making trade-offs. Shopping on line saves time and money. Should we ask more questions as to why?

If national brand outlet X offers an “ethical” option, should we go there for our shopping – possibly at the expense of supporting the local high street shop which might be silent on its supply chain?

Sometimes there are no easy answers, even for the responsible shopper. But a good rule of thumb might be 'If it looks too good to be true, then there's likely to be something wrong'.

And what about **shareholder power**? We are familiar with the Board room agitation when a specific case of labour exploitation in the supply chain of a big brand name comes to light. But eradication of labour exploitation has to be proactive – part of the company DNA - and not just the territory of the Corporate Social Responsibility Department. Is that the signal being given to companies by their major investors?

The challenge of preventing labour exploitation is substantial and difficult.

We at GLAA are positive and optimistic that the GLAA - with its enhanced powers of investigations - and its extra budget - working ***in partnership*** will continue to punch above its weight and make a real difference.