Hard Work, Hidden Lives

The Full Report of the Commission on Vulnerable Employment
“I always call them the hidden workforce... They’re never working on the counter or the till. They’re always in cleaning, distribution, manufacturing jobs where the public don’t see them... hotels, food preparation... I call them the silent workforce.”

(Trade union organiser)

“I finished my job before 4.30 and I went to the agency office and sat there and I said to the manager I am waiting for my money now. Manager said this is not possible. I said I need money. I am working every day, 12 hours one day and I don’t have money for rent, food. I need money. My last salary was 2–3 weeks ago. Manager called security, security said get out.”

(Food processing agency worker)

“I had better experiences in Bosnia during the war than here... Here, I had great expectations, but I have only been mistreated.”

(Poultry factory worker)

Acknowledgements

We would like to thank all the organisations and individuals who provided us with evidence during our investigations. We give our particular thanks to the workers who allowed their stories to be told.

Our short report is also available to download from www.vulnerableworkers.org.uk

Cover photo: Paul Carter
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To see our short report go to [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.uk)
This is the full report of the Commission on Vulnerable Employment. It is based on testimony from vulnerable workers, oral evidence, statistical analysis and written submissions from academics, employment rights professionals and experts in the field. Its conclusions and recommendations were reached through deliberation by Commission members and represent the views of the group rather than opinions of any individual Commission members or the organisations they represent. All Commissioners served in a personal capacity, and not on behalf of any organisation with which they may be associated.

Both our short and full reports are available to download at www.vulnerableworkers.org.uk.

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I suggested the TUC set up this Commission for two quite distinct reasons.

Unions have always known that a small minority of workplaces treat workers very badly, but there was a sense that this was on the increase. This was reinforced by some shocking media exposures of exploitation, usually involving migrant workers.

So the first task was to try to get an accurate picture of exploitation in today’s workforce. How many vulnerable workers are there? What does it mean to be a vulnerable worker? How do workers become vulnerable? Why don’t our current laws protect workers from the worst exploitation? Is the problem getting worse?

But knowing the answers to these questions does nothing to make the lives of vulnerable workers any better. To do this we need both policies that will end the worst types of exploitation and the will to get those solutions implemented.

The big problem is that the debate about workplace rights has become sterile. If government does anything to extend rights it is instantly accused of being anti-business and old Labour. A big proportion of employers have nothing to fear – and much to gain – from a crackdown on the small minority who undercut the responsible majority by breaking the law, or are using loopholes to get round it. But this does not stop any advances automatically being denounced as red tape.

So the second reason to set up a Commission was to cut through this ritualised debate. My hope was that a body that involved successful business people and independent experts as well as trade unionists, and that only made recommendations after carefully gathering evidence and commissioning new research, could start a new conversation that recognised we have a problem that needs a solution.

And while the role of government is crucial, they are not the only people who can help end vulnerable work.
Unions have also been asked some hard questions by Commissioners, and although there is much good practice, unions could clearly do more. Responsible employers who are already interested in ethical trade want to ensure their supply chains do not rely on exploitation, whether they end here or abroad. Consumer power can also hold companies to account.

All the Commissioners, whatever their background, have been shocked by some of the stories we have heard. I know that the vast majority of business people that I meet will be as angry and as upset as any trade unionist by the shocking case studies we document. And we have the evidence that shows they are far from exceptional. Anyone who believes in the rule of law will be astonished at the open lawlessness we reveal.

The intolerably poor working lives that too many endure in today’s Britain should be a spur to action. But to achieve this we will need a change in the terms of debate from employers, unions and government. Employers need to understand that the recommendations we make here will not harm our competitive position in the world economy. They are not designed to be anti-business but protect those who play by the rules from being sucked into a race to the bottom. We are not calling for a return to old-style regulation, but decent minimum standards effectively enforced in a way that targets bad employers and does not waste time bothering the good. While we range widely, our recommendations are both fairly modest in scope and based on what works in other successful economies, tailored where necessary to the British experience. And we want both employer and union voices in the Fair Employment Commission which we recommend here.

Unions cannot be complacent. Even in organised workplaces, it is often the permanent staff who are in the union, while the vulnerable, sometimes temporary workforce are ignored. Other workplaces have simply never heard from a union. And we have to learn that winning new legal rights is not enough unless we also help make them a reality and build practical enforcement into our proposals.

The Government also has much to do, and must start by rejecting a framework that defines any action on this agenda as anti-business red tape. Government rightly emphasises the role of work in escaping poverty and social exclusion. The end of mass unemployment is a great social advance. But replacing the hopelessness of the dole queue with the misery of dead-end lives trapped in insecure, low-paid, low-skilled jobs should be just as much a target for progressive political action.

Without an end to vulnerable work, the Government will fail to meet its wider targets. Vulnerable employment does not allow workers to escape from poverty. The rise of the working poor is striking. Benefits alone will not end child poverty – parents need good jobs.

Vulnerable work also makes people ill. If the Government wants to prevent disease as well as treat it, then it must act on vulnerable work.

Migration is clearly a difficult issue for politicians. There is voter concern that it has caused unemployment and driven down wages. While these effects may have been exaggerated, the recent increase in migrant workers has brought the hidden world of vulnerable work into the daylight.

But it is the weak position of migrant workers that has made them vulnerable. If you increase the supply of vulnerable workers then the unscrupulous will come along to exploit them. So the worst way to respond to concern about migration is to further reduce migrant workers’ rights. That will simply cause an even greater downwards pressure on standards.

Hyperbole and cliché are so common in today’s political debate that it is hard to find the right words to express how strongly Commission members feel about the injustices we have uncovered and the urgency of action to tackle them. Please read what we have to say, and more importantly, join our campaign for action.

Lastly I would like to thank all the Commissioners for giving up their valuable time and help to give this report real authority. And I should place on the record the thanks of Commission members to all the TUC staff who have helped their work. In particular Nicola Smith has worked full time (and more) to organise our meetings and regional visits; commission and collate research; and to draft this report. Without her efforts this would be a far less authoritative piece of work.

Brendan Barber
The Commission on Vulnerable Employment estimate that around two million workers in the UK find themselves in vulnerable employment – which we define as precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship.

There are many and complex reasons for vulnerable work. Much exploitative treatment of vulnerable workers occurs because the law is not strong enough to prevent mistreatment, with employers using gaps in employment protection to treat staff badly. The result is extreme insecurity for workers who do not have contracts of employment, work through agencies, or who have reduced rights because of their immigration status.

But many employers of vulnerable workers do also break the law, exploiting the powerlessness of their workers and the lack of effective enforcement of employment rights. Enforcement agencies do not have enough resources to guarantee employment rights and do not work well together. In certain low-paid sectors, including care, cleaning, hospitality, security and construction our evidence shows that some employers routinely break the law.

While there have been welcome improvements in employment protection in recent years, the persistence of vulnerable work means we now have a two-tier labour market in the UK. This is particularly troubling given that international experience, supported by OECD analysis, shows that economies can combine competitive success with proper protection for vulnerable workers.

Our short report (also available online at www.vulnerableworkers.org.uk) highlights our key findings and recommendations. In this full report we set out our analysis and proposals in full for how we believe trade unions, employers, civil society and government should act to challenge vulnerable employment.
Key recommendations

**Improved awareness and advice**

Vulnerable workers have little knowledge of their rights and find it hard to get advice. This is unsurprising as government does little to publicise employment rights while advice and legal agencies are under-resourced, creating employment rights ‘advice deserts’ in parts of the UK.

1. **Immediate action needs to be taken to improve employment rights awareness.** There should be a continuous national campaign, backed by government and involving civil society, employers, and trade unions, to increase awareness of employment rights across the workforce, but particularly among vulnerable workers.

2. **Vulnerable workers should have access to advice.** This requires more resources for agencies and other bodies working with vulnerable workers. Local authorities should have a statutory duty to fund employment rights advice services. In addition, the impact that legal aid reform has had on the availability of advice for vulnerable workers should be urgently reviewed.

**Better enforcement of employment rights**

Many employers and employment agencies making use of vulnerable workers regularly flout the law and get away with it. Employment tribunals (ETs) can be costly and intimidating places, especially for vulnerable workers. The agencies that enforce specific employment rights employ committed staff but are under-resourced, do not have sufficient powers and do not work together, although the Gangmasters Licensing Authority (GLA) has made an impressive start.

3. **Better enforcement of employment rights should be led from the top.** The Government should establish a new Fair Employment Commission to provide strategic leadership for co-ordinated employment rights enforcement and to advise on wider policy to challenge vulnerable employment.

4. **When laws are broken, rights should be effectively enforced.** Workers who do not receive their wages, who are not provided with paid holiday or sickness leave or are refused their legal entitlements to maternity or paternity pay should have recourse to a simple, effective and timely way to enforce their rights. All statutory rights that involve only questions of fact and monetary-based claims should be enforced by a state agency, as well as by employment tribunals. Much closer working between enforcement agencies is also essential if vulnerable employment is to be tackled effectively.

5. **Tighter regulation is needed of the sectors and businesses where risks are greatest.** The GLA has demonstrated that it can effectively enforce standards in its sector and their approach could be applied to other sectors where vulnerable workers are exploited. A clear, nationally agreed set of standards should be established for employment businesses/agencies providing temporary labour, which needs to be closely monitored. The Government should be prepared to extend the GLA licensing regime – a proposal which responsible agencies back – to cover sectors characterised by vulnerable employment. The aim would be to ensure that an employer seriously exploiting workers and undercutting reputable companies would lose their licence to trade.

**Better regulatory and legal protection for vulnerable workers**

Many vulnerable workers suffer because they do not legally count as ‘employees’ with a contract of employment. Those considered simply as ‘workers’ or who have been forced into bogus self-employment not only have few rights, but lack any security, meaning that employers can sack them if they complain. Working through an agency can also create similar uncertainty and precariousness at work. Immigration status is complex and can act to make workers more vulnerable by making them entirely dependent on their employers.

6. **The unequal treatment of agency workers must end.** There should be a legal guarantee of equal treatment between agency workers and directly employed staff undertaking the same work.
7. **It is wrong that ‘workers’ and the bogus self-employed should be denied the legal protections enjoyed by ‘employees’ – employment rights in the UK are assigned using a complicated and outdated system that requires review.** This urgent review should examine employment status rules in order to improve the rights and protections available to ‘workers’ (as opposed to ‘employees’), including recognition of the exploitation caused by bogus self-employment.

8. **Many migrant workers are forced into vulnerable employment by immigration regulations.** Across the immigration system regulations relating to low-paid migrant workers should be reviewed, with specific consideration given to areas where their impact leads to a higher risk of exploitation.

**Improved union organisation of vulnerable workers**

Trade unions have not organised the majority of vulnerable workers. In the formal economy around 25 per cent of those in vulnerable employment have a union presence in their workplace, but are not themselves union members. It is time for unions to take coordinated, national action to organise and recruit vulnerable workers – and to act to increase membership not just among directly employed staff, but also the employees of contractors and workers who are supplied by employment agencies.

9. **Unions must act to ensure they represent the interests of vulnerable workers.** Unions should organise all workers in workplaces where there is a union presence, whoever employs them and whether their employment is direct or temporary. Unions should also focus on areas of the economy where exploitation is rife and where trade union membership is low. Trade unions should commit to a TUC co-ordinated drive to boost membership among vulnerable workers.

**Guaranteeing rights down the supply chain**

Our research shows that over 80 per cent of employers now subcontract parts of their business. As supply chains become longer, enforcement of rights becomes more complex and responsibilities more ambiguous. Employers in the private sector and public bodies can do more to ensure that their supply chains do not support vulnerable work. Consumers should be able to hold employers to account.

10. **Responsible employers should work together to challenge vulnerable employment.** Unions and employers should work together to develop an ethical employment initiative, involving existing organisations that provide support with corporate social responsibility and building on good practice to develop supply chain standards aiming to challenge vulnerable employment in the UK; and Government and other public bodies should use procurement to improve employment standards.
Commissioners’ introduction

This report exposes a hidden Britain. It shows that employment practices attacked as exploitative in the nineteenth century are still common today. It reveals that vulnerable work is not inevitable, and that women, people from black and ethnic minority groups and disabled people are more likely to suffer its consequences. Around two million workers are trapped in a continual round of low-paid and insecure work where mistreatment is the norm. People providing the services on which our society and economy rely can therefore find themselves without the most basic standards of fair treatment in the workplace. We find this intolerable.

Our analysis was shaped by evidence from academics, politicians, employers, enforcement agencies and civil society groups. We commissioned new research, ran an extensive public consultation and gathered testimony from both vulnerable workers and their advocates. Throughout our report we have also highlighted case studies of workers who have experienced vulnerable employment – and they have shared their stories with us to highlight not only their own experiences but those of their many colleagues. We thank all who contributed; their evidence has helped to make this a thorough and wide-ranging investigation into vulnerable employment in the UK.

While we expected to find poor treatment, its extent has stunned us all. Worst of all, much of it took place within a legal framework that fails to prevent exploitation. We have met production-line agency staff working long days and nights for less pay than permanent colleagues. Homeworkers have told us about lifetimes of poverty, being paid less than £1 per item of clothing they sewed, and receiving no paid holiday or sickness leave. We have heard from construction workers who had been injured at work but were not entitled to welfare protection or sick pay because of their contractual and immigration status. Office cleaners on casual contracts told us that they had no choice but to keep working when they were ill, as they could neither afford to lose a day’s pay nor risk the sack.
But employers also break the law with impunity. Every day in cities, towns and villages illegal treatment goes unchallenged. Wherever we went we found it remarkably easy to find people who had experienced the most shocking injustice. We met workers who had spent 70-hour weeks on around £2 an hour, and had been sacked immediately they challenged their employer; hotel chambermaids who had to be available to work from 8am, but who were not paid for the extra hours if rooms were vacated in late morning; migrant domestic workers who had been beaten or sexually assaulted, but lived in too much fear of deportation to report these serious crimes; and security guards who had worked for months but had never been paid.

If vulnerable employment is to end, loopholes in the laws that are meant to protect workers must be closed. The lack of legal protection sends the message that treating workers unfairly and unequally is acceptable. But resolving these deficiencies in the law is only part of the answer. There needs to be far greater awareness of rights at work. Workers who suffer illegal treatment should have access to effective, coordinated enforcement. We want to see better opportunities to progress from low-paid and insecure jobs. We also call on unions themselves to do much more to assist vulnerable workers. We want to see consumers – already keen to support fair trade and environmental sustainability abroad – apply pressure to ensure that fair employment practices start in the UK and go right through supply chains, whether they end here or overseas.

Our report looks at why vulnerable work exists today, and recommends practical and policy solutions that can help to end such exploitation. We are certain that change is needed - and is possible. While some jobs will always be paid less than others, this does not mean that workers doing them should not expect decency and respect. We reject the argument that vulnerable employment is a price that has to be paid for national prosperity; our evidence shows it is possible to build a successful economy without a hidden army of vulnerable workers.

We will be monitoring the progress of our work. We make a formal request to the TUC General Council that they take ownership of our recommendations, and act to follow up on their implementation. As a Commission we have also agreed to meet again in May 2009 to reflect upon progress towards our key calls for action.

We take an unashamed moral stand. The endemic poor treatment that we have found should not be tolerated. Not just government, but trade unions, employers, civil society groups and citizens as both voters and consumers must take every opportunity to challenge vulnerable employment. Progress has been made and we pay tribute to all those who are making a difference. But unless we all accept the challenge many vulnerable workers will continue to suffer. It is up to all of us to act.
Chapter 1

Defining vulnerable employment

In this chapter we explain our definition of vulnerable employment, and provide an overview of the experiences of vulnerable workers in the UK. We also consider the social and economic context in which vulnerable employment has developed, and show how changed approaches to employment rights protection have influenced its existence. We conclude by considering the limitations of existing government approaches to tackling vulnerable employment, and by setting out the economic and moral case for taking action.

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Julie’s story

Julie has done a variety of jobs in her 54 years. After leaving school with no qualifications she worked in a shop and then a couple of factories. After the birth of her first child, Julie stayed at home to look after her child for a while, before working as a school dinner supervisor and then for Meals on Wheels. Julie had to stop this work to care for her second child, who has learning difficulties. When Julie found out about homeworking opportunities through a neighbour, it seemed to represent a way to work and contribute to the household income while still being able to look after her daughter. She worked as a homeworker for the next 20 years.

Julie’s main home-working job was making crackers. This involved lots of paper, card and glue and having to store boxes before collection, which, Julie reports, left the house in a near constant mess. Although the glue and ‘snaps’ were a health and safety risk, there was no health and safety information or training. Pay was a cash-in-hand piece-rate of £35–40 per cracker ‘kit’. Kits contained 1,800 crackers and each took around 40 hours to make, giving a pay rate of under £1 per hour. A system of ‘quality controls’ also meant a kit could be rejected with no pay: “If you don’t get it perfect you don’t get your pay.” There was no sick pay, holiday pay, maternity pay or pension contribution; there were no pay slips or written contract. The work was also insecure and irregular: “You never knew if you would have work in every week. You could have rush orders. They could turn up and say, ‘can you do these and we’ll pick them up in the morning?’, and the following week you’d have no work... You couldn’t plan anything.”

Julie says the job put her under significant strain and pressure. Kits had to be made by the time the van came round every week or you did not get paid and Julie constantly had to juggle her other commitments in order to get the work done in time. She says that she often ended up working until 2 or 3 in the morning the night before and conscripting her husband and daughter to help her; she also worked through illness. She told us: “I am so annoyed they are ripping the homeworkers off. They work harder than in a factory. When you work in a factory you clock off and come home and forget about it. A home-worker can’t. You have to carry on.”

All of this sometimes caused tension in the household: “If you’re under pressure and the family wanted to go somewhere and I had the work to do there would be tension there. It would get on top of me if the house was in a mess.” Because her husband was in work, Julie was not entirely dependent on her income from the job, but she knows of others, including her daughter, who did rely on their homeworker wages: “My daughter’s done crackers and relied on it. Husband in the army, had a small child, couldn’t go out to work.” She says that many of these people were claiming benefits at the same time as working to make ends meet.

Julie was entirely unaware of her employment rights until she saw a piece in a newspaper on the national minimum wage (NMW). This prompted her to contact the National Minimum Wage enforcement body and, through it, the National Group on Homeworking (NGH). With NGH’s support Julie reported her case and confronted her manager. Under pressure, the employer brought in a ‘fair estimate agreement’. However, the 12½ hours per kit stated was so far off a fair estimate that Julie refused to sign. Julie is disappointed that nothing came of her reporting the company to the Minimum Wage Enforcement Unit: “I put my head on the block for these people and the minimum wage people let me down badly.” However, with the support of NGH she also put forward a tribunal claim and, after a year, was finally given a hearing. The firm settled out of court.

(We were introduced to Julie through the National Group on Homeworking)
Vulnerable work is insecure, low-paid and places workers at high risk of employment rights abuse. Its existence is not inevitable; it is a result of choices made by political and economic decision-makers.

Women, people from minority ethnic groups and disabled people are more likely to be in vulnerable work.

Vulnerable employment does not always involve illegal treatment. For many the unfair and indecent treatment they receive remains lawful.

Workers in vulnerable work are more likely to become ill.

If vulnerable work was a step along a road leading to better and more secure work, then it might have a role – but those in vulnerable work are unlikely to leave it.

Vulnerable employment does not exist in isolation; it is a product of existing social and economic inequalities and the UK’s approach to labour market regulation.

Both employment law and effective trade unions can protect against some aspects of vulnerable employment.

While New Labour has introduced some new legal protections, the UK’s economy remains the 2nd least protected in the economically developed world. Vulnerable workers are also unlikely to have trade union protection.

Where new rights have been introduced, less thought has been given to how they should be enforced and there has been a marked reluctance to use collective representation to guarantee them.

Significant gaps in protections remain – the biggest way in which workers lose rights it through being denied the legal status of an employee. This means they have far fewer rights, and no employment security.

It is impossible to measure vulnerable employment – however our work suggests around 2 million workers are at high risk of being in such exploitative jobs.

We can afford to challenge vulnerable employment – there are economic benefits to improved employment protection, and poor treatment of workers is not a prerequisite for a successful, flexible economy.

An increased government focus upon welfare to work has contained limited acknowledgement of the existence of vulnerable employment, and therefore risks exacerbating it.

The Government cannot meet its targets on social inclusion, health, employment skills and child poverty and tolerate widespread vulnerable employment.

Since the launch of our Commission, there has been some government action on vulnerable work. However, Government’s definition of the problem is too limited. It fails to capture the daily insecurity and fear of those in the lowest paid and most temporary jobs, and limits the required policy responses. Government must do more to recognise and support workers at risk of vulnerable employment.
Defining vulnerable employment

Through our investigations we have come to define vulnerable employment² as: “Precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship”. Vulnerable workers are those who undertake vulnerable employment.

A range of factors affects on the power imbalance between workers and employers, including: workers’ legal rights; their terms and conditions of employment; and their personal characteristics.

Vulnerable work is insecure and low paid, placing workers at high risk of employment rights abuse. It holds very little chance of progression and few opportunities for collective action to improve conditions. Those already facing the greatest disadvantage are more likely to be in such jobs, and less likely to be able to move out of them. Vulnerable employment also places workers at greater risk of experiencing problems and mistreatment at work, though fear of dismissal by those in low-paid sectors with high levels of temporary work means they are often unable to take any action to challenge it;³ analysis undertaken by the Legal Services Commission has shown that many people believe that nothing can be done about employment problems, and that workers are often too frightened to take action about them.⁴

However, its existence is not inevitable. All advanced economies have lower skill and lower paid jobs, but the experiences of those who do them varies greatly. For example, OECD research shows that workers with similar levels of qualifications face vastly different chances of low pay depending on their country of residence⁵. How vulnerable such work should be depends on choices made by political and economic decision makers.

Those who are already facing labour market disadvantage are at the greatest risk of mistreatment. In a study funded by the Department for Business, Enterprise and Regulatory Reform (BERR) of workers whose employment rights had been abused,⁶ those who approached Citizens Advise Bureaux for advice were slightly more likely to be female than male, significantly more likely to be disabled, and more likely than the general population to be from an minority ethnic group and to have been born outside the UK. The great majority were employed in small workplaces and were in low-paid, low-skilled work.⁷ Evidence looking at the experiences of particular population groups also highlights increased risks of vulnerable work. For example, a recent survey of young workers⁸ found that 17 per cent said that they or their colleagues had experience of unsafe working practices, and 22 per cent had had their wages docked because they were ill. The YWCA has also highlighted to our Commission that young female apprentices are at high risk of being paid less than their legal entitlement, and in their submission to us the Muslim Council of Great Britain highlighted the overt discrimination and increased risk of bad workplace practice faced by many Muslim workers. The RNIB and the Employers’ Forum on Disability also made specific submissions highlighting the increased risks faced by disabled people in the workplace.

Workers in certain sectors are also at greater risk. Our research⁹ shows that problems at work are experienced across all sectors of employment. However, problems are particularly common in certain sectors of work, with care homes, clearing, hotels and restaurants, hairdressing and beauty and security the sectors in which advisers most commonly indicated that problems were present. For example, 84 per cent of advisers said that dismissal problems were present in care homes, and 79 per cent of advisers said that problems with pay were present in cleaning companies. For pay, dismissal and working time over 70 per cent of advisers said that each problem was present in care homes, cleaning companies and hotels and restaurants.

Bullying and harassment can be daily feature of working life for vulnerable workers. The Department of Trade and Industry’s (DTI’s) Fair Treatment at Work Survey found that 6.9 per cent of all workers had personally experienced unfair treatment, bullying or sexual
harassment at work over the last two years. Those already facing disadvantage are more susceptible: for example, people with a disability or long-term illness were twice as likely (15.1 per cent) as others to have experienced unfair treatment at work, as were gay, lesbian and bisexual workers (13.8 per cent) and those from minority ethnic groups (for example, 12.5 per cent for black workers and 8 per cent for Asian workers). Women were more likely to have experienced unfair treatment than men (7.3 per cent compared to 6.6 per cent). Risks are greater still for vulnerable workers. During our research it was made clear to us that: “...in a lot of these temporary manual areas of work it isn’t about pay and bad treatment, it’s about violence”. (Employment rights professional)

Importantly, vulnerable employment does not always involve illegal treatment. For some, the unfair and indecent treatment they receive remains legally permissible. Temporary agency workers can legally be paid less than directly employed permanent workers undertaking the same job, and seldom have the same rights as their co-workers to sick pay, paid holidays or pension contributions. The ‘bogus self-employed’ do not work with autonomy, but are denied the most basic protections made available to other workers; and casual and seasonal staff often find themselves living with daily insecurity, in addition to reduced employment rights. Workers in the informal economy have barely any legal protections, and for many migrant workers the restrictions placed on their labour market flexibility, and their limited entitlements to out of work welfare benefit protections, combine to place them in vulnerable employment.

Vulnerable employment makes people ill – it has negative effects on people’s health and personal relationships. Large-scale studies have shown that self-reported job insecurity is associated with poorer health, and that poor interpersonal relations between workers and employers are associated with increases in sickness leave. In the UK, analysis of the British Household Panel Survey has shown that healthy women and men suffer adverse health effects in insecure low-paid work. Overall, people facing less autonomy, low earnings and insecurity at work were two and a half times more likely than those in better-paid, more secure jobs to develop an illness limiting their capacity to work. A recent government review of the health of work working age population has similarly found that where work is insecure, monotonous and repetitive people are more likely to have ill health. There are also consequences for mental health and personal relationships. The recent BERR-funded survey of low-paid and low-skilled workers who had experienced problems at work documented the range of negative effects of mistreatment. The study highlighted the “very real damage done to individuals’ mental and physical health, to their relationships with family, friends and others, and to their future employment prospects”. Many clients had become unemployed as a result of their experience; and financial loss or difficulty, often leading to debt, had been experienced by 52 per cent of the clients. Also, 64 per cent had experienced some kind of health problem, including anxiety, stress or depression.

If vulnerable work was a step along a road leading to better and more secure work, then it might have a role – but those in vulnerable work are unlikely to leave it. In 1999 the Treasury identified that for some workers in the UK there is a ‘low pay, no pay’ cycle, in which workers move between low-paid temporary jobs and unemployment. Their research, involving analysis of the British Household Panel Survey, showed that people in low-paid work are more likely to be out of work in the future, and that those who move out of low-paid work to unemployment are more likely to be low paid on re-entry, concluding that: “the hypothesis that low paid jobs act as stepping stones to higher paid jobs is not supported by the data... low paid jobs are more likely to act as blind alleys than as stepping stones to positions higher up the pay distribution”. The New Earnings Survey documents similar outcomes, concluding that “individuals placed in poorly paid entry jobs with little prospects are unlikely to progress on from these,” and that those without qualifications and basic skills find it hardest to find sustained work.

More recent studies show that these trends still exist. For example, in 2007 research undertaken for the Low Pay Commission found that while many workers progress from minimum wage work, a large group do not move into better jobs (with women at higher risk of persistent low pay than men), and there is strong longitudinal research to show that temporary work does not lead to better jobs for low-paid workers.

We believe that there is no reason that vulnerable employment should exist in a modern economy, and that the extremely poor treatment experienced by Britain’s vulnerable workers creates a clear moral case for action.
Following two years serving in the British Army, John found a job as a street cleaner for a local authority. The council used a mix of permanent and agency workers for their street-cleaning operation. John had been recruited through one of the two agencies that had offices on site at the council premises, and afterwards discovered that he was on significantly less pay and worse conditions than directly employed colleagues: minimum wage pay, no employer sick pay and no fixed number of working hours. Moreover, for the first three or four months, John would sometimes have only two days work for what he had been led to believe was a full-time job. John and his agency colleagues received no training and had to pay for the mandatory personal protective equipment (PPE) from direct wage deductions (including £20 for boots).

An average day for John would involve turning up at the employer’s premises at 5am and waiting around for about an hour to see if he would be selected for ‘rounds’ with permanent workers. If not selected he would have to wait until around 8am in case needed. If not needed, he would be sent home without pay. In John’s first two months this happened regularly and he was able to secure regular selection only by showing up consistently during that time. John found that agency workers who took days off as holiday would be put to the back of the queue for selection. He says that this was used to discourage workers from taking time off – effectively barring them from taking any holidays. Despite never taking any leave, John received no accrued holiday pay from his agency.

The experience of standing in a line and being sent home in favour of his peers was humiliating. John told us: “The job wasn’t that bad and the people that you worked with weren’t that bad but it was just the terms and conditions were poor and you had to stand there and be demoralised in front of other lads the same age as you... It did nothing for your confidence.”

Because of the low rate of pay and irregular hours, John had to take a second job as a part-time cleaner in order to pay his rent and bills, which meant that some weeks he worked over 70 hours. The long and irregular hours gave John no time for a social life through the week and not much at weekends since he needed the time off just to recover. There was also financial strain and uncertainty: John was highly conscious that he could be refused work at any point and, even with two jobs, was worried that he would not make enough to cover basic living costs. In fact, John now says that he might not have managed had he not received occasional financial support from his parents.

John says he was both conscious of, and frustrated by, the poor and unequal pay and conditions and that this prompted him to get involved in a trade union that had begun organising among the workforce. The day after attending a strike, John was called into the agency office and told that he was no longer required. The job was reinstated after union intervention, but John has now moved on – becoming increasingly active in the trade union.

Under union pressure the council has changed its policy, and now uses agency workers only as cover for short-term absence and, John reports, many agency workers have been taken on permanently.

(We met with John through his union)
Vulnerable employment does not exist in isolation; it is a product of existing social and economic inequalities and the UK’s approaches to labour market regulation.

Over recent decades our economy has grown substantially. The last 10 years has seen employment rates rise to the point where around 75 per cent of the working-age population is in paid work. However, significant inequalities remain; there is, for example, a 14 per cent gap between the overall employment rate and that of minority ethnic groups and in their submission to us the Equality and Human Rights Commission (EHRC) noted: “ethnic disadvantage in the labour market is so well established as to be predictable”. Similarly, there is a 27 per cent gap for people with disabilities and employment rates among those with the lowest skills are only just above 50 per cent.20

The jobs available in the UK are changing. Global competition has meant that a highly skilled, functionally flexible workforce is increasingly essential for economic success. While demand for low-skilled jobs remains, these jobs are increasingly found in service sector work, including hospitality and personal services. Some have suggested that these changes show that jobs are polarising.21

More workers are employed by small businesses than ever before. Just over 40 per cent of the workforce is now employed in a business that employs 99 workers or fewer (a 4 per cent rise from 1997), around 8,006,000 workers in total.22

In part, these increases result from the increasing length of corporate supply chains, with employers in the public and private sectors contracting out previously core business functions.

Our research shows that nationally 84 per cent of employers report using contractors, and that of this group 14 per cent report that contractors are undertaking work previously done by employees. Reasons employers give for changing from employees 13 to contractors include improved services, costs savings and greater flexibility.

The number of employment agencies in the UK is likely to be rising, and the UK also has the most fragmented agency labour market in Europe. As a proportion of all temporary work, agency work is showing steep increases, comprising 17.1 per cent of all temporary work in Autumn 2007 compared to 13 per cent in 1997.24 The European Foundation estimates that in 1998 the top five agencies controlled between 75 per cent and 80 per cent of the market in France, Belgium and the Netherlands, compared with only 16 per cent in the UK.25 We also have the highest agency work penetration rate (defined as the average daily number of agency workers as a percentage of total employment) – 4.3 per cent in 2006, compared to 2.1 per cent in the USA and the Netherlands, 1.3 per cent in Ireland and 0.9 per cent in Germany.26

The informal ‘cash in hand’ economy in the UK is thriving. While the Treasury’s Grabiner Report found that it is impossible to precisely estimate its size, it did conclude that informal economic activity (including both cash in hand work and undeclared profits) is likely to involve billions of pounds.27 The report found that, typically, businesses in the informal economy tend to be low-wage and labour intensive, often with a seasonal or irregular element to their work. It also noted the negative effects of informal work, highlighting that when workers lose access to employment rights and social protection that everyone suffers not just from unpaid tax, but the drag on the economy of inefficient low quality work.

The rate at which migrants are employed in the UK has risen steadily since 1997. Recent analysis shows that in the UK the overall economic impact of immigration is limited but positive. Migrant workers contribute more in taxes than they receive in services, and migration is likely to lead to slightly higher levels of employment and wages for local workers;28 government evidence has recently estimated that new
migration has added about £6 billion to economic growth, around one-sixth of total growth in the UK economy during 2006. Increased migration has not, however, been without difficulties. There is good reason to believe that local problems in delivering public services can arise when authorities fail to anticipate the arrival of significant numbers of migrant workers and their families, and a negative effect on the distribution of jobs and wages is a risk in specific sectors of the economy. The Treasury, generally very positive about migration, recognises that there may be "costs which may fall particularly heavily on those least well equipped to cope". This highlights the need to ensure that the economic benefits of migration are fairly shared, and that vulnerable workers do not lose out while the majority gains.

Although the female employment rate is the highest it has ever been, the full-time gender pay gap is persistently high, with women being paid 17.2 per cent less than men, one of the largest pay gaps in Europe. Patterns of part-time work are strongly gendered, with women four times more likely than men to undertake part-time work. Around 40 per cent of working women, and the majority of working mothers (around 58 per cent of all mothers, and 64 per cent of mothers with children aged 0–4) are in part-time work, compared to around 9 per cent of men. Women who are carers are also more likely than men who are carers to be in part-time work (46 per cent compared to 11 per cent). For women working part-time the pay gap increases to around 35.6 per cent. These women therefore earn around 60 per cent of the average hourly earnings of men working full time — a trend that has shown little change since the mid-1970s.

Working time also shows strong trends by gender. While women remain responsible for more unpaid work, including childcare, other caring commitments and housework, men in the UK continue to work extremely long hours. The proportion of women doing unpaid overtime drops from 24.2 per cent to 17 per cent when they have children: for men who are fathers the proportion doing unpaid overtime remains relatively unchanged, dropping only slightly from 22.6 per cent to 21.7 per cent. 57 per cent of working women have some kind of flexible working arrangement, compared to 23 per cent of men.

Low income in work is all too common in modern-day Britain. In 1977, 12 per cent of workers earned less than two-thirds of the median; this had risen to 21 per cent by 1998. By April 2006, more than one-fifth (23 per cent) of all UK workers – 5.3 million people – were paid less than this amount (£6.67 an hour). Nearly two-thirds (60 per cent) of low-paid workers are women, and over two-fifths of low-paid workers in total are women working part time. Over half of women working part time in low-paid jobs are ‘working below their potential’, not using their skills and experience or their qualifications in their jobs. This places women at much greater risk of cycling between low-paid jobs without opportunities for labour market progression. Disabled people are also at greater risk of being in low-paid work, being 10 per cent more likely than working people without such a condition to be in low-paid jobs. Ethnicity and age are also important factors: Bangladeshi, Pakistani and black African people are the ethnic groups most likely to be low paid, and young people are also more likely than others to experience such low wages.

Analysis undertaken by the Low Pay Commission further documents these trends, highlighting that groups including women, people from minority ethnic groups, young people and people with disabilities are more likely than the general population to be paid the minimum wage rate. In April 2007, 64 per cent of minimum wage jobs were held by women and 61 per cent were part time. Minimum wage jobs are also more common in smaller organisations, with 10 per cent of posts in micro firms (1–9 workers) and 7 per cent in small firms (10–49 workers) paying the minimum wage, compared to 4 per cent in large companies. Sectors with the highest proportions of minimum-wage jobs are female-dominated: retail, hospitality, social care, hairdressing and cleaning; and temporary or casual jobs are more likely to pay the minimum wage than permanent posts.

The association between being in low-paid work and living in a household on a low income is all too common in modern-day Britain. Over the last decade, the proportion of households in poverty in which at least one adult is in paid work has significantly increased: almost six in ten households in which adults are living in poverty (57 per cent) are households where one or more adults are in paid employment, up from under a half ten years ago. Over one in seven households in which one or more adults are in paid work is now counted as ‘poor’.

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Analysis suggests that for the lowest-paid workers insecurity has increased. While average job tenure for men in the bottom income quartile is seven years, it is 12 years for those in the top income quartile. In recent years tenure rates for the lowest-paid have also fallen – to seven years from nine years in 1982. The consequences of insecurity are greater now than at previous points in recent history. For example, the same research shows that the average UK consumer has £3,000 in unsecured debts through personal loans and credit cards, and that one in five of the population has unsecured debts of over £10,000. Losing paid employment can have extreme financial consequences for low-paid workers.

Such persistent poverty isolates and excludes. Research by the National Consumer Council found that those living in areas of high deprivation were likely to feel that “their voices are unheard, their views unrepresented and their needs ignored”. For vulnerable workers, their experiences at work can exacerbate this sense of exclusion. As a respondent to our consultation told us:

“People just aren’t often valued in the cleaning, catering, caring category. There is the hire and fire culture. We will get in another person from an agency. They don’t belong to the organisation, don’t feel valued. They’re dispensable... I know what it’s like. You’re running from job to job. You care about your patient but in reality you’re being thrown from post to post and its time to go home and the next person’s brought in. You’re more of a body delivering a task than an individual employee. That’s very much how it will feel.”
(Trade union officer)

Recent research shows that New Labour’s tax and benefit policies have limited the growth in income inequality. The Institute for Fiscal Studies demonstrate that considering the period 1996-97 to 2005-06 as a whole, all quintile groups have experienced income growth in the region of 1.9 per cent - 2.4 per cent on an annualised basis, with relatively little difference across groups. They note that this sits in stark contrast with the Conservative years when income growth was significantly greater for those who were already the best off.

However, many inequality measures are now higher than when New Labour came to power. Although it has been restrained, the upward inequality trend established in 1979 has not therefore been reversed. In recent years earnings for those at the top have once again begun to grow at a faster rate than those at the bottom, with the IFS study suggesting that between 2004-2005 and 2005-2006 there was a 0.4 percentage drop in the incomes of those in the poorest quintile, compared to a 1.5 per cent increase for those in the richest. During 2004-2005 and 2005-2006 the number of people living in relative poverty therefore rose, for the first time since 1996-97. These trends may go some way to explaining why, between 1998 and 2004, low earners became much more dissatisfied with their pay (in contrast to higher earners, whose satisfaction levels showed strong increases).

Evidence shows that societies with the greatest levels of inequality are those with the lowest social mobility levels, and the UK is no exception. International comparisons show that Britain has relatively low levels of mobility between generations, and that the problem is also on the rise: trends in intergenerational mobility show that it has fallen over time, and the poorest families have increasingly lower chances of improving their circumstances. The experiences of vulnerable workers are therefore starkly juxtaposed with those both of the majority, and the super-rich minority.

We therefore believe that a range of social and economic trends contribute to the risks of workers finding themselves in vulnerable employment.
Angela’s story

Angela is 37 years old and has worked full time as an office cleaner for a large cleaning contractor for almost seven years. Since she has been in the job Angela has had to take time off work because she had a miscarriage and because of serious illness. Within six weeks of returning to work after her four months of sick leave, Angela was sacked for taking “too much time off sick”. With union support she was able to get her job back on appeal.

On an average day Angela starts work at 6am and gets a 40-minute unpaid break at 9am. She then works from 9:40am through till 1:15pm, despite her contractual hours ending at 12:45pm. There were previously two cleaners working at Angela’s office but she is now the only one and has to do the work previously done by two people within the same number of hours: “It’s all left to me, so it is a little bit stressful thinking that I've got to do everything and don’t want to get myself into trouble for not doing the work.”

Angela has diabetes and has suffered from other serious illnesses in the past. Her employers have not allowed her to take time off to attend hospital appointments, despite the fact that an occupational health professional advised her employers to let her go. Angela’s dismissal was justified through misuse of the disciplinary system to essentially penalise her absence through illness: “They [the employer] haven’t said I shouldn’t have been off, but they give me warnings which brought me up to a third stage warning. They do it very confusingly.”

Angela stated that the company breaches health and safety regulations by advising their workers to mix cleaning chemicals. The workers are often expected to clean without enough cleaning products and Angela has had to buy products with her own money a number of times: “They do put a lot of work on us and they expect an awful lot and we’ve had trouble getting stores [of cleaning materials] and stuff but they still expect us to do the job with no stores.” She also told us that the vacuum cleaner supplied by the company is poor, and her work takes her twice the time it would take with better equipment.

Angela reports that her manager is rude towards workers, shouts at them and does not deal with problems and requests adequately: “I want her to realise that she shouldn’t be talking to people like that and maybe she [the senior manager] should have a word with her and maybe send her on a course, a communications course, because she can’t communicate with people properly and someone of her position, you know, shouldn’t be speaking to her staff like that, because we don’t speak to her like it.”

The job has a physical and financial impact for Angela: she is always tired because of the early hours and always has to “watch the pennies”. In five years she has received no bonuses and has had only a 2 per cent pay rise, a significant cut in real terms. Angela would be happy to continue working as a cleaner in the future but would like a more secure job where she receives better treatment: “I do enjoy cleaning, just I don’t enjoy the company that I work for at the moment.”

(We were introduced to Angela through her union)
Both employment law and effective trade unions can protect against some aspects of vulnerable employment. Over the last century there have been significant changes both in the employment rights available to UK workers and the mechanisms by which these rights are enforced. In 1891 Parliament passed the Fair Wages Resolution, which for the first time required government to procure goods and services only from companies which agreed to pay the going rate for the trade or industry. This rate was often based on terms agreed in national collective agreements. Wages Councils were established in 1909, aiming to set collectively agreed sector-specific minimum wage levels. By the mid 1940s a “virtually comprehensive system of minimum terms and conditions was established”, guaranteed not through legal interventions but national-level collective agreements between trade unions and employers. State support for these agreements and a strong trade union movement meant that while Britain had a smaller body of employment law, its employment standards were comparable with other western European nations.

These collective approaches to employment protection were retained throughout the 1950s and 1960s. There was, however, a growing awareness that for those without collective protections exploitation could be extreme, with many non-standard workers finding themselves outside the scope of collective bargaining and employment protection rights. From 1963 the Contracts of Employment Act therefore comprised the start of an ongoing programme of legal protections for workers, which continued until the 1980s, providing working people with entitlements, including the right to redundancy pay, protection from unfair dismissal and some forms of discrimination, and statutory maternity pay.

It was not until the 1980s, however, that the belief that employment protection was complementary with economic success was challenged. The incoming Conservative government adopted a policy of “partial or selective deregulation... on the basis that this would promote labour market flexibility”. Legal protections for specific groups were removed including the repeal of protections for young workers. Low-paid workers suffered through restrictions in the authority of Wages Councils and reductions in trade unions’ powers; between 1980 and 1993, there were six Acts of Parliament that increasingly restricted unions’ ability to undertake lawful industrial action. The minimum period of continuous employment needed to qualify for unfair dismissal protection was raised from six months to two years and, while other statutory entitlements were not repealed, procedural obstacles were placed in the way of those attempting to realise them. It was decided that “laws and collective agreements setting minimum terms and conditions were hostile to flexibility, and the established tradition of collective laissez-faire, strong trade unions partnered by minimal legal employment protection, was broken”.

New Labour’s election victory in 1997 marked a period of greater emphasis upon employment rights, arguably accompanied by a continued acceptance of the belief that the British economy’s flexibility was adversely affected by protections at work. Individual employment rights have thus been presented as a means of promoting an efficient and competitive business environment, and less emphasis has been placed upon their role in addressing power inequalities in the workplace. In 1998, the Prime Minister was keen to emphasise that employment law reform would still leave Britain with “the most lightly regulated labour market of any leading economy in the world”, and international comparisons show that his assessment was broadly accurate: the OECD’s employment protection index ranks the UK as the second least protected of all developed nations.

This is shown in the following chart:
Nevertheless a number of new employment rights have been introduced since 1997, including the national minimum wage, which re-established a mechanism for ensuring a pay floor in the labour market. A range of new family-friendly entitlements has been introduced, including additional maternity leave entitlements, limited paternity leave, adoption leave and pay, and a right for workers to request flexible working and to take emergency leave. The new Working Time Regulations placed limits upon working hours, holiday entitlements have increased and statutory trade union recognition procedures have been introduced for workplaces with more than 25 staff. Importantly, part-time and fixed term contract workers have received the right to receive the same treatment as full-time and permanent colleagues.

But while there are worthwhile new rights at work, one of the main weaknesses of UK employment law is the marked reluctance by policy-makers to recognise the role for collective representation in securing individual rights, and the poorly resourced state infrastructure for enforcing them. The changes “extend legal regulatory norms into areas of the employment relationship that had previously been a matter for voluntary determination”, with the consequence that legislation rather than collective bargaining has responsibility for setting minimum standards.
Vulnerable workers are unlikely to have trade union protection. While collective protections once covered the majority, it is now a minority of better-paid workers who have union protection; most workers benefit only from legal employment rights entitlements. While union membership has stabilised over the last decade, the most recent analysis shows that the rate of union membership (union density) for workers in the UK fell by 0.6 percentage points to 28.4 per cent in 2006, down from 29.0 per cent in 2005. This was the largest annual percentage point decline since 1998 among all those in employment in the UK, and is reflective of a longer-term trend; density in 1992 was 36.2 per cent of UK workers.\(^67\) Membership is lowest in the private sector, with only one in six private sector workers in the UK in 2006 being union members. In the lowest-paid sectors of employment, union membership seldom exceeds 10 per cent. For many rights, enforcement therefore rests more upon voluntary action rather than placing proactive and positive duties upon employers.

There are still significant gaps in employment protection. While European Directives have provided the impetus for much employment rights reform, extensive use has been made of exceptions and derogations as a means to limit the impact on the legislation in the UK. Thus legislation has been characterised by inevitable “inconsistencies and compromises”.\(^68\) For example, a focus on family-friendly rights and work-life balance is combined with limited enforcement of the Working Time Directive, from which derogations have been negotiated. The potential of the Directive to tackle the long hours’ culture and to redress the gender imbalance in working time distribution\(^69\) is therefore limited. There are also areas where employment protections that were in place before the 1980s have not been fully restored; for example protections from unfair dismissal remain limited and many trade union powers have not been reinstated.

The biggest way that vulnerable workers lose employment rights is that very many are denied the legal status of being an employee. The UK retains a dual system of employment rights, with ‘employees’ having access to significantly better protections than a separate category of often low-paid ‘workers’. This system means legal distinctions drawn between ‘employees’, ‘workers’ and the ‘self-employed’ ensure that employment rights are not evenly distributed. Many low-paid temporary workers do not qualify as employees, and therefore have fewer legal rights at work.

While this is a highly technical area of employment law, which requires a court to definitively rule on someone’s employment status, its impact is brutal. If you are simply a worker you have almost no rights other than the minimum wage, holiday and working time rights and health and safety protection. In particular you have absolutely no security or guarantee of work. In addition to more extensive statutory employment rights, employees often also benefit from better contractual rights and workplace policies than temporary staff including agency workers, casual workers and many homeworkers. Further detail on these legal distinctions is provided in Chapter 6.

So while workers today have a range of individual employment rights, there are gaps, and even where the law does protect vulnerable workers they often have no access to the means to enforce their rights. For many, flexibility has become a euphemism for exploitation.
Victor’s story

Victor, a former peacekeeper in Bosnia, arrived in the UK from his native Hungary in summer 2007. He had signed up with an agency in Hungary with hopes of working in the UK to learn English, gain experience and earn money. The agency had promised a factory job paying £7.50 per hour, with appropriate accommodation provided. This proved to be a false promise and Victor has since endured sub-standard working and living conditions. Victor spoke to us through a translator.

On arriving in the UK, Victor was met by a representative from the agency and driven overnight to the poultry processing factory where he was expected to start work the following morning. He was put in an unfurnished, three-bedroomed house, which he shared with up to 14 other people. There was no fridge and everyone slept on the floor. Victor worked cutting turkey thighs on a production line for 10 hours a day, five days a week. Despite the job involving the use of sharp knives, there was no training (Victor just copied the people next to him). The pay was £120 per week (£2.40 per hour). An ‘administration charge’ took most of Victor’s first weeks’ pay and he and his housemates were each charged £8 per day for the minibus trip to and from work. Workers did not have their own safety boots but each morning had to pick out a pair from a big box in the factory before getting changed for their shift.

Victor reports that 90 per cent of the workers at his level were migrants from all over Europe. Although several workers already had bank accounts, all pay was cash-in-hand and they were never given tax forms to sign. The job ended for Victor after he came down with a fever and had to stay at home. After he had been off for a week, the agency told him he was no longer needed. No sick pay was provided.

By this time Victor and some of his co-workers had joined a trade union. The union was able to help him find other work and to initiate a tribunal hearing. However, Victor reports that agency “henchmen” threatened other workers against getting involved in the union.

Victor reports that this employment experience caused him to become depressed. However, he considers himself to have been fortunate in comparison to those of his co-workers who were physically threatened and/or had children to look after. Although he wanted to go home almost immediately after arriving, Victor decided to stay in the hope that things would improve. However, six months on, Victor has had enough and plans to return to Hungary as soon as possible. He says: “I had better experiences in Bosnia during the war than here... Here, I had great expectations but have only been mistreated.”

(We were introduced to Victor through his union)
By definition, vulnerable employment cannot be quantified: existing statistical categories indicate the proportions of who may be at risk of vulnerable work, but cannot be used to develop absolute figures. In addition, a significant proportion of vulnerable work is not captured by any official statistics; for example, we do not know how many informal workers there are, or the extent to which existing data on agency work is accurate.

Despite its limitations it is, however, possible to consider existing data70 on the number of workers who are at high risk of being in vulnerable work.

While over five million workers in the UK are low-paid, we do not believe that low pay on its own places workers at high risk of being in vulnerable work; it is possible to be in secure, low-paid work with prospects for progression, as well as low-paid vulnerable employment. Our analysis is based on the number of workers with low skills in low-paid and temporary work identified in the Labour Force Survey (LFS), around 1,546,643 workers overall. We believe that the limitations of the data make this a very conservative estimate. Low-paid migrant workers with a legal right to work in the UK are included in the overall LFS analysis, though there is evidence to suggest that the LFS undercounts these workers. Undocumented migrant workers and informal workers will not be included in the LFS. To compensate for this we have added a conservative figure of 500,000 workers to our total.

While we believe that union membership will act to reduce the vulnerability of workers, our investigations suggest that union membership alone is not enough protection for those at the very bottom of the labour market. We have therefore included workers who are trade union members in our calculations.

Based on these findings, we make a conservative estimate that there are around two million people in vulnerable employment in the UK today.

This analysis is documented on the next page.
### Table 1  *Numbers of workers at most risk of vulnerable employment*

<table>
<thead>
<tr>
<th>Indicators of vulnerability</th>
<th>Number of workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers with no qualifications paid less than £6.50 per hour</td>
<td>942,157  <em>(Labour Force Survey: Summer 2007)</em></td>
</tr>
<tr>
<td>Temporary workers paid less than £6.50 per hour (excluding those with no qualifications)</td>
<td>551,562  <em>(Labour Force Survey: Summer 2007)</em></td>
</tr>
<tr>
<td>Note: temporary workers comprise approximately 20.4 per cent fixed-term employees, 15.7 per cent seasonal workers, 16.8 per cent agency temps, 35.4 per cent casual workers and 11.7 per cent other non-permanent workers.</td>
<td></td>
</tr>
<tr>
<td>Workers with home as a base who are paid less than £6.50 per hour (excluding those with no qualifications and those who are temporary)</td>
<td>52,924  <em>(Labour Force Survey: Autumn 2007)</em></td>
</tr>
<tr>
<td>Total:</td>
<td>1,546,643</td>
</tr>
<tr>
<td>Women: 958,919 (62%)</td>
<td></td>
</tr>
<tr>
<td>Men:  587,729 (38%)</td>
<td></td>
</tr>
<tr>
<td>Estimated number of undocumented migrant workers</td>
<td>430,000  <em>(Home Office, 2002)</em></td>
</tr>
<tr>
<td>Estimated size of the informal economy (including both cash in hand work and undeclared profits)</td>
<td>1.75 per cent of GDP estimated to comprise undeclared income</td>
</tr>
<tr>
<td>Total: conservative estimate 500,000</td>
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</tbody>
</table>
Globalisation has increased demand for business flexibility. Recognition that globalisation has “put a premium on workplace practices that support flexibility and adaptability” is seldom contested. Increased competition from developing countries, an increase in demand for higher skills, intra-industry trade and the off-shoring of services as well as goods are all trends that have required labour market change, and have affected the level of demands made on the workforce to ensure that the economy remains competitive. The controversy is over whether flexibility and adaptability require more limited employment protection for workers, or whether the response to global trade can be also be supportive of employment rights and improved treatment.

OECD evidence shows that the relationship between labour market regulation and unemployment rates is complex, concluding that that the net impact of employment protection legislation (EPL) on aggregate unemployment is ambiguous. Their overall summary indicator of EPL strictness shows little linkage with national employment rates. This is shown in the following table:

Table 2  Employment protection legislation and employment rate, EU members that are also OECD members (source as above)

<table>
<thead>
<tr>
<th>Country</th>
<th>Strictness of EPL</th>
<th>Strictness of EPL</th>
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In light of these findings the OECD has reviewed its Jobs Strategy (which had placed emphasis on the notion that employment protection was an important cause of unemployment), and concluded that “a reasonable degree of employment protection could be welfare-improving, i.e. it can help balance a concern for workers’ job security with the need for labour market adjustment and dynamism”.

Other studies by leading authors have further concluded that EPL and job creation are not correlated, and various analyses have shown the positive impacts of labour market protection on both economic performance and flexibility, for example highlighting that the facts of economic growth across Europe are not consistent with UK presumptions about the negative impacts of regulation. As government research has concluded, labour market flexibility can therefore “be achieved in a number of different ways and within a range of different welfare and labour market frameworks”.

Other factors, including labour market institutions and structures, cultural differences, and economic conditions, have important impacts on labour market operation. Regulation is only one factor that impacts on employers’ investment decisions; the skills base of the labour force, the functional flexibility of workers, the physical infrastructure of the country, level of risk with respect to product demand, investment in research and development and local taxation all have a strong impact upon whether employers choose to invest in the UK.

Employment protection has clear business benefits. Good employers agree that quality labour standards are needed to enable innovation, flexibility and responsiveness by firms competing in a global economy; in a recent survey undertaken by the Chartered Institute of Personnel and Development (CIPD) of over six hundred HR professionals, the majority said that employment law made a positive contribution to worker relationships, and less than 15 per cent said that employment law gets in the way of business; 67 per cent agreed with the statement that employment law drives good business practice. There is also evidence that compliance with regulation can boost productivity, enabling performance improvements as new processes are developed and jobs are redesigned. For example, DTI research on the impact of employment legislation on small firms identified that there were productivity benefits to small businesses of introducing employment legislation. Positive effects related to longer-term competitive advantage, improving areas such as worker relations and modernising production processes. Similarly, research has found evidence that the minimum wage has stimulated small employers to increase training. The study also concluded that many of the firms affected by the minimum wage had made improvements in quality, as a means to justify price rises introduced to cover increased labour costs.

Employment protection also prevents good employers being undercut by the bad. During our regional visits we met with employers who called for improved enforcement of labour standards to prevent their businesses being undercut by competitors profiting from worker mistreatment. Our research also shows that employment agencies who feel they are being undercut by unscrupulous competitors support stronger enforcement of minimum standards.

We therefore believe that labour market flexibility is not at odds with protection of those in the most vulnerable work, and that good employers support measures designed to create a level playing field by preventing poor treatment of those in the lowest-paid and most insecure jobs.
Imran is 29, British-Bangladeshi and educated to NVQ Level 2. During a period when he was out of work and claiming Job Seekers Allowance, Imran was referred by Jobcentre Plus to an employment agency specialising in placing unemployed clients in work. Through them Imran undertook a voluntary placement before being passed to the regular employment agency side of the operation. The employment agency found a job for him as housekeeper and porter for a large public service provider.

While he was employed, Imran mostly worked nights from 10:30pm to 5am. Imran’s agency did not provide him with a uniform and health and safety equipment, so he paid for them himself. He says that he enjoyed his job, worked hard and was informed by management that he was doing well and had a good chance of being asked to become a permanent worker.

The problems began when Imran was not paid for two weeks’ worth of work and also noticed that he had not received the premium rate he was due for working on public holidays. When he queried this, he was told by the agency that they did not have his clock-in card, which would have an electronic record of the hours he had worked, but that they would check his bank statements (which he provided) and get back to him in two days’ time. For a few weeks he was told that he would receive a payment by the end of the week. However, despite Imran’s repeated phone calls, the payments never came.

Eventually Imran received a call from the agency to say that he had never been on their pay roll system, that they did not have his clock-in card or pay slips and that his employment had been terminated: “They’re looking at the computer and saying they’re going to get back to me. Two days later they phoned me and said you’re not working for us no more. There was no letter, they just rang me up and said we’ve got no work. After that I’ve received texts every day – two or three – saying they’ve got available shifts [at the same place].”

Imran claims that his agency co-workers were also being underpaid but did not speak up about it because they were afraid of being sacked. He thinks that the agency lost his clock-in card and pay slips and was trying to cover this up because they did not want to pay him what he was owed or to admit they had made a mistake. Imran also suspects that the incentive system in the agency’s contract with Jobcentre Plus means they are interested only in getting people into work and not in dealing with people’s concerns once they were in the job: “If they put someone in a job they get bonuses. That’s why they just want to get rid of people who come in.” He described a time when he cut his finger badly at work and was told to make an injury claim by his supervisor, but was completely ignored by the agency when he tried to do this.

Not getting his proper pay was particularly difficult and stressful for Imran because he was already in a substantial amount of debt. He had to borrow money from his parents, brother and friends: “It’s really embarrassing at this age. My dad’s a pensioner. It’s really embarrassing when you go to your brother and ask him for money, especially the younger one.” Things got so tight that Imran’s wife and daughter had to go and live with his in-laws in another city because he couldn’t provide for them. He is upset that he cannot afford to visit them.

The stress involved with his pay problems and dismissal has affected Imran’s physical and mental health: “[I got] very depressed. Sitting at home and thinking, getting migraines... I lost my appetite. Thinking why did this happen. They didn’t give me a reason why they won’t have me in that job.”

Despite this, Imran recently sat exams for a new job in security and is hopeful that he will get a position and begin to get back on his feet: “If I get the security job I’ll be okay and stand on my feet again. I’m going to try my best. I don’t want to be a burden on my family.”

(We met Imran through the TUC/BERR Vulnerable Workers Project)
The challenge of tackling vulnerable employment has been discussed since the early 1990s. In 1991 Tony Blair, then Shadow Employment Minister, castigated the Conservative administration for failing to protect Britain’s most vulnerable workers. As Prime Minister, some 13 years later, he was still promising government action on employment rights enforcement.

Since 1997 New Labour has placed an increasing focus upon work as a means out of poverty, introducing an employment focused welfare state. A range of measures, including the introduction of the New Deal employment programmes, tax and benefit reforms to end benefit traps and ‘make work pay’ and mandatory work focused interviews for working-age claimants. Increasingly, this has also included the development of policy around engaging claimants in unpaid work experience and employability skills courses as purported means to enable them to re-enter the labour market.

However, while welfare benefits and Tax Credits have become conditional upon claimants entering paid employment, less attention has been paid to the quality of the jobs workers are expected to enter; as the Joseph Rowntree Foundation (JRF) note, “incentives and help for people in non-working households to move into work have not been matched by incentives and help for people to progress within work or to get better quality jobs.” At present there are also no guaranteed standards of treatment for claimants engaged in work experience, or undertaking ‘employability’ skills training.

Welfare to work policy has therefore contained limited acknowledgement of the existence of vulnerable employment in the UK. Recently, there has been increasing reference to “the wrong jobs” and to advancement in work and employment retention. For example, The National Audit Office has highlighted that improving retention and advancement at work will be key to combating in-work poverty. It also notes that if services focused upon “helping participants to gain the right job for them, rather than the first job that comes along”, they could be more efficient at enabling workers to sustain employment. Similarly, the Employment Retention and Advancement Scheme pilot has focused on placing people in “suitable work”. However, the main focus of welfare to work policy remains on support for claimants to overcome their individual ‘barriers’, and to date there has been little policy focused specifically upon reducing the incidence of vulnerable work, or the impacts that the ‘low pay, no pay’ cycle can have on the chances of people progressing at work. As a respondent to our research told us:

“Vulnerable employment demoralises tremendously, people often lose confidence. While government trends seem to be trying to get people back into work and moving on, if they haven’t been in work and get into these jobs they are subject to the whims of bad employers and they’ve got few legal rights. The type of work they’re engaged in is volatile... The upshot of this is that if people get into this sort of work it demoralises them. It doesn’t motivate them to get into training, it doesn’t incentivise them to get into permanent jobs and upskill themselves.”

(Trade union official)
New research undertaken for our Commission suggests that the jobs claimants are expected to enter are increasingly likely to be employment agency vacancies, which, as discussed above, provide poorer terms and conditions and less security than permanent work. Analysis shows that in January 2008 the proportion of new Jobcentre Plus vacancies accounted for by ‘other business activities’ reached 58 per cent.

While this code is comprised of a range of occupational classifications in addition to employment agency work, occupational analysis shows that the proportion of new vacancies attributable to other occupation groups within the code have been declining. For example, in February 2008 security guarding, contract cleaning and call centre work only accounted for 14.9 percent of new vacancies. Our research therefore concludes: “the increase in the proportion of Industry 74 (other business activities) is likely to be driven by employment agency vacancies”.

We therefore believe there are strong risks of welfare to work policy becoming a mechanism by which claimants are forced into vulnerable work, rather than a means by which they are enabled to progress into jobs providing security and opportunities for progression.

The Government cannot meet its targets on social inclusion, health, employment, skills and child poverty and tolerate widespread vulnerable employment: increased progression into sustainable, better-paid jobs are needed to meet the Government’s child poverty pledge and the 80 per cent employment rate target. Achieving the world-class skills demanded by Lord Leitch’s report will require substantial increases in in-work training and education; and health inequalities will not be reduced if working conditions for the worse off do not improve.

After the launch of our Commission, the Department for Business, Enterprise and Regulatory Reform (BERR) established a Vulnerable Workers’ Enforcement Forum to assess the adequacy and resources of the employment rights enforcement framework. BERR is also funding two ‘Vulnerable Worker Pilots’ in London and Birmingham (run in partnership with the TUC and Marketing Birmingham respectively) aiming to test different ways of providing support for vulnerable workers and employers at a local level.

However, government has a problem with its definition of a vulnerable worker as someone “working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse”. The Government are therefore clear that, while a worker may be susceptible to vulnerability, this is significant only if an employer exploits that vulnerability.

This is too limited. It fails to capture the daily insecurity and fear of those in the lowest paid and most temporary jobs, and limits the required policy response to the enforcement of existing employment rights. Government must do more both to recognise and to support workers across the labour market who are at risk of poor treatment at work.
1 Please note that in some case studies the real names of the workers we met have been used. In others, workers have opted to use a pseudonym.

2 Please note that we have used the terms vulnerable employment and vulnerable work interchangeably throughout our report.


7 Ibid.


15 Ibid.


18 Ibid.


22 Analysis undertaken by the Commission on Vulnerable Employment using BERR VAT statistics.


To see our short report go to www.vulnerableworkers.org.uk

36 Ibid. p16.
37 TUC press release, TUC Response to the ONS hours and earnings survey. 7th November 2007.
39 TUC press release, Single women in their 30s do more unpaid overtime than anyone else, 22nd February 2008.
41 Ibid.
43 Ibid. p24.
49 Ibid.
53 This analysis is based on measures before housing costs. An analysis based on measures after housing costs would show that relative poverty stopped rising in 1997-1998 before starting to rise again in 2004-2005.
60 Ibid p47.
63 The index is comprised of three main components: regulation on temporary forms of employment; specific requirements for collective dismissal and protection of permanent workers against (individual) dismissal.
The Labour Force Survey (LFS) is limited in its ability to identify those at greatest risk of vulnerable employment. For example, the LFS does not reach some places where agency workers might be found as it is based on a post office list of residential addresses and excludes hotels, caravans etc; more than a third of LFS answers are proxies so it is not always certain that the respondent will know the employment status of others in the family; and it is also likely that migrant agency workers are less likely to complete the survey (because of worries about legality of employment status, possible language difficulties and the ‘what’s in it for me’ question).

In oral evidence to The Home Affairs Committee Dave Roberts, a senior Home Office official, stated that “The Home Office Research report ‘Sizing the unauthorized (illegal) migrant population in the United Kingdom in 2001’ was published on 30 June 2005 and estimated the illegally resident population in 2001 at 310-570,000.” The central estimate of the report is 430,000. Oral evidence can be downloaded from http://www.publications.parliament.uk/pa/cm200506/cmhaff/775/775iii.pdf Accessed 3rd April 2008.


Ibid. p63.


89 Ibid. p15.


92 Ibid. p6.


Chapter 2

Increasing awareness and advice

In this chapter we set out our views on the scale of the problem of low awareness of employment rights among vulnerable workers and employers, and possible solutions to this information deficit. We then discuss the lack of access that many workers have to adequate employment rights advice, and make the case for significant investment in reducing employment rights 'advice deserts'. We also consider the affects that wider government policy can have on vulnerable employment, and highlight the need for increased awareness of employment rights issues among policy-makers.

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Anne’s story

Anne is a lone parent who has to balance work with the care of her young daughter. A qualified nurse with extensive and varied experience in nursing, Anne’s last job was as a support assistant with a large service provider, where she initially worked on a part-time contract. However, as a result of her employer changing her shift pattern to include more sleepovers (staying through the night at the residence of people with support needs), Anne’s childcare arrangements fell through and she was unable to work her shifts. Her then manager arranged for Anne to go ‘sessional’ – requiring her to switch to a zero-hours contract where her employer had no obligation to provide her with work – on the basis of a verbal agreement that she would be able to work certain fixed hours five days a week.

While this arrangement presented a solution to the problem over suitable hours, Anne soon found that the loss of contractual obligations in her employment relationship put her in a vulnerable position. After speaking out about an issue of neglect that she had witnessed, Anne was bullied for a period of around four months. At the same time as she was attempting to address the bullying problem with her manager, Anne was told that her employer might no longer be able to provide her with the hours that she was used to. Despite several attempts to resolve the situation, the problems continued and caused Anne to feel uneasy and stressed: “At that time I was feeling really under pressure,” she says. This situation contributed to Anne entering a period of debilitating depression – a pre-existing condition that she had noted on her application form – and being signed off sick for four and a half months. Anne was told that she was not entitled to claim sick pay from her employer because of her sessional status, but she notes that, in fact, all staff may have been denied sick pay: “For seven weeks I did not receive any sick pay. She’s [the manager] always said you didn’t get sick pay. Nobody gets it. There was a period last year where I lost my voice for three weeks with a virus and they deducted two weeks’ wage.”

Anne eventually managed to claim Statutory Sick Pay and kept her employer supplied with new sick notes and other relevant information. Once she was sufficiently recovered, she phoned her employer to say that she was ready to return to work and arrange a back-to-work meeting, as instructed by her GP. Initially the employer told Anne there were currently no hours available and then, when she contacted them again two weeks later, that two new members of staff had joined since she had ‘left’ and that there would be no work for her in the near future. Both of the two managers she spoke to emphasised that there was no obligation to offer work, or to provide a back-to-work interview, because she was sessional.

Anne has only recently accessed support from Acas, which she heard about after our Commission secretariat replied to an email she sent to us seeking advice. Following this intervention, she has also joined a trade union in order to have protection if something similar happens again. Through much of the time she was experiencing problems she was isolated and unaware of her rights. A former trade union member, Anne did consider rejoining a union in her former job but was discouraged by a manager. She reports that, although some younger sessional workers treat the job as a stop-gap, many have families and want job security.

At present Anne is making a grievance complaint, which she hopes will result in some kind of resolution, but she is still jobless and on benefit. Although Anne wants to return to work (and refuses to go back on Incapacity Benefit), her confidence has been damaged and she fears that similar problems may occur again. She feels angry and upset at how she has been treated: “It shouldn’t matter if you are permanent, temporary, sessional, full-time or part time,” she says, “you should be treated equally with respect and dignity.”

(We met with Anne after she contacted our website for help)
Across the UK, awareness of employment rights is low. The lowest-paid workers, and those who are already facing disadvantage and discrimination in the labour market, are the least likely to know about their employment rights.

While employers may be aware of broad employment rights, knowledge of their substance tends to be much lower. Evidence suggests that small employers often have low awareness of their workers’ employment rights. In the lowest-paying sectors, employers have the least awareness.

Advertising budgets for employment rights’ awareness campaigns are low. No public awareness advertising budget exists for areas including the Working Time Directive, the Employment Agency Conduct Regulations, maternity and paternity rights, and paid holiday entitlements. The amount spent on promoting awareness of the minimum wage is around a fifth of that spent on the campaign to prevent benefit fraud.

There are important roles for trade unions, civil society organisations and employers to play in promoting employment rights awareness among workers.

Reduced access to paper based employment rights resources risks preventing vulnerable workers, who may not have access to the internet, from building awareness of their employment rights.

Accessible, face-to-face advice is likely to be the best way to provide employment rights’ support to vulnerable workers. However, capacity among advice providers is low. Very high proportions of advisers we surveyed felt that their services had too few or far too few staff providing employment rights advice (70 per cent for CABx and 80 per cent for law centres), and less than a third of CAB and 19 per cent of law centre advisers felt that they had enough.

There is no statutory duty upon local authorities to fund independent employment rights’ advice services, and there is evidence that increasingly short-term and fragmented voluntary sector funding streams have exacerbated funding problems for employment rights’ advice providers.

Advice deserts across the UK are preventing vulnerable workers from reaching satisfactory resolutions to problems that they experience at work.

Reform of legal aid has led to a reduction in the number of advice providers and solicitors who can support vulnerable workers. The recent introduction of fixed-fees for solicitors undertaking legal aid work has also made it harder for law centres and other providers to take on complex employment cases.

Across government there are examples of policies accidentally placing workers at risk of vulnerable employment, for example through the introduction of direct payments without sufficient support for social care service users to undertake their responsibilities as employers.
Across the UK, awareness of employment rights is low. In a recent DTI survey, only 17 per cent of respondents said that they ‘knew a lot’ about their rights at work, and just 12 per cent assessed themselves to be ‘very well informed’. However, even among this latter group, 29.7 per cent could not, unprompted, name a single employment right or law. Among all workers, substantive awareness of employment rights was very low. For example, while 63 per cent of respondents were aware that there were legal limits on their hours of work, only just over a quarter knew what these actual limits were. Similarly, awareness of the existence of protection from unfair dismissal was high at 90 per cent; however, only six per cent of workers knew that they were protected from unfair dismissal only after one year (and 58 per cent thought that they had this protection from the first day of their employment). Surveys also show that those who have previously experienced problems at work are less likely to feel informed about their rights at work than those who have not experienced a problem, noting that this may highlight that once people experience a difficulty they become more aware of the extent to which they were previously misinformed.

Evidence further demonstrates that the lowest-paid workers are the least likely to know about their employment rights. In the same survey, only 12.5 per cent of workers in the ‘other unskilled’ group said that they felt well-informed and knowledgeable about their employment rights; and in another large-scale study 44 per cent of workers earning below £15,000 a year were found not to be well-informed about their employment protections. Analysis of awareness levels for specific rights demonstrates similar characteristics. For example, analysis of knowledge of flexible working entitlements found that 39.7 per cent in the ‘other unskilled’ category were aware of parental leave rights, compared to 61.4 per cent of managerial staff surveyed. Similarly, knowledge of wages and terms and conditions legislation is lowest among workers in lower-level manual and service occupations. A recent DTI survey of parents’ knowledge of employment rights found that 85 per cent of fathers said they knew, before the baby’s birth, that they were entitled to paid paternity leave. This figure varied according to fathers’ incomes, with those on the lowest incomes least likely to know about their entitlement: 66 per cent of fathers earning less than £1,000 per month were aware that they had a right to time off, compared to 91 per cent of fathers earning £3,000 or more.

General awareness of the existence of the national minimum wage (NMW) is very high, with around 93 per cent of workers aware of employers’ responsibilities to pay. However, when questioned about specific entitlements, respondents’ knowledge is more limited: survey evidence shows that only 55 per cent of 16 to 21-year-olds knew there was a minimum wage rate for 16 to 17-year-olds, with young women less likely to know than men. One third of all respondents thought that there was a single rate, regardless of age. Only six per cent knew the actual rate for 16 to 17-year-olds, 4 per cent for 18 to 21-year-olds, 11 per cent for 22 to 64-year-olds, and 13 per cent for those aged 65 or older. The Low Pay Commission has reported comparable findings with respect to knowledge of minimum wage rates and enforcement mechanisms. In 2003 it noted that while 97 per cent of low-paid workers surveyed were aware of the existence of the NMW, only 28 per cent were aware of the new adult rate and 12 per cent were aware of the helpline. Similarly, in its third report it noted that just seven per cent of low-paid workers knew how to make a complaint of minimum wage underpayment and only one per cent of low-paid workers saw the helpline as the first place they would go for advice, compared with 41 per cent who cited a Citizens Advice Bureau (and by 2003 the number who would contact the helpline first had only increased to three per cent).

The same trends are clear in research specifically considering low-paid sectors. Acas’s survey work
with ethnic minority workers in the hotel and catering sectors found that the “great majority” of workers interviewed felt ill-informed about employment rights, and had no idea of where to get information if they needed it. Workers had particularly poor knowledge of rights including holiday and leave entitlements, and in some cases were therefore not receiving any paid leave. Workers commented that: “When you are new in the UK, you don’t know anything about English public holidays. Some have been here for more than 10 years and they still don’t know anything about public holidays. We don’t know the English employment policy regarding overtime and holiday pay.”

In recent research on the hairdressing sector it was found that, even after an awareness campaign, only a small majority knew the correct main adult rate of the minimum wage, while awareness of other rates and their application was lower. Mistakes tended to underestimate existing rates. The research noted that awareness was lower than larger DTI surveys of employment rights, which was likely to be because of the focus on a low-paid sector in which small businesses predominate.

Those who already experience labour market disadvantage and discrimination are more likely to have low awareness of employment rights.

For example, women, people from minority ethnic groups and people with low skills are less likely to be aware of the Working Time Regulations; and people from minority ethnic groups show significantly lower awareness of the NMW. These findings were replicated in a random survey in a West Midlands shopping centre of 467 people’s knowledge of their employment rights, which found that women, people from minority ethnic groups, young people and people that were low-paid were the most likely not to be aware of their entitlements.

Awareness is lower than average among young people, with 48 per cent of those aged 16–24 feeling that they are not well informed about their rights at work and 60 per cent saying that they could do with knowing more. Children and parents are also particularly unlikely to know about children’s rights at work, with survey work undertaken by the Children’s Legal Centre demonstrating very low awareness of the regulations that employers should be following with regard to the employment of workers aged 13–15. The YWCA also reported to our Commission that young women whom they worked had little understanding of the varied rates of the NMW, and did not think that current advertising methods were appropriate or extensive enough: “When we consulted a group of young women on the national minimum wage, few knew the actual figures. Most thought it was over £5.00 for everyone. Many did not understand the differences in hourly rates according to age; when they did, they did not understand why there is a difference.”

Having a temporary job has also been shown to decrease the chances of a worker being aware of their employment rights. Temporary workers are less informed than permanent staff with respect to a range of employment rights, including work/life balance entitlements, unfair dismissal and minimum wage rates. Awareness levels are often also lower among workers in smaller firms, for example with respect to discrimination legislation and working-time regulations. In their response to us Thompsons, a legal firm specialising in employment law, reported that vulnerable workers in non-standard, precarious work are “unlikely to be aware of their rights at work”.

Many trade unions reported that migrant workers have particularly low awareness of their employment rights, which can be exacerbated by limited understanding of English. For example, USDAW reported that: “The single most pressing issue concerning agency and migrant workers is the language barrier. While the multi-ethnic composition of the workforce has grown in recent years, multi-language communication within companies has not. This has caused problems and raised serious issues, particularly in the area of health and safety.”

Even among vulnerable workers who are seeking advice on tackling a problem, knowledge of the specific breach they have experienced is low. In the BERR survey of CABx clients, by the time they approached a bureau only 29 per cent of workers were aware that their employment rights had been breached, although a further 45 per cent suspected a breach. Breaches with particularly low levels of client awareness included disability discrimination (61 per cent), maternity pay/leave (50 per cent), use of statutory procedures (44 per cent), written statement of particulars (42 per cent) and paid time off for antenatal care (33 per cent).
Sarah’s story

Sarah worked part-time in a bar to support herself through university, having found the job after handing her CV around her town. She lasted in the job for around five months. Pay was at the minimum wage level and hours were set at a minimum of 16 per week. Shifts were posted up at the premises every week: the days and times of Sarah’s shifts would change from week to week and a single shift could last a minimum of four hours to a maximum of twelve. There were no regular breaks, except on the odd occasion when the bar was quiet.

Sarah found that she was always on ‘bar backing’ duties (collecting and washing glasses, etc.) despite the fact that she had worked in cocktail bars previously and had far more experience than co-workers who had been put on the bar. When she challenged her manager about this, she was told that it was because the girls working on the bar were “blonde and skinny”. He claimed this arrangement as being in Sarah’s and everyone else’s best interests on the basis that it would bring in more tips (which were shared equally among all bar staff).

Sarah found the whole culture of the workplace to be “sleazy”: staff relations were cliquey and competitive, partly due to there being performance targets and prizes and partly because physical appearance and “willingness to flirt” made a difference to how favourably female bar workers were treated by the male management. Sarah has reason to strongly suspect that job applicants were vetted on the basis of their looks before being given an interview. During her employment she was subject to sexual harassment from a male assistant manager, whose groping and other inappropriate behaviour made her feel very uncomfortable. The response when she complained about it to other staff was dismissive – “that’s just the way he is”, they said.

Sarah’s university grades dipped at this time and she is certain that this was as a result of the job. The inflexibility of the hours and shift patterns meant that she would have to do late shifts finishing at 4am and then attend early morning lectures. More generally, Sarah found the whole experience of working there made her feel “...really miserable: it’s not just the hours you’re there, it’s the build-up... the knowledge that I’d have a shift on Saturday evening would ruin the whole day – it eats into your life”.

Sarah eventually quit the job when she was told that she had to work Christmas and New Year’s Eve, despite her protesting that her family and boyfriend were at the other end of the country. As a result of this experience, Sarah did not do any further part-time work during term-time, preferring to run up her overdraft and work over the summer.

(We met with Sarah through her union)
Workplaces with low trade union membership also show lower awareness of employment rights. For example, findings from the Health and Safety Executive\textsuperscript{26} show that in workplaces without union recognition there is lower awareness of the relevant health and safety regulation among managers, health and safety officers, worker reps and workers. In its submission to our Commission, Citizens Advice and Citizens Advice Scotland informed us that vulnerable workers often have “no access to the protective services of a trade union and have little awareness of their legal rights, let alone how to enforce them”.

Predictably, then, the workers whom we met on our regional visits were generally aware of their full employment rights only if they were in the process of taking significant action to redress an injustice. Many had heard of few of the rights to which they were entitled, were confused about whether or not they qualified, and often had little idea about where to get more information or how to report a problem. In many cases when a right was not provided, many workers were unlikely to raise it with their employers through fear of dismissal. Very few knew whether they had a trade union in their workplace, or had any idea how to contact one. There was general low awareness of what the role of a trade union could be.

Government surveys have concluded: “Workers who are most vulnerable to exploitation at work have a greater need for this detailed knowledge. However... it is such workers who are at greatest risk of having low levels of knowledge of key employment rights.”\textsuperscript{27} We agree, and believe that there is a significant information deficit among vulnerable workers with respect to their employment rights, and that this needs to be challenged.
Evidence suggests that small employers are more likely to have low awareness of their workers’ employment rights. A survey on the awareness and knowledge that small firms have of individual employment rights found that overall only a fifth were confident or very confident about their knowledge. Low general awareness meant that there was an “acute absence of knowledge” about some specific rights; for example, over 50 per cent of owner managers who were aware of maternity leave did not know if it was conditional upon length of service; the majority of firms employing one to nine people were not aware of the right to parental leave; and just 27 per cent knew the correct limitation on hours worked per week. With respect to the minimum wage, 12.2 per cent were aware of the correct rate for 18 to 21-year-olds, and 37.4 per cent were aware of the correct rate for adults aged 22 and over. The study concluded that “employers’ detailed knowledge was much lower than their claimed awareness”.

Low awareness means lower levels of compliance with employment rights legislation. Government research shows that the increasing number of unfair dismissal cases is linked to the increasing number of workers employed in small companies, who bring over half of all employment tribunal claims. Our survey also found that the majority of employment rights advisers cited micro-workplaces (of less than 10 workers) as the most frequent location of the three workplace problems that their clients experienced most often (problems with dismissal, pay and working time). Many repeat offenders were also small businesses.

While employers may be aware of broad employment rights, knowledge of their substance tends to be much lower. Evaluation of the implementation of amendments to the Working Time Regulations has found that many employers were unaware of forthcoming changes. The Low Pay Commission has given specific consideration to awareness of the minimum wage among employers in low-paying sectors. Its 2003 report found that while 99 per cent of employers in low-paying sectors were aware of the existence of the NMW, only 32 per cent were aware of the new adult rate, and 32 per cent again of the helpline. BERR survey work on awareness of family-friendly rights among employers reached similar findings. Only 5 per cent of employers were able to name three of the four recent changes to maternity legislation, and only 50 per cent could spontaneously name even one of them; even when prompted, only around 61 per cent of employers were aware of changes in legislation regarding the rights of workers with responsibilities for caring for young or disabled children, or for a related adult, to request flexible working. Similarly, Acas has found that there were “clear gaps and misunderstandings” in small employers’ knowledge of the rights of pregnant staff.

In the lowest-paying sectors, employers have the least awareness. For example, in the small firms’ survey one in ten employers in hotels and catering believed that workers did not have a statutory right to four weeks’ paid holiday. The same study also found that composite scores for employment rights’ awareness were below average in low-paying sectors including transport and communications, health, domestic and personal services, construction and distribution.

There may be lower employer awareness around the rights of agency workers. In a survey of workplace representatives undertaken by the TUC, only four respondents out of 85 said that the Employment Agency Conduct Regulations had had an impact on the use of agency labour in their workplace, while 41 said they did not; 26 didn’t know and 14 didn’t answer. Overall, the survey revealed little awareness and much confusion about the regulations.
Limited awareness-raising

Advertising budgets for employment rights’ awareness campaigns are low. The size of government advertising budgets provides an indication of the priority given to different public awareness campaigns, and analysis shows that employment rights’ awareness ranks relatively low. This can be seen in the following table, which highlights the budgets of a broad sample of advertising campaigns about which information is publicly available. Minimum wage awareness has been chosen for comparison as it is one of the only areas of employment law for which there is currently a dedicated advertising budget:

Table 3
Advertising budgets of various government public awareness campaigns 2004/05 to 2007/08

<table>
<thead>
<tr>
<th>Campaign</th>
<th>Budget 2004/05</th>
<th>Budget 2005/06</th>
<th>Budget 2006/07</th>
<th>Budget 2007/08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit thieves(^{40})</td>
<td>£6,950,000</td>
<td>£7,459,000</td>
<td>£6,568,000</td>
<td>Figures are not yet available(^{41})</td>
</tr>
<tr>
<td>Five a Day(^{42})</td>
<td>£1,300,000</td>
<td>£900,000</td>
<td>£920,000</td>
<td>Figures are not yet available</td>
</tr>
<tr>
<td>Campaign to encourage use of tissues when suffering from a cold(^{43})</td>
<td>N/A</td>
<td>N/A</td>
<td>£609,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Campaigns to market the North East region to investors and visitors(^{44})</td>
<td>£1,302,000</td>
<td>£3,374,000</td>
<td>£4,450,000</td>
<td>Figures are not yet available</td>
</tr>
<tr>
<td>National Minimum Wage awareness(^{45})</td>
<td>£315,754</td>
<td>£328,603</td>
<td>£118,000</td>
<td>£1,200,000</td>
</tr>
</tbody>
</table>
For most employment rights, there is no attempt to raise national awareness of their existence – despite evidence regarding low levels of public knowledge. No public awareness advertising budget exists for rights including the Working Time Directive, the Employment Agency Conduct Regulations, maternity and paternity rights’ awareness and paid holiday entitlements. Even when budgets exist, they are relatively low; in 2006/07 the minimum wage advertising budget was just over 2 per cent of the size of that allocated to the campaign to prevent benefit fraud. In recognition of importance of increasing awareness, the 2007/08 budget has shown a substantial increase, to £1.2 million. These new resources have allowed for some innovative campaigns, for example the minimum wage bus currently touring low-paid areas of the UK. However, even if the benefit fraud advertising budget remained identical to the previous year, spending on minimum wage awareness would still comprise only 18 per cent of benefit fraud advertising expenditure.

There is also evidence that advertising campaigns have not always been effectively implemented. Evaluation of the recent minimum wage campaign in the hairdressing sector found that few trainees remembered having seen the DTI letter and booklet produced during the campaign, and when shown a copy felt that it would not have attracted their attention as it was not focused clearly upon either pay or hairdressing.

However, research shows that there are many strategies that could have a significant impact on awareness levels. The hairdressing campaign evaluation noted suggestions from respondents that non-print methods of communication such as TV and cinema advertising might be more effective than printed literature in spreading awareness of the minimum wage. In their submission to us, the YWCA provided similar evidence from a focus group with young women. The participants said that: “...information should be targeted at people in school – starting at around the age of 13/14, with the possibility of sending a letter to their home address so they would open it. It should be targeted through youth centres, bus stops and town centres.”

Research has suggested multiple ways in which awareness could be increased – for example, suggesting employment rights’ advertising on beer mats, at the post office, on child benefit booklets and claim forms for Tax Credits. It has been proposed that New Deal literature could include reference to the NMW and every Jobcentre Plus office could have a supply of booklets on employment rights entitlements. Unison has suggested printing the minimum wage rate and helpline number on payslips, or compelling employers to display workplace notices to ensure widespread awareness, as was required under Wages Council legislation. The Low Pay Commission’s reports have also continued to document its view that more should be done to increase awareness of the specific rates of the NMW, with its 2007 report concluding that government should work collaboratively with other organisations to raise awareness, taking account of existing opportunities for maximising the accessibility of employment rights’ information.

During our regional visits, we heard of Jobcentre Plus advisers who had been asked for employment rights’ advice, but had not been able to provide appropriate information. It therefore appeared that Jobcentre Plus officials may not routinely be provided with employment rights’ advice training, a measure that could significantly improve awareness of employment rights among vulnerable workers.

We therefore believe there is a need for urgent investment in raising employment rights awareness among vulnerable workers.

There is also evidence of the need for more extensive promotion of awareness among employers. For example, a recent Chartered Institute of Personnel and Development (CIPD) survey found that just under half of HR professionals surveyed described employment law guidance as poor. Similarly, research considering employers’ views of minimum wage promotion found that official information was described as “inadequate and insufficiently detailed to be helpful in practice”. The campaign evaluation found that in only a small number of cases had positive changes in practice been made in response to campaign messages. Some respondents still believed that workers from countries outside the EU did not have to be paid the rate, and even in a self-selecting postal survey (which demonstrated higher levels of awareness than other methods) only a small majority of owners and managers were found to know the
correct adult rate. A majority (69 per cent) did not know the correct development rate figure.

In their response to our Commission Citizens Advice and Citizens Advice Scotland highlighted that: “In many cases the unfair treatment that workers experience can be seen to result from poor practice on the part of their employer due to, for example, an inadequate awareness or knowledge of the often inordinately complex legal provision, a lack of specialist HR personnel to implement and oversee the necessary processes, and the demands of running a small firm in an increasingly competitive business environment – or a combination of such factors. Indeed, there appears to us to be a spectrum of employer conduct, with deliberate abuse by unscrupulous employers or rogue employers at one end, inadvertent poor practice by essentially well-intentioned employers at the other end, and many shades of non-compliance in between.” Our survey of employment rights advisers33 reached similar findings, concluding that much non-compliance with employment law was a result of employer ignorance rather than wilful law breaking: two thirds agreed or strongly agreed with the statement ‘employer ignorance is responsible for most of the breaches you deal with’ (although it is important to note that a third indicated they agreed with the statement ‘most of the employers you deal with know the law, but are clever at evading it’).

As with workers, there is no catch-all strategy for providing employers with information on employment rights. A qualitative Acas study of ethnic minority small businesses found that these small firms sought information on employment rights on a ‘need to know’ basis rather than in a structured or planned fashion. Across the sample, few participants were aware of Acas’s employment relations role. The study concluded that, to be effective, the service would have to proactively promote its work, rather than waiting for businesses to approach it for information. The research also identified that no single communications approach would be effective for all ethnic minority businesses,34 and that local initiatives based on the characteristics and needs of each area would provide the best means to build further relations with such firms. Recent survey research with employers who have experience of the minimum wage compliance process also suggests that more publicity is necessary, with the researchers recommending that minimum wage information could be sent to employers with their annual tax packs, that P60 forms could be amended to include hours and earnings, and that increased advertising in the trade press for low-paying sectors could all help to raise awareness.34

We therefore believe that significantly increased investments in creative, proactive and targeted advertising strategies are necessary if awareness is to be increased among employers.

Acas are already in a strong position to promote employment rights to small employers, with a national presence and strong brand awareness among both employers and workers. Their consultation response to our Commission highlights that last year they ran nearly 1,000 training events aiming to help employers improve their employment practices. They have also been participating in the BERR-funded vulnerable workers pilots (delivered by the TUC in London and Marketing Birmingham in the Midlands), whose activities include piloting new approaches to engaging with employers to support the delivery of employment rights training. Acas have also set up a working group to monitor developments relevant to vulnerable workers and their employment. In our view, they are therefore well placed to deliver further targeted training and support to small employers as a means of preventing vulnerable employment.

Trade unions and civil society organisations also have an important role to play in increasing employment rights’ awareness. In efforts to support vulnerable workers, trade unions are increasingly developing innovative methods of disseminating employment rights information, through work with civil society organisations and tailored resources and leaflets. There are some excellent examples of good practice in this area, including work overseas with trade unions in other countries and the development of multilingual resources for migrants. Coordination of information is, however, also important, and our investigations suggest that a strategic approach is not always being taken to the production and dissemination of information. For example, while increasing information resources are being produced for migrant workers, there is a risk of union, civil society and government duplicating one another’s work. Often voluntary and community groups are best placed to support vulnerable workers, but they can be severely under funded.

In some areas, we found examples of voluntary sector staff collecting examples of mistreatment, but not considering that there could be benefits from passing the information to appropriate government
enforcement agencies or trade union representatives. It also became evident that for some local trade union officials knowledge of specific employment rights entitlements, and of enforcement channels, was low.

We also believe that there is further scope for employers to promote employment rights’ awareness among their workers. We identified examples of good practice where employers are actively supporting their workers to understand their rights at work; for example, during our regional fieldtrips we met employers who were employing liaison officers to support migrant workers to understand their rights. However, there were many more cases where employers were not providing information, or in the worst cases, were deliberately misleading their workers about their employment rights. Several respondents to our research and consultation also emphasised that employers should have a greater responsibility to provide their staff with information on employment rights:

“We believe there should be a duty on agencies to hand each worker a copy of an information leaflet explaining their rights when they sign up for employment.”
(RMT)

“We’re asking that employers should be compelled, under their duty of care, to ensure that workers receive and properly understand contracts and terms of employment.”
(Advice for Life)

“One thing that has come up consistently from members themselves in the industry is that, in addition to providing workers with a statement about terms and conditions, it should simply be required to issue a statement about their basic rights. Otherwise all that happens is that people have to scramble about looking everywhere to try and find out what their rights are. I think the view is that that would be quite a simple and straightforward thing to do.”
(Trade union officer)

There is therefore a need for trade unions, civil society organisations and employers to take strategic approaches to promoting employment rights’ awareness among vulnerable workers.

With limited public information advertising, the internet has increasingly become the Government’s medium of choice for the dissemination of employment rights’ information. In summer 2004, the majority of hard-copy DTI booklets and leaflets on employment rights were withdrawn, and are now available only online. Since then, the DTI has also chosen to address the information gap around issues of employment status through the online DirectGov gateway, rather than hard-copy publications.

Reducing access to paper-based resources risks excluding the most vulnerable workers. Citizens Advice has highlighted that hard copies are often extremely useful for their clients, reinforcing information they are given verbally by advisers, enabling workers to give their employers authoritative information on employment law, and providing accessible and free access to accurate information. From their analysis, printing off a copy of one of these booklets from the internet would cost around £6.60, which would be prohibitive for those on low incomes and impossible for those unable to access online resources.

There is also government evidence of a digital divide, which shows that only around 20 per cent of those on low incomes have a home computer with internet access and that in some housing estates well under 50 per cent of households have a landline telephone (compared to a national average of over 90 per cent), let alone access to a modem. During our regional visits, we met very few workers who had regular internet access. It also became clear that some voluntary and community groups were still without dedicated computer access that would enable them to provide employment rights’ information to clients and members in an electronic format. Respondents to our research also emphasised the limitations of the internet as a means to communicate with vulnerable workers:

“I don’t think the internet is a way forward. A lot of people don’t have computers or aren’t used to using the net. I think that’s been a mistake by the Government: the right to request working forms are only available on the net. People can’t. People assume everyone has net access, they haven’t. Poorer people in particular.”
(Employment rights adviser)
Surveys on employment rights awareness have asked specifically about the role of the internet in providing information. Use of the internet varies considerably by age, with 38 per cent of those aged 35–44 likely to say they would use the internet, compared to 27 per cent of those aged 16–24 and 10 per cent of those aged 55–64. Those with higher earnings are more likely to make use of electronic information – only 25 per cent of those earning less than £15,000 per year say they would use the internet to access information, compared to 44 per cent of those earning over £40,000. Those who were most likely to say they would use the internet were aged 35–44, respondents with high earnings, private sector workers, those with managerial responsibilities and non-union members. Analysis of use of the Acas helpline similarly found that those who had been most likely to make previous use of the website were more likely to be younger, in full-time work, in larger workplaces and in managerial and professional occupations.

Our survey of employment rights advisers found that 70 per cent of law centre advisers, and 49 per cent of CABx advisers found that their clients accessed information about employment rights on the internet. Advertisers’ views on the utility of the information ranged from ‘very useful’ to ‘less than half our clients have access to the internet so the information is not available to many’. Some were also concerned that using the internet to convey information about more complex areas of employment law could be counterproductive, as clients could misinterpret the information.

There is also little evidence that all employers choose the internet as their medium of choice. For example, Acas found that the most popular way for small employers to find advice on the employment rights of their staff was phone and face-to-face contact. While there was a growing interest in the use of websites, this was preferred by only one in ten employers. Similarly, in a DTI survey, only 12.5 per cent of employers employing between one and nine staff cited the internet as their preferred source of information on employment rights, and many of them considered their accountants or solicitors their key sources of information on these issues.

We therefore believe that while there is a role for electronic employment rights’ resources, alternative strategies are also essential to ensure that vulnerable workers and some employers are not excluded.
Magda’s story

Magda, from Poland, is in her 20s. She has a degree and a qualification to be a social worker in her home country but decided to move to the UK shortly after graduating to improve her English, gain work experience and skills and earn some money. Magda currently works for a leisure company where she is now a receptionist but was previously employed in ‘member care’ (mostly cleaning duties). Her previous main job since arriving in England was as a cleaner in a hotel.

Although all jobs have paid the minimum wage rate, the hotel did not provide any sickness or holiday pay and stipulated that a minimum of 12 rooms must be cleaned in each six-hour shift: “If we didn’t finish for the six hours we had to stay longer. They didn’t pay us for this... In the beginning it was really hard. Sometimes we had to forget about breaks and just clean to go home earlier.” Magda got a bad back from the rushing around and bending down required by the job: “You can clean everything but sometimes it’s hard for your back. One month I got to feel some changes in my back. You have to sweat all the time, you are running.” She also breathed in fumes from the cleaning chemicals used for the windowless bathrooms.

To supplement her income at the hotel, Magda took a part-time informal job, two days a week at weekends, as a catering assistant at £5 per hour. Shifts could be up to 12 hours, sometimes without breaks. There were also occasions where the man who ran the business kept Magda and her co-workers waiting at the beginning or end of shifts for up to two hours, for which he refused to pay: “If somebody said they were not going to come back to him because they doesn’t treat us well he said okay, fine I will find another girl.”

Magda finds her current role at the gym stressful. Staff are set performance targets and there are problems with understaffing and high turnover. Magda is sometimes expected to do cleaning tasks on top of her reception duties. She has also recently discovered some workers’ hours are being changed so that they are paid more in order to keep them: “Everyone has different wages... Now I don’t know who has more or less, no one wants to tell. I feel a bit upset about the way they deal with this.” She is also disappointed at the lack of appreciation and recognition for her hard work and good performance in the way she is treated by senior staff.

Magda has some idea about where she could go for information and advice on enforcing employment rights but says that often for people in her situation it does not seem practical or worthwhile to pursue complaints: “Sometimes Polish people don’t want to do something [about poor treatment at work]. They don’t want to waste time. They try to find a better job and leave this behind. If we could be together we could. Sometimes it’s a waste of time to do something about this because we have to find another job, earn some money to survive because nobody will pay for us the rent.”

Although it is not ideal, Magda plans to stay in her current job for the time being to gain skills and experience until she is in a position to get something better: “At the moment I try to get some skills from reception, administration and improve my English. Later I would like to do banking, to help me when I come back to Poland to find some better job there. I will not waste the years I am spending here.”

(We met Magda through a local ESOL provider)
Employment rights advice deserts

Trade unions can offer active support in the workplace, accompanying workers in grievance and disciplinary hearings and often finding solutions that avoid the need for legal action, enabling workers to retain their jobs and saving recruitment costs for employers. A union presence in a workplace makes it more likely that employers will be aware of the employment rights of their workers; for example, knowledge of legislative changes in relation to maternity leave and flexible working rights is higher in unionised workplaces. Analysis of the Workplace Employee Relations Survey (WERS) shows the likelihood of employers providing details of terms and conditions of employment is greater where trade unions are present, and suggests that collective bargaining facilitates access to and improvements to statutory employment rights.

However, vulnerable workers are among the least likely to be members of a trade union or to approach them for advice. A large DTI survey found that low-paid workers were less likely than those earning higher wages to approach a union for advice; 17 per cent of those earning less than £15,000 per year said they would seek advice from a trade union, compared to 37 per cent of those earning £25,000–£39,000. Those in smaller workplaces of nine workers or fewer were also much less likely to obtain advice from a trade union: 11 per cent, compared to 35 per cent of those in workplaces of over 500 employees. There was also variation by age; only nine per cent of those aged 16–24 would go to a union, compared to 32 per cent of those aged 55–64. (Further discussion of the action that unions need to take to organise vulnerable workers is provided in Chapter 3).

Acas are in a strong position to provide telephone-based advice to vulnerable workers. Their response to our Commission notes that their helpline takes more than 470,000 calls a year from workers seeking advice, and highlights recent steps that have been taken to make it more accessible, including the introduction of a translation service for workers for whom English is not a first language. However, while this is an important service for those requiring initial information, which with increased resources could be promoted more widely, such telephone based support cannot not be a replacement for more intensive, face-to-face advice, providing workers with the opportunity to discuss possible routes to resolution and gain support with drafting letters and completing forms.

Accessible, face-to-face advice is likely to be the best way to provide employment rights’ support to vulnerable workers who have experience problems at work. Research from the National Consumer Council shows that people living in areas of high deprivation prefer face-to-face interaction, and are less confident about telephone advice and information, finding it harder and more time-consuming to resolve problems in this way.

Respondents to our research also felt that speaking to an adviser could be the only way for some workers to begin to resolve their problems:

“A big element has to be talking to a person. It’s not a leaflet or a website. People don’t connect with that. They want to thrash out the arguments with you.”

(Employment rights adviser)

An adviser responding to our survey explained the specific limitations of telephone based advice for migrant workers:

“If they need a specialist, we used to have a specialist migrant adviser coming here until last year. They lost their funding for that. They’ve now set up a telephone project where the people on the other end do speak some of the east European languages, but these people don’t want telephone advice - they want face-to-face advice. I think it’s a little bit of the fear of who might be on the other end of the telephone, because there’s a lot of intimidation that goes on by certain gangmasters. The other thing is I think they feel that sometimes they...
have a language in common, like Russian, but it’s not their native language and they like to be able to use non-verbal communication as well. They like to show things to people and use expressions.”

(CAB adviser)

The Legal Services Commission has found that many workers also face real difficulties in accessing advice services, as many operate only during working hours. Again, some respondents experienced difficulties with telephone advice, which can be particularly inappropriate for those with learning difficulties, language problems or particularly complicated problems. It was found that “for some of the most socially excluded people within the community, more active forms of face-to-face advice, involving different forms of physical ‘outreach’, may be necessary if advice is to reach and be effective for all those who may need it.”

Research undertaken by Citizens Advice identified similar issues, with 60 per cent of rural bureaux surveyed identifying communication problems as a major challenge when supporting migrant workers, and the availability and cost of interpretation and translation services identified as a significant problem. Difficulties with accessibility were also noted by respondents to our consultation:

“I know we’re not getting everybody who needs it. A lot of our employment cases are by referral. The local equality council has a worker who deals with migrant workers and he’s overwhelmed. The opening hours are limited. People are trying to work and we don’t offer any out-of-hours service. I imagine there’s an awful lot we’re not picking up that we could do.”

(Employment rights adviser)

The Legal Services Commission has also undertaken research suggesting that in cases of employment problems the sources from which advice is sought are diverse. While unions, CABx and employers are the most frequently consulted sources of advice, they are followed by solicitors, other advice agencies, the local council, health professionals, the police, insurance companies and other sources such as MPs and local councillors, social workers, government departments, Jobcentre Plus and financial institutions.

The report suggests that people who have experienced legal problems are seldom clear as to the best source of advice for their particular difficulty, often approaching non-specialist agencies for specialist problems or contacting friends and relatives for further information following initial advice. They suggest “a degree of confusion and despair about where to obtain advice” among those who did not receive all the advice they needed from their first source. The report therefore notes the importance of fast and effective referrals between services, and common awareness and coordination among all potential points of advice, including both voluntary and statutory services.

The study identified access to training as a critical issue affecting the quality of provision in the sector. The study found that providers of generalist employment advice, including trade union branch officers, Citizens Advice Bureaux staff and other employment rights advisers, seldom received consistent, ongoing quality training. In turn, this meant that the quality of provision was extremely variable, and that specialist advisers had inconsistent skills levels.

We therefore believe that there is a need for increased local and regional strategic planning to ensure accessibility and awareness of employment rights advice, and to ensure that provision is of the highest possible quality.

Capacity among advice providers is low. CABx are volunteer led services. The normal CAB service provides employment advice and information about rights, but not necessarily specialist casework and ongoing support. Our research shows that in 2006/07 just 33 per cent of CABx had a paid or volunteer employment specialist. Furthermore, in our survey, 46 per cent of the 124 bureaux for which data were provided (out of 144 bureaux nationally that provide specialist employment rights support) had only one volunteer and no paid employment specialists, with a further 17 per cent and 19 per cent respectively relying upon between two to four volunteers. Overall, around two thirds relied entirely upon part-time volunteers to provide employment rights advice.

There are only around 55 law centres nationally specialising in employment law. 32 of these law centres responded to our survey. Almost half of these centres had one employment specialist, and around a third had two. In contrast with CABx, law centres reported very limited use of volunteers, but the numbers of advisers and their geographical coverage is far more limited.
Very high proportions of advisers we surveyed felt that their employment rights advice services had too few or far too few staff (70 per cent for CABx and 80 per cent for law centres), and less than a third of CABx and 19 per cent of law centre advisers felt that they had enough.

Migrant workers with employment problems are likely to require specialist support that spans both employment and immigration law. However, our research evidence suggests that resources in this area are particularly scarce: around two-thirds of both CABx and law centres felt that they had ‘too little’ or ‘far too little’ legal experience to assist migrant workers. Our consultation also identified particular issues in finding appropriate interpretation and translation. Advisers told us how low capacity impacted on clients:

“I suppose I say that because we’ve never turned anybody away, which is perhaps rather an odd way of looking at it. ... We kind of muddle through, somehow. As I say, we haven’t had to say to anybody we’re much too busy to take your case on, but we do rely heavily on the volunteer advisers to sort out the lower level stuff.” (CAB adviser)

“I would like to have an employment section. I think we have sufficient employment enquiries. I would like at least one full-time employment specialist adviser who could represent at tribunal, at least one, because I think there’s a need. We are in a particularly bad situation in this area in that there are ... if I put in a search on CLS [Community Legal Service] in a forty mile radius, I might get three hits and one or two of those will be law centres who only deal with their own area. There’s nobody locally that does specialist employment advice. We have a steady stream of employment problems. [There is a] big culture in this area of warehouse workers, part time workers, agency workers and very little support for them...”

(CAB manager)

“We are screaming anyway with the ones that do qualify [for legal aid] because of the amount of demand. We open our doors at 10.00am but at 9.15am there is a queue around the corner, and we can only take about six people per session, you know six people in the morning and six in the afternoon. Yes we do turn away and yes, we try not to turn away, we try to refer, but that area of referral is shrinking.”

(Law centre adviser)

Respondents to our consultation also summarised the situation:

“If we feel somebody needs someone to sit down with them and go through something then we would suggest CAB. But where I live, there are people queuing around the block outside the CAB when I leave at 8am. What is the reality of that, especially for someone with a child, of getting seen?”

(Employment rights adviser)

In recent years there has been a real terms decrease in the proportion of Citizens Advice Bureaux’ income that comes from local authorities. While most CABx receive some core funding from local authorities, there is no requirement for this, or any other funding that local authorities provide for advice services, to cover employment rights provision. Child Poverty Action Group have highlighted the impacts that such policies can have: “However, when push comes to shove (and in the virtual absence of any statutory obligations to fund legal and advice services), we have seen authorities changing their funding priorities to fund only services that benefit themselves (or more accurately, the targets they have set for themselves or which have been set by central government). Thus, funding is either withdrawn from independent advice providers and/or transferred to services that concentrate on reducing rent arrears of local authority tenants through debt services, or maximising take-up of disability benefits that are then clawed back by the authority through domiciliary care charges.” In our survey most employment rights advisers said that their services had experienced real terms local authority funding cuts in recent years – this was the case for 77.8 per cent of CABx and 75.9 per cent of law centres. A survey by Amicus (now Unite) of voluntary and not-for-profit sector organisations revealed that for many organisations present funding regimes are complex and bureaucratic, causing job insecurity and stress for staff, compromising services and affecting organisations’ abilities to plan. The report emphasises that short-term funding has a detrimental impact on clients as well as workers and volunteers. In particular, smaller organisations were found to be vulnerable, with many deterred from accessing information or applying for funding because of the complexity of the processes. In its response to us, Unite also noted that: “the experience of Unite members in the voluntary sector is that competitive funding streams are leading to under-resourcing for vital voluntary sector organisations”.

To see our short report go to www.vulnerableworkers.org.uk
Recognising the existence of such difficulties, the Treasury’s 2002 Cross-Cutting Review provided a framework for the better use of voluntary and non-profit organisations in the provision of public services and made recommendations for improvements in funding processes. These included involving the sector in the planning as well as the delivery of services, forging long-term strategic partnerships with the sector, and ensuring implementation of the Compact (a framework for partnership working between the state and the voluntary and non-profit sector based on shared principles and undertakings).

However, the National Audit Office and the National Centre for Voluntary Organisations (NCVO) have since noted that not all the proposals have been implemented successfully, recommending a re-emphasis to examine whether the framework is working effectively. Respondents to our consultation noted various shortcomings in its operation:

“"The Compact has been around for about 10 years but most people don’t know anything about it.”
(Voluntary sector respondent)

“"The Compact works well in some areas and poorly in others and there hasn’t been any enforcement of it... poor local authorities just put it in the bin. If the Compact was fully exercised then quite clearly we would have a better situation with regards to full cost recovery, longer funding.”
(Trade union officer)

There is evidence that increasingly short-term and fragmented funding streams have exacerbated resource difficulties for employment rights advice providers (including voluntary sector and union groups such as unemployed workers centres). Advisers in our survey commented on an increasing fragmentation of support, which left staff chasing funds from many different sources. With core funding static or decreasing for the majority of advisers, time spent seeking funds had increased or greatly increased for 81 per cent of CABx and 84 per cent of law centres. While these organisations are by no means the only independent rights’ advice providers in the UK, evidence presented to us during our regional visits suggests that similar trends are affecting other independent employment rights services. For example, we met with migrant worker advice projects that were overwhelmed with clients but would shortly be closing due to their lack of funds. Respondents noted that short-term funding affected both the immediate availability of services for vulnerable workers and also the longer-term sustainability of the provision; they highlighted that when service staff felt insecure in their own work they were more likely to leave, leaving advice posts unfilled.

The Scottish Low Pay Unit’s response to our Commission summarised the situation in Scotland. It highlighted that the increasing restrictions placed on the use of funding led to the involvement of multiple providers in the delivery of employment advice, which could further complicate access for vulnerable workers:

“"There are several agencies working in this area in Scotland, but complex funding conditions make it difficult to provide a joined-up service. The SLPU operates across the whole of Scotland. However, we are not resourced sufficiently to provide help to all who need it or to offer representation or mediation services. Acas offers advice, conciliation and arbitration to help avoid the need for tribunal cases, but does not have a remit to help those whose problems are not likely to lead to tribunal, where legal redress is not available or to offer representation. In some areas, local Citizens Advice Bureaux, Welfare Rights Offices or Law Centres have employment specialists but the capacity of these services varies. Trade Unions are able to assist workers throughout the process, but as previously discussed, their services are available only to members. The end result is that workers often have to consult several different agencies in order to get the support they need.”

During a regional visit to Wales, we heard about research undertaken by the Equalities Commissions, the Legal Services Commission and the Welsh Assembly considering the availability of advice and support for workers who had experienced employment discrimination. The report highlighted problems including a lack of information about employment rights and sources of advice, a weak advice infrastructure, a lack of training and quality accreditation and a poor system of referral and coordination between advice agencies. The study identified vast ‘advice deserts’ in Wales, and highlighted that no audit of funding of advice provision had ever been undertaken. Inadequate, complex, short-term and reduced funding was found to be limiting service capacity and fragmenting provision.
Citizens Advice has estimated that around 2 million people each year fail to take action on legal problems because of lack of access to advice. Its analysis suggests that these people are most likely to have experienced problems relating to money, employment, accidental injury or work-related ill health, and to be living on an annual income of less than £10,000 and/or in rental accommodation; they are the lowest paid, and already facing disadvantage.

Even when people take attempt to take action, research indicates that success is relatively rare. A large survey of unorganised, low-paid workers found that while 86 per cent of low-paid workers who had experienced a problem at work had taken some initial action to resolve their difficulties, only 18.6 per cent of those who had taken action (only 16 per cent of the whole sample) had reached a satisfactory outcome.

We believe that such failure to access information and advice, and to reach satisfactory resolutions to workplace problems, is linked to the existence of employment rights advice deserts across the UK. In our view action is therefore needed to address the shortfalls in funding for employment rights’ advice for vulnerable workers, and to improve local co-ordination of employment rights advice funding.
Since 1999 legal aid has been subject to large-scale reform, with the introduction of a contracting system for organisations supporting those who qualified for legal aid, moving away from a demand led system where solicitors were reimbursed on a ‘pay as you go’ basis. Since October 2007 new requirements have been placed on solicitors and advice providers to contract for legal aid through a system of fixed and graduated fees for each case, as opposed to the previously common practice of payment on an hourly basis.

Reform aimed to limit increases in legal aid spending, as a result of the rising costs of the criminal legal aid and child care proceedings. However, while criminal legal aid budgets continue to rise, spending on non-family (including employment) civil legal aid declined from £320 million in 2003–04 to £227 million in 2005–06. By 2007 the budget for legal aid support in these areas was only slightly above the level of £210 million, the same amount as in 2001. Between 1997 and 2005 civil legal aid costs (excluding asylum) fell by 24 per cent.

Ever since legal aid reform commenced there has been controversy over the new requirements that have been placed on solicitors undertaking legal aid work, with solicitors and advocacy groups claiming that the bureaucratic requirements of contracting have led to a reduction in suppliers willing to undertake legal aid work. While the new system of contracting has been in operation there has been a significant decline in the supply base; from 1992 to 2002, the number of firms undertaking legal aid work decreased from 11,000 to 4,361. In its 2002 Annual Report the Legal Services Commission drew attention to this continuing problem, stating: “We are concerned about the changes we are seeing in the supplier base... We are picking up intelligence through our regional offices that up to 50 per cent of firms are seriously considering stopping or significantly reducing publicly-funded work.” Its 2005-06 annual report noted that this problem had not been reversed, and by March 2006 the number had fallen further to 3,623 nationally.

The largest decline in providers has been in employment advice work, where legal aid is available for legal help and advice and preparation work. From 2001 to 2006 the number of civil contracts for employment advice held by solicitors dropped by 46 per cent, from 373 providers to 216 nationally.

The LSC state that although there has been a reduction in suppliers, the amount of initial advice and assistance being provided has increased. However, the Commons Select Committee on Constitutional Affairs has concluded that reforms have exacerbated advice deserts, and that “some areas of England and Wales, including rural and some urban areas, do not have adequate supply of publicly funded legal services.”

A national survey of over two hundred CABs found that 69 per cent disagreed or strongly disagreed that the reform had had a positive impact on the local landscape of advice provision. 39 per cent of bureaux said that they thought that their CAB was in an “advice desert”. Bureaux also felt that local solicitors were doing less legal aid work, with 40 out of the 100 written comments on the question specifically mentioning the reduction of solicitor provision in the area and subsequent gaps in the pattern of services. 27 per cent of bureaux reported difficulties finding legal aid solicitors able to deal with employment law cases. In its response to our Commission, Unite also highlighted that the changes are reducing access to immigration advice for migrant workers; they note that, according to the Law Society, 74 per cent of immigration practitioners said their firms were less likely to take on legal aid work as a result of the changes.
Advisers in our survey described the impacts that the reduction in suppliers was having locally:

“We used to have an A4 double sided sheet of people who would take if we couldn’t, if we were over-loaded. It’s almost empty now. I mean, it’s almost not worth giving out. I think the three or so that remain, they can’t take them as they are over-loaded.”

(Law centre adviser)

“They [private solicitors] don’t want to know because there’s no money in it. There’s no money in employment law; the people who are taking the cases can’t afford to pay £150 an hour for a solicitor.”

(Law centre adviser)

Since 2007 the new contracting model has been accompanied by a system of fixed fees, meaning that advice providers receive a flat fee regardless of the length or complexity of cases they take on. The system has led to concerns that it may no longer be financially viable for legal aid providers to take on the cases of the most vulnerable workers, as the fixed fee scheme incentivises providers to take on easier, shorter cases. Many law centres are deeply concerned that the changes will mean that they can take these cases on only through internal subsidies, and that commercial practices will continue to cease to take on legal aid funding as they cannot profit from it. At the AGM of the Central London Law Centre there was extreme concern regarding the new system, with solicitors highlighting that the cases of the most vulnerable clients could not be run in the amount of time that the specified £225 fee would equate to in hours (less than 4 hours). They noted that discrimination cases in particular required more support to run properly without being negligent. The House of Commons Select Committee on Constitutional Affairs has also been extremely critical of the changes, describing the new system as “over-complex, rigid and likely to impose unsustainable cuts in the fee income of solicitors’ firms”, and noting that the most vulnerable clients are likely to suffer.

Our survey of employment rights advisers identifies that these fears are being borne out. Two thirds of law centres reported that advice time had decreased as a result of the implementation of the new legal aid contracts, and that as a result the types of casework they undertook had altered: simple cases were adopted and more complex cases turned away in order to comply with numerical targets. As contracts do not pay for free, initial screening of problems, advisers also reported being unable to offer short-term advice:

“Prior to [the new contract] that we had been able to give everyone half an hour free advice. That was hugely helpful for vulnerable workers. Half an hour doesn’t sound like much, but one of the biggest issues we have with vulnerable workers is they’re hard to reach and language barriers are even more (of a problem). It’s much easier for someone to pop in or phone for half an hour advice and not have to fill in forms...than it is to go through a lot of form filing procedures and that was a very good way of at least giving people very basic ideas about what they were entitled to, which enabled them to go away and do some more good.”

(Law centre adviser)

“They’ve increased the money but they are expecting us to do much more for the money...we used to be paid by the hour, so you do the work; you get paid for the work you’ve done. Yes, you had to quite rightly jump through hoops to demonstrate that the work you were doing needed to be done and you were doing it efficiently... Now what they do is they say well we’ll give you £225 for each case you open. So you have to be opening a significant number of cases less than £225 to balance out most of them which are above £225...I am afraid that quality is going to suffer because of what the Legal Services Commission is doing and not only that, it will allow organisations into the sector, or encourage organisations into the sector that are good at doing volume, but not complexity.”

(CAB adviser)

Eligibility criteria for legal aid are also limiting access for vulnerable workers. While legal aid is available for legal help or advice and preparation work, the qualification thresholds are so low that a worker on the minimum wage with Tax Credit entitlement would find themselves earning too much to qualify – anyone with more than £672 disposable income per month after tax is excluded. Support could also be denied via the ‘sufficient benefit test’ whereby, if the cost of legal aid is too great in relation to likely compensation, qualification can be withdrawn. Low-paid workers are disproportionately likely to be affected by this rule, given the relatively low awards they are likely to receive.
The Select Committee on Constitutional Affairs has therefore concluded that “at present, the legal aid system is increasingly being restricted to those with no means at all”.102

The DTI Survey of Employment Tribunals103 found that a quarter of applicants said that during the tribunal process they would have liked additional help, compared to only 12 per cent of employers.104 The survey also showed that among applicants, lack of satisfaction with the process was most commonly related to having inadequate access to advice and representation, and overall nearly half (46 per cent) of applicants said that they did not use a solicitor because they could not afford to. This compares with only 15 per cent of employers who said that they could not afford to use their desired sources of advice.105 Employers were also much more likely than applicants to have received other types of advice on the case, including advice on what the tribunal might award (80 per cent of employers, compared to 65 per cent of applicants) and help in preparing hearings (73 per cent of applicants, compared to 58 per cent of applicants).

It is therefore our view that the impact of legal aid reform on the availability of employment advice for vulnerable workers needs to be urgently assessed. We believe that government needs to ensure that adequate legal aid is available to enable vulnerable workers to access advice and challenge exploitative treatment, and that the new systems of reimbursing solicitors and advice providers for legal aid work do not further reduce access to employment rights advice.
Pamela’s story

Pamela is 51, white British and a lone parent. She has no qualifications. For six years, and until recently, she worked part-time from home as a courier, delivering and collecting catalogue orders. This work was paid at a piece-rate that fell below the minimum wage. Pamela was not given any benefits on the basis that she was self-employed – a definition she is now taking legal action to challenge.

On an average working day for Pamela, the delivery would arrive at around 8:30am and she would spend a few hours doing paperwork, drawing up lists of addresses, putting stickers on the parcels, planning out her route and loading the car. She would then go out and do her deliveries for three or four hours. Pamela was only paid per parcel delivered and not for time and expenses for the administrative side of the job, or for petrol and car repairs. She was paid 45p for every parcel delivered and 30p for every parcel collected – averaging out at between £2 and £3 per hour. On days that she had to do work that she had been unable to complete the day before, Pamela had to take her children out on deliveries with her.

Pamela’s original contract also stated that she had liability for car insurance and implied responsibility for finding a replacement when off sick or on holiday. When the company she worked for was taken over by another firm, Pamela was offered a smaller round outside her local area and asked to sign a new contract saying that she was genuinely self-employed. When Pamela asked for a copy of the contract, she was refused.

Pamela found out about the National Group on Homeworking (NGH) through the internet. With their support she took her (original) employer to an employment tribunal disputing her alleged self-employed status and claiming for minimum wage and holiday pay. At the start of February, Pamela heard that she had won her case and was considered both a ‘worker’ and a ‘homeworker’ for the purposes of the NMW. The next step would then be a tribunal to look at the actual issue of NMW underpayment, and assessing what arrears Pamela would be owed (these were likely to be substantial). However, the company is seeking leave to appeal and if they get permission then the whole issue will be opened up again, and Pamela’s win could either be overturned or upheld at an appeal tribunal.

At the time of the initial decision, Pamela – who has already been to four hearings – commented: “When I first went to the tribunal it was very hard. I thought – does this mean that everyone in my position has to go to court to seek something so basic as the minimum wage? Other people have an automatic right to this, why can’t I? I know there are thousands out there like me, and I feel that I’m fighting for them too.”

Although she was claiming Working Tax Credit, Child Benefit and Council Tax Benefit while in the job, Pamela says that it was very difficult to manage financially on a single income below minimum wage pay with two children. Her requests for a pay rise were ignored by company management and she ended up taking on a second delivery area for extra income. Even then, Pamela could not make any savings or meet mortgage payments and she began to get into debt.

Pamela describes the experience of getting deeper into debt as devastating: “Sometimes I couldn’t sleep at night, sometimes I cried, I just tried hard to bottle up everything”; “It’s a very insecure situation to be in... It got quite desperate actually because I had to cut right down on paying my mortgage payments.”

In the end, she was forced to ask her mother for a loan to help with her finances.

Pamela now has a new, permanent job, still working from home but with full benefits as well as training opportunities. Although she is slowly regaining some financial stability and is feeling much happier, Pamela remains concerned about the vulnerability of other lone parents in similar situations: “It’s just agony, the fact that lone parents...they’re in a very vulnerable situation. I feel as though they need a little more support and guidance and help to get work that fits in with their families because obviously they want to work. I feel that lone parents need more protection. If I’d had it in my situation would have been completely different.”

(We met Pamela through the National Group on Homeworking)
Evidence presented to us suggests that across government policy greater consideration needs to be given to how new initiatives will specifically affect vulnerable workers. For example, the Department of Health has placed an increased focus on providing users of social care services with individual budgets with which to procure services. However, support for services users who then find themselves responsible for employing their support staff varies significantly across local authorities, with the result that many workers are not provided with their legal contractual rights, or are provided with only very casual and insecure work. As well as leading to vulnerable employment for workers, such lack of consideration of employment rights is likely to affect the quality of services provided. For example, those administering direct payments may not be aware of correct Criminal Records Bureau (CRB) procedures, and poorly treated workers are less likely to feel motivated to carry out their work to the best of their abilities.

Similarly, during the development of the Protection of Vulnerable Adults (POVA) registration system, little thought was given to measures to protect workers from abuse by bad employers. As a result, instances have been identified of employers threatening workers with placement on the provisional risk register (which deems them a risk to vulnerable adults, and therefore bars them from work with immediate effect until the investigation period is complete) should they complain about working conditions. Respondents to our consultation described the impact that this could have for workers:

“They have additional dimensions to their problems because of the POVA register. If they have a dispute at work, a disciplinary, where something happens at work, they get put on the pending register. And if they’re on it they can’t get work. It’s a negative thing; if you are registered, you won’t get work. Employers can put people on the register on pending, and that will prevent care workers raising disputes because of their fears about being put on that register.”

(Employment rights adviser).

Given these examples of various central government policies failing to recognise the role that they could play in challenging vulnerable employment, we believe that there is a need for improved central government awareness of vulnerable work, and for ‘employment rights proofing’ of policy to be introduced across Whitehall.
Recommendations

There is a national problem with access to information and advice around employment rights, for both workers and for many employers. Many vulnerable workers do not know what their entitlements are, and those who advise them do not always have access to accurate information. Similarly, small employers in particular are often left without the support they need to provide their staff with up-to-date information on employment rights. This lack of knowledge undermines the purpose of employment rights legislation; if awareness is low, workers are unable to identify what their entitlements are, and employers remain unaware of their responsibilities. Higher awareness could therefore contribute to a reduction in formal workplace disputes, preventing avoidable problems from arising and enabling earlier identification and resolution of potential difficulties.

We therefore recommend that the Government conducts ongoing national campaigns to raise employment rights awareness among workers and employers, covering existing employment rights entitlements and access to enforcement. Content should be tailored to the needs of the most vulnerable workers and small employers, communicated in ways that make the information accessible, for example via digital television and on billboards and public transport. In our view, given its importance to the treatment of those living in poverty in Britain, campaigns should work towards levels of resourcing that are comparable with the benefit fraud advertising initiatives. The campaigns should be ambitious in the target levels of awareness that they seek to achieve.

The Department of Health takes a social marketing approach to its advertising. Social marketing is defined as “an adaptable approach, increasingly being used to achieve and sustain behaviour relevant to a range of social issues and topics”\(^{107}\). The National Social Marketing Centre has identified that a successful approach has three key elements: it seeks to achieve a ‘social good’ (rather than commercial benefit), with specific behavioural goals identified and targeted; it involves systematic phased work to address short, medium and long-term issues; and it utilises a range of marketing techniques and approaches (a marketing mix). The Department of Health’s new social marketing strategy involves a commitment to health promotion work across government and with other organisations in the voluntary and independent sectors. The aim is that the campaign messages are promoted to the public at every possible opportunity, and that staff have the training and knowledge to enable them to communicate messages effectively. Activities are also encouraged through communities, schools and workplaces. A key part of the strategy is involving partners in disseminating key messages. There is also a clear plan for making use of the media in providing the public with health information.\(^{108}\)

The Pension Service has also used social marketing to improve awareness of pension credit. The marketing campaign was designed to target potential claimants using data-matching techniques, and aimed to position pension credit in people’s minds as an entitlement, rather than a benefit. Evaluation by the National Audit Office found that the marketing campaign was twice as cost-effective in increasing benefit take-up as previous campaigns. Activities involved the Pensions Service working in partnership with local authorities and local voluntary sector agencies representing older people. Links with local services were key to the campaign’s success. The communication campaign, delivered in close partnership with local providers making personal contact with pensioners, focused on advertising, direct mail and work with the local and national press to emphasise how many people were ‘missing out’. Research was also undertaken to better understand the pensioner population that is not claiming entitlements, enabling differentiation by common characteristics (for example, pensioners who...
have information gaps and misconceptions, those reluctant to apply, and pensioners who may never apply).\textsuperscript{109}

We therefore believe that a similar strategic approach should be taken to improving awareness of employment rights. The awareness campaigns would need to recognise the interrelated nature of many of the problems that vulnerable workers experience, perhaps developing a general ‘know your rights’ brand to accompany different adverts focusing on areas where employment law awareness is currently low. As part of the campaigns, we would advise significant investment in public information booklets, which could be disseminated upon request, in addition to accessible web resources highlighting both employment rights and routes to enforce them.

The campaigns would also have to understand the importance of taking a local approach, and develop strategies for involving key stakeholders, such as trade unions, employers, trade associations and civil society groups, in disseminating their messages. They should seek to target all workers at risk of being in vulnerable employment, including low-paid migrant workers, homeworkers, agency workers and other non-permanent staff. Unions already disseminate information about employment rights through their membership and through union-sponsored events (for example, trade union conferences or concerts). These activities could be linked into the overall campaign messages. *Unions could also ensure their officials and reps are able to access employment rights training*, to build their knowledge of key elements of employment law and the role of employment rights enforcement bodies. *Employers could undertake to display information and advertising in their workplaces*, for example via posters and payslips. *Large employers could also ensure that information is disseminated throughout their supply chains and via employment agencies*, supporting their suppliers to better understand employment law.

Organisations including schools, Jobcentre Plus offices and GPs practices would also have a key role to play, both in disseminating information and training staff in key employment rights’ messages. Where necessary, this could involve production of simplified guidance regarding current employment protections, for example with respect to the law on the treatment of schoolchildren at work. *Across the public sector, employment rights’ training, highlighting key workplace rights and the roles of the relevant enforcement agencies, should therefore be made available to staff who could receive intelligence on workplace practice as part of their role* (for example, primary health care staff, social workers, and Jobcentre Plus advisers). Overseas staff could also be involved in providing information to migrant workers, for example via British Embassies or High Commissions. Key to success would be strategic use of all possible avenues to ensure that information on employment rights is accessible to the workers and employers who need it most.

Our investigations have identified an increasing crisis in Britain’s employment rights advice and advocacy infrastructure. Parts of the UK are employment rights advice deserts, and in some areas there are no advisers who are able to support vulnerable workers to challenge exploitative treatment at work.

The recent Thoresen review of financial advice called for a national information and guidance service for personal finance issues. The review identified that this service should be governed by the principles of impartiality, supportiveness, crisis prevention and universality, and should be sales-free.\textsuperscript{110} Specifically, it highlighted the importance of a multi-channel approach, comprising telephone, face-to-face and web-based services. It noted that: “A mix of channels will enable a universal service - one which appeals to different people and is easy to access. For example, an online-only service would not fully engage all the estimated 19 million people who could benefit the most from Money Guidance, 48 per cent of whom do not have access to the internet at home (although they may have other ways or places to access it).”\textsuperscript{111}

Similar principles also govern the Connexions service, providing advice and information to young people on a wide range of subjects, including employment rights advice, via web, telephone and face-to-face contact. The service aims to provide integrated advice and guidance for young people, recognising the importance of advice in enabling young people to make a smooth transition to adulthood and working life.\textsuperscript{112} Local authorities have responsibility for co-ordinating information, advice and guidance services in a locality. The quality standards against which provision is assessed include ensuring that young people are aware of how to access advice services and that information, advice and guidance services are regularly and systematically monitored.
We believe that employment rights advice should be afforded a similar priority. To ensure that this is the case, we therefore recommend a range of measures, to ensure access to early advice for both workers and employers.

Firstly, we recommend that there should be a statutory duty upon local authorities to provide funding for an independent employment rights’ advice service in their local area. This should be accompanied by an increase in central government funding to support these services, ideally linked to wider advice provision.

We also believe that trade unions and employers have a part to play in increasing local availability of independent employment rights’ advice, offering both financial and in-kind resources to ensure that those facing exploitation at work are able to access support. As part of their corporate social responsibility work, we believe that employers should consider providing funding to employment rights services, and local community groups who are supporting vulnerable workers. In their efforts to organise vulnerable workers, trade unions should also consider providing funding to voluntary and community organisations who are building links with workers at risk of exploitation (this is discussed in more detail in Chapter 3).

Co-ordination of services is essential. Short-term and fragmented voluntary sector funding streams have exacerbated funding problems, and while our investigations have found that it is often the smallest community and faith groups that are best able to reach vulnerable workers, they can have the least secure funding. Research also shows the need for common awareness and coordination among all advice providers, including both voluntary and statutory services, and during our fieldtrips we met local advice and support groups who had not previously been in contact with each other, and were not always aware of each others’ provision. We therefore believe that in addition to providing guaranteed funding, local authorities should support increased local coordination of employment rights provision, identifying service and funding gaps and promoting partnership working and information sharing between different providers and community groups.

Trade unions and employers also need to ensure that support they offer links with other local initiatives.

Reform of legal aid has led to reductions in the number of advice providers and solicitors who are undertaking legal aid employment rights advice work. This has led to reductions in access to employment rights advice and support for the most vulnerable workers, and evidence shows that reform continues to contribute to the emergence of employment rights advice deserts across the UK. We therefore urge the Government to undertake an urgent review of the impact of funding changes on the availability of employment rights advice for vulnerable workers.

Small employers have reported to us that they find it hard to access accurate information on employment rights, and are not always sure where to obtain information. We believe that action is needed to ensure that employers have access to the advice they need to ensure that employment law can be implemented correctly. Evaluation of recent DTI pilots found that help for small firms may most effectively be directed at supporting good employment practice so as to improve employers’ confidence in managing the employment relationship. These pilots involved shared access to HR advice and training, in return for a contribution made by participating employers in a local area. The full cost was partly subsidised by the Government. The pilots led to demonstrable improvements in client confidence levels in dealing with and awareness of employment issues, and noted that all providers negotiated some form of continuing support with many clients following the end of the pilot period.113

Regionally there are also examples of good practice. In the East of England the Migrant Gateway service, part funded by the East of England Development Agency, provides funding for a telephone advice service for employers seeking advice on employing migrant workers.114 The service offers specialist advice on issues including compliance with rules and regulations relating to the employment of migrant workers, benefits that migrant workers are entitled to, and migrant workers’ employment rights. Initiatives that have been run by the service include employing outreach workers to visit employers and advise on practice, and competitively priced training packages. These are promoted to small employers on trading estates, who all make a small financial contribution for a joint training package that is provided to them on site.
The London Vulnerable Workers Pilot (a BERR commissioned project, delivered by the TUC) has established a tailored training programme for managers in small businesses in the building services sector (mainly cleaning and security). The training is a response to the lack of knowledge and skills in employment rights and relations among many managers in small businesses in the sector. The training will be designed in consultation with employers and delivered with Acas. Its aim is to give managers the skills they need to deal with workplace issues quickly and efficiently. Following the training, supervisors will be able to understand how to get the best from their workforce, have a better idea of how to be a good manager/supervisor, identify causes of grievances and be competent in ways of resolving such issues. This is expected to lead to wider benefits including improved relations between supervisors and workers, improved worker commitment and performance and reduced staff turnover.

Small employers can benefit from training in groups, sharing costs and pooling resources combined with subsidised offers. We therefore recommend that regional and national government build on the success of these various pilots, and recognise the importance of increasing resources for small employers to undertake joint training on employment rights issues. We believe that Acas may be well placed to co-ordinate such an initiative.

Evidence also shows that as part of their corporate social responsibility planning large employers can be willing to support smaller businesses through providing HR expertise and resource to them. For example, evaluation of the UK Workforce Hub and CIPD human resources volunteering pilot, a project where CIPD members could volunteer their HR expertise to voluntary or community organisations, found that both participating HR staff and organisations were very positive about the experience.115 Volunteers, who were at different stages in their careers, gained experience and welcomed the opportunity to undertake a volunteering opportunity targeted at their professional knowledge and practices. Voluntary organisations also praised the programme and the benefits it brought their organisations. We therefore believe that there may be more scope for a formal scheme to be developed, led by the business community, allowing larger businesses to share their HR expertise through providing training or mentoring to smaller businesses.

Increasingly, small employers can be individuals in receipt of social care services, allocated individual budgets with which to purchase their own care services. However, increased consumer rights can come at the expense of employment rights, as new ‘employers’ struggle to understand their responsibilities to their new staff. We therefore believe that in such cases a duty should be placed on local authorities to ensure that those in receipt of direct payments have adequate support to understand their obligations under employment law.
Notes


2 Ibid.


8 Ibid.


10 Ibid. p74.


15 Ibid. p21.


18 Ibid. p108.


25 Ibid. p14.


29 Ibid. p28.

30 Ibid. p36.


Agency Workers

The survey was carried out.

Experiences of Employers in Small Firms

Findings. London: BERR.

The Stationery Office.

and family friendly rights, responses to parliamentary

including working time, the treatment of agency workers

work. However for the majority of employment rights,

promotion of Acas and for promotion of health and safety at

of the DTI/HMRC Targeted Campaign

Minimum Wage in the Hairdressing Industry: An Evaluation


Commission Report 2007

the National Minimum Wage

pp427-448.

Law and Society

Low Pay Commission.

of the DTI/HMRC Targeted Campaign

Acknowledgement

of the DTI/HMRC Targeted Campaign.

www.cabinetoffice.gov.uk

40 Hansard HC col 320W (24 Oct 2007).

41 Hansard HC col1151W (3 April 2008).

42 Hansard HC col 1068W (5 Feb 2008).

43 Hansard HC col 1379W (18 Dec 2007).

44 Hansard HC col 1233W (19 Mar 2008).

45 Information supplied to the TUC from the HMRC National Minimum Wage Compliance Unit.


58 Citizens Advice note that Acas booklets cannot provide a replacement for the DTI series. In The Paperless Waiting Room, the author states that “the new Acas leaflets are not as detailed, comprehensive or good as the DTI booklets. For example, the new ACAS leaflet ‘Parents at Work (RW04)’ contains just three sentences on the relatively new rights to paternity leave and pay, whilst the DTI booklet ‘Working Fathers: Rights to Paternity Leave and Pay (PL317)’, of which the DTI distributed some 30,000 copies in 2003, runs to almost 50 pages.”


56 per cent of callers in the survey were calling as or on behalf of employees.


National Social Marketing Centre UK. www.nsms.org.uk.

Amicus (undated) Short-Term Funding, Short-Term Thinking. London: Amicus.


The Compact is the agreement between government and the voluntary and community sector to improve their relationship for mutual advantage and community gain. It is available to download from www.thecompact.org.uk.


Qualitative interviews indicated that no change in monetary terms indicated a cut in real terms. Those who noted that their funding had stayed the same were therefore assessed to have experienced a real terms decrease.

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111 Ibid. p1.


In this chapter we discuss the role that trade unions have to play in challenging vulnerable employment. We analyse the extent of trade union organisation among vulnerable workers, provide examples of where trade unions are currently acting to recruit and organise those in vulnerable employment, and discuss what the union movement has to do to build on existing good practice.
UNISON’s Overseas Nurses Network

UNISON’s Overseas Nurses Network (ONN) in Scotland was launched December 2003. It is a network of nurses and other care workers from overseas that:

- acts as an information point to provide information on a range of relevant issues such as trade union rights, employment rights, contracts of employment, employment law affecting overseas workers and welfare information
- provides access to training such as stewards’ and/or health and safety training, assertiveness training, rights issues, communications training such as newsletter and computer training
- provides a means to network on a professional level for overseas members working mainly in the private health care sector (but also in the voluntary and NHS sectors)
- provides a means to network on a social level, and meet other members in similar circumstances – a chance to ‘get together’ and share experiences and useful information
- establishes stewards who also act as buddies for new members recently arrived in Scotland
- provides access to UNISON welfare and other support where appropriate
- organises an annual event that is the main event in the network’s calendar
- encourages members to become active in their branch.

The ONN’s founder emphasises the important dual role that the network has for its members, in providing support and being a source of information and self-empowerment. She told us:

“Network groups bring people together to exchange information and support. The ONN helps people form relationships and acts as a support network. Through it we can teach people how the system works and how to represent themselves both to employers and to trade unions. They can come to understand the law and the pros and cons of certain courses of action.”

From UNISON’s perspective, the ONN is a means to engage migrant workers and a useful conduit for consultation with them, providing a way to determine their specific needs. Their founder firmly believes a change from established union structures towards building networks like the ONN is vital if unions truly want to engage and support overseas/migrant workers – losing some of the old institutional rigidity and creating a new ‘trade union as family’.
Vulnerable workers need trade union support. Evidence shows that where trade unions are recognised, working conditions are better. Trade unions also have a number of workplace roles that can be used to support vulnerable workers.

However, most vulnerable workers are not trade union members. Our analysis indicates that only 10 per cent of vulnerable workers are in a trade union. Data show that the characteristics of the average trade union member are almost the opposite to those of many vulnerable workers.

Many vulnerable workers are employed in workplaces where there is no union presence. However, a significant proportion of vulnerable workers are employed in workplaces where there is a union. Our analysis highlights that over 25 per cent of vulnerable workers have a union in their workplace, but are not union members. Around 60 per cent of these workers are women.

Increasingly, workers within the same workplace have different employers, or are supplied by employment agencies – but unions have seldom organised among them.

In recent years there has however been a shift in trade union attitudes towards vulnerable workers. There is growing recognition in the union movement that until now unions have largely failed to reach those in vulnerable employment, and that if they are to offer protection to vulnerable workers new strategies for organising among these groups are necessary.

Unions seeking to build support among vulnerable workers face several challenges, including doubts among workers that trade unions are relevant and the nature of vulnerable employment, which is often found in sectors and occupations with no strong history of union organisation.

However, despite the challenges there is much that trade unions can do to improve their engagement with vulnerable workers. There are, for example, many good examples of unions engaging with temporary agency workers.

To ensure that they can reach those in vulnerable employment unions have to change their ways of working. This can mean challenging rigid membership and participation structures, and building new working relationships with community and faith groups.

Training for officers and stewards is key to ensuring that they have accurate employment rights knowledge, and are able to support vulnerable workers.

Organising vulnerable workers does bring costs for trade unions, as it can be resource-intensive. This is not an excuse for avoiding action. Trade unions have a moral responsibility to organise vulnerable workers.

Ensuring that unions have sufficient paid organising staff, and that stewards and officers have appropriate expertise, are essential to successfully organising vulnerable workers. Developing new ways of organising, building on community unionism and the trade unions movement’s increased commitment to learning, is also important.
Vulnerable workers need trade union support. While the government enforcement infrastructure is in need of significant improvement, even the most proactive and systematic enforcement framework would never reach every worker. Unions also provide an essential means of tackling workplace disputes before they escalate, and preventing vulnerable employment from taking hold.

Research shows that compliance with employment rights legislation is higher where trade unions are recognised; for example, trade union representation impacts positively on whether full holiday entitlements are available. Analysis of the Workplace Employee Relations Survey (WERS) shows that unrecognised workplaces have more employment tribunal claims made against them demonstrating the role that trade unions play in resolving workplace disputes before the need for litigation arises. For many workers, unions are therefore central to guaranteeing good workplace relations and improving working conditions. Evidence continues to show that membership of a trade union has a statistically significant impact on raising pay rates and limiting pay differentials across the labour market.

Trade unions currently have formal workplace roles that can be used to support vulnerable workers. Where a union is recognised for collective bargaining, trade union representatives play a key role in resolving disputes between employers and individuals, and in a large-scale survey, 84 per cent of representatives said that this formed a part of their workplace responsibilities. Union safety reps’ rights have an important place in enforcing workplace health and safety standards, and evidence shows that workplaces with union safety reps and joint union-management safety committees have major injury rates of less than half of those without. The recently government established Union Learning Fund (ULF) has also boosted unions’ capacity as learning organisations (the ULF is discussed in more detail in Chapter 4).

However, our analysis indicates that only 10 per cent of vulnerable workers are trade union members. Key indications on characteristics of the unionised population from the Labour Force Survey (LFS) and British Social Attitudes Survey (BSAS) show that union members are predominantly employed in the public sector: 59 per cent of public sector staff are union members, compared to 17 per cent in the private sector (although BSAS suggests public sector union density is falling faster than in the private sector; there was a fall of 21 percentage points in the public sector between 1984 and 2003, compared with a 9 percentage point drop in the private sector). Members are about twice as likely to be in permanent rather than temporary employment, and are mostly aged over 30; LFS figures show only 23 per cent of union members are under 34. BSAS also found that the proportion of workers aged between 18 and 29 years old who were trade union members declined by 22 percentage points between 1983 and 2003 (from 41 to 19 per cent). Union members are also likely to have had a length of service of over two years; only 13 per cent of members surveyed had been working for the same employer for a shorter period.

Trade union members are disproportionately well-qualified, and degree or other higher education level is the only qualification grouping to have more union members than non-union members. Members also work disproportionately in high-skill, professional occupations, mostly for large employers. Only 31 per cent of union members are employed in workplaces with fewer than 50 workers, compared to 53 per cent of all workers.

While there is no gender gap in union membership, there is an ‘ethnicity gap’: people from minority ethnic backgrounds are less likely to be union members than white people. LFS figures show trade union members to be disproportionately white, though the 1 per cent difference (93 per cent of union members are white, compared to 92 per cent of non-members and just
under 92 per cent of total workers) may hide the rate of divergence and geographical differences. An analysis conducted for the Southern and Eastern Region TUC (SERTUC) found that an increased concentration of minority ethnic workers in London’s low-pay sectors (such as retail, distribution, hotels and catering) has been accompanied by a differential decline in union density in these groups. Between 1993 and 2000, there was a 16 per cent decline in union density among minority ethnic male workers and a 10 per cent decline among female workers from minority ethnic backgrounds in London, compared to a 12 per cent and 2 per cent decline for men and women workers respectively in London overall.

Our research shows that recent migrant workers are much less likely than local workers to have their terms and conditions determined by agreements between trade unions and employers. Analysis of the LFS shows that the proportion of trade union members among recent migrants (in a sample considering two particular geographical areas of the UK) was less than half that of the general population – 12.2 per cent compared with 25.4 per cent. A far higher percentage of recent migrants (81 per cent) compared to the entire sample (65 per cent) also said that their pay and conditions were not affected by agreements between trade unions and employers.

The data therefore show that the characteristics of the average trade union member are almost the opposite to those of many vulnerable workers.

Many vulnerable workers are employed in workplaces where there is no union presence. Around 64 per cent of vulnerable workers are not union members, and are not aware of any trade union activity in their place of work. Of these workers over 60 per cent are women, around 9.5 per cent are from an minority ethnic group and around 27 per cent are aged 24 or younger. There is a strong difference between the public and the private sector – only 6 per cent of non-unionised vulnerable workers work in a public sector workplace where there is no trade union (around 63,300 workers). In contrast, 93 per cent of vulnerable workers who are not union members and have no union in their workplace are employed in the private sector (around 930,000 workers).

However, a significant proportion of vulnerable workers are employed in workplaces where there is a union. Our analysis highlights that over 25 per cent of vulnerable workers have a union in their workplace, but are not union members. Again around 60 per cent are women. Around 5 per cent are from an minority ethnic group and over 30 per cent are aged 24 or under. In the public sector around 50 per cent of non-unionised vulnerable workers work in a workplace with a union presence, compared to 20 per cent in the private sector. Overall numbers of these workers are however smaller in the public sector – around 133,000 workers compared to 264,200 in the private sector.

These trends are also clear in specific sectors. For example, in hotels and restaurants only 1 per cent of vulnerable workers are trade union members. However, 10 per cent of vulnerable workers who are not union members undertake their work in a workplace where there is a union presence. Similarly in health and social work around 18 per cent of vulnerable workers are union members, but a further 26 per cent are not members but work in a workplace where there is a union. In wholesale and retail work 10 per cent of vulnerable workers are in a union while 20 per cent of non-members work in a workplace with a union presence.

Within workplaces many workers are now employed by contracted firms, or on temporary contracts for services, rather than being directly employed by the company who owns the workplace. But unions have not always made the effort to organise these workers. For example, research considering agency labour in the UK poultry sector found that the vast majority of poultry supplier sites reported that they recognised a trade union, but only in a minority of sites were unions actively involved in organising agency workers. Airports are another good example, while airport staff have high levels of trade union membership workers in retail, security, catering and cleaning roles can be missed off the union organising agenda in these sites.

In recent years there has however been a shift in trade union attitudes towards vulnerable workers. There is growing recognition in the union movement that until now unions have largely failed to reach those in vulnerable employment, and that if they are to offer protection to vulnerable workers new strategies for organising among these groups are necessary.

This is reflected in public consultation responses to our Commission from trade unions. Unite, for example, asserts that trade unions: “have a responsibility to act” to tackle the vulnerability of workers, while USDAW similarly states: “trade unions have a responsibility to ensure that the most vulnerable sections of the workforce get a fair deal.
from the employers by organising all sections of the workforce.” UNISON reported to us that: “trade unions need to respond to the vulnerable worker agenda too, for example, holding public authorities to account for their procurement decisions, minimising agency work, making themselves accessible to all, forming support networks, having materials in all languages”.

During our research there was also clear evidence from trade union officers of the importance of organising among these groups:

“The moral question anyway is that workers are being exploited by employers and should be represented and defended and organised by unions. That’s the job of a union.”
(Trade union officer)

“Our message is you’re all in this boat, you’re all workers, we’ve got to stop the company using them. We want them to join the union, be supported and support where we are on the recognition agreement.”
(Trade union officer)

“The workplaces where they are organised and unionised there’s better conditions. Rather than seeing migrant workers as a problem, see them as providing a blood transfusion into the union. It’s forcing unions to rethink ideas about organising and whether their structures are appropriate or not. Ideas about where they’re putting their resources and finances. We do not organise at our peril. We’re not in a situation where we can say we don’t need migrant workers in the unions.”
(Trade union officer)
Recognising the challenges

Unions seeking to build support among vulnerable workers face several challenges. Findings from a large-scale survey of unorganised workers further suggest that there is some receptiveness towards trade unions among those in vulnerable employment. Over half of respondents who were not union members when they experienced a problem considered that being in a union could have helped them resolve their difficulties. Those who thought their problems amounted to an infringement of rights were much more likely to think union membership would help them. Most respondents who had never been trade union members had never joined because they were in non-unionised workplaces and/or had not felt the necessity and did not know anything about them, suggesting “a representation gap and not principled opposition, or preference for individual and non-union channels”.

However, the same survey also found that 54 per cent said they would not consider joining a union and 15 per cent had “ideological opposition”, that is they ‘did not want to be represented by a union/felt unions were against their politics or don’t believe in unions’. Further survey evidence (from WERS) suggests that 40 per cent of the working population are ‘union averse’, i.e. those who said “not particularly likely” or “not at all likely” when asked “if a group of workers at your workplace formed a union and asked you to join, how likely is it that you would join that union?” (compared to 17 per cent ‘union friendly’). Moreover, both union members and union-friendly non-members are older than average and there is a stark age difference between the union-friendly and the union-averse: 21 per cent of non-union members under 30 are union-friendly and 74 per cent are union-averse; 37 per cent of non-union members over 50 are union-friendly while 52 per cent are union-averse.

Evidence from our research also shows that among migrant workers there may be particular perceptions of trade unions that need to be challenged to enable engagement, as workers may be fearful of joining a union or have little conception of what the roles of trade unions are:

“If you take Polish workers there’s a popular myth that because people come from Poland they have a history of trade unionism. It’s not true. Most of the workers that we’re recruiting do not know anything about unions because they’re young, 20–35 in the main. They have very little experience or understanding of unions. They perceive unions as being connected to the state, in some cases connected to countries. They do not see independent trade unions in the way your average British worker does. Most of the migrant workers know very little about what a union is.”

(Trade union officer)

“In Portugal we have collective agreements which are different from the UK. In the UK it’s an agreement between the union and the employer, in Portugal it’s between the unions, employers’ associations and government and it stands for all industries. It differs from industry to industry. They negotiate everything. In Portugal all unions are automatically recognised. Because everything is negotiated on a high level most of the people don’t join the union in Portugal. Here it’s different; they really need representing. It’s more necessary for them to be represented.”

(Trade union officer)

While there is potential for greater union organisation among vulnerable workers, there are therefore also challenges.
Liverpool’s King’s Dock has seen the development of an innovative new workplace learning model for the construction industry. Behind the initiative is a learning partnership network between construction union UCATT, construction firm Bovis Lend Lease, Liverpool Community College and the national construction skills body Construction Skills. Each member of the partnership contributed to the establishment and running of a learning centre located on the site of Liverpool’s new Arena and Convention Centre – a major project employing up to 2,000 workers across its duration.

With 10 computers, internet access, college tutors and a variety of courses on offer, the waterfront learning centre made a concerted effort to tackle the skills gaps and shortages in the construction industry. This was done through a demand-led approach, engaging the workforce through a series of taster sessions, leaflet drops, site inductions, ‘toolbox talks’ and canteen promotions, postcards for making course suggestions and even Indian head-massage sessions. In response to high demand, courses were provided in IT, numeracy and literacy, and conversational Spanish. After-work ESOL lessons proved a major attraction for many of the workforce (a total of 28 languages have been spoken by those who work on the site). Drop-in sessions and one-to-one support were provided for those workers hesitant about returning to learning or concerned about their lack of qualifications. This training has been attended by a sizeable proportion of the workforce. Training was also provided for supervisors and managers on ITC and report writing.

The partnership network also made efforts to engage the management of subcontractors, and the centre was made available to these organisations for running their own courses. Workers from 12 subcontractor employers attended training and the centre was used by a variety of organisations to deliver additional training such as harness and lanyard training for scaffolders.

The King’s Dock initiative is a relatively novel one for the construction industry and it has had to negotiate several substantial barriers, not least the transience and mobility of the construction workforce. Some key lessons have been learned and the initiative has evolved along the way.

While some difficulties remain, the benefits of the initiative are wide-ranging: from improved health and safety and communication to strengthened links with the local community and improved industrial relations between employer and union. These have received acknowledgement from the government: the HSE has voluntarily sought to promote the model and the centre has been cited in two government reports as a model of best practice for ESOL in the workplace and workplace dialogue on training and skills.

King’s Dock now provides an effective model for incorporation into future construction projects.
The legislative context impacts upon the scope that trade unions have to organise, recruit and secure collective agreements. The Employment Relations Act 1999 established a statutory procedure that enables a trade union to obtain recognition by the employer for collective bargaining purposes where the majority of the relevant workforce wants this (the Act also established a similar procedure regarding the de-recognition of a trade union). Both procedures came into force in June 2000. Applications for recognition and de-recognition are determined by the Central Arbitration Committee (CAC). The procedure(s) do not cover small employers (with fewer than 20 workers) – despite a long standing TUC campaign against this exemption.

Further challenges are created by the nature of vulnerable employment itself. As our analysis shows, much vulnerable work is located in sectors and occupations with no strong history of union membership and organisation, and where employers may be hostile, making them resource-intensive and difficult for unions to penetrate. Some vulnerable workers are also migrants, which presents unions with language and cultural barriers to engagement. Unions are also hindered in their attempts to organise by the legal inequalities in the rights of agency workers, discussed in more detail in Chapter 6. Respondents to our research shared their views on these issues with us.

“If it’s a hire-and-fire mentality, if you can’t negotiate on pay, where’s your offer? If you’re trying to recruit an agency worker and you can’t negotiate the price of a contract because that’s dealt with between the agency and employer you can try to influence that, but if you fail what happens then? If you can’t represent someone at a grievance or disciplinary because the company is saying to the agency ‘I’m not having him here’, what is the union’s offer?”
(Trade union officer)

“It’s a well-organised site, nearly 90 per cent membership in the indigenous workforce, no membership in the migrant workforce. They won’t allow us to recruit on site for the migrant workers because they say they don’t belong to the supermarket, they belong to the agency. We’re having to go through the back door to try and get an agreement with the agencies which is happening nationally.”
(Trade union officer)

“Because they’re on a turnaround of six months in one industry, six months somewhere else because there’s no fundamental training done with them, they’re just doing jobs that need a body there to do it without too much skill or training. One minute they could be in a distribution warehouse for six months lumping pallets and the next minute they’re out there and they’re cleaning hotel rooms.”
(Trade union officer)

However, despite the challenges there is much that trade unions can do to improve their engagement with vulnerable workers – and with such low levels of membership among those in vulnerable employment the scale and importance of the challenge is clear. And unions are succeeding; for example, evidence presented to us also shows that trade unions can achieve significant successes in protecting and promoting the interests of agency workers, including negotiating on their use and/or pay. PCS, for example, has published an agency workers activists’ guide and a recruitment leaflet targeted specifically at agency workers. The aim of the booklet and leaflet is to promote organising, campaigning and negotiating, and to gather information to help in further activities. The material has been circulated to all PCS branches, with stocks available for regional organisers to use in targeted organising and recruitment campaigns. The CWU has worked with many employment agencies, and USDAW also seeks to prevent the creation of a divisive two-tier workforce by working to secure representative agreements with agencies and putting across the case for equal treatment to client firms, while seeking to support this work from the bottom up through reaching out to agency workers and creating as strong a level of membership as possible. Respondents to our research told us of approaches they had taken to recruiting agency workers.

“We have a two-prong strategy: to engage the user company in policies around direct employment so these people can be given direct, permanent contracts and secondly to organise and represent the agency worker to protect and try and promote their interests while they’re working with the agency.”
(Trade union officer)

“We do work well on day-to-day issues, both at national and local level. With the agency we have a partnership agreement with them. We meet with them regularly and we try and do what we can to improve the terms. Pay is very much determined by the end user and our ability to try and bring about equal treatment, which is our policy, is very difficult.”
(Trade union officer)
Organising agency workers

A recent campaign run by PCS at a national agency data processing site demonstrates that unions can have success in recruiting agency workers, securing improved terms and conditions for them and bringing about a more responsible approach to the use of agency staff by employers.

Within the increasingly large agency workforce (over half of the total workforce), a significant proportion had been working as agency ‘temps’ in the same job for several years (up to seven). A survey of agency workers showed that job security was a major concern for many. Although many agency workers were not aware of it, there was also an issue over unequal treatment: as well as not having the same holiday, sickness and other entitlements, agency processors’ wage rate was £3 per hour less than that earned by permanent colleagues doing the same job.

The PCS local branch began a campaign to:

- organise and gain recognition with agency workers
- secure permanent posts
- gain equal terms and conditions between agency workers and permanent equivalents
- include agency workers in the membership and activity of the local union branch.

While work towards these objectives is still ongoing, the union can point to some major successes:

- 90 per cent of agency staff joined the union.
- A representative agreement was reached with the employment agency (through recourse to the Central Arbitration Committee in the face of agency refusal).
- 100 new permanent jobs were established (37 of which went to agency workers).
- There were 125 fixed-term appointments.
- A 20p per hour pay rise for the remaining agency workers was achieved and there are ongoing negotiations with the agency to secure improved terms and conditions, focusing now on improved holiday entitlement.

The foundation of this success was the recruitment of agency workers. This was achieved by making them aware of the gap in pay and conditions, the fact that there was only a very limited possibility of them receiving a permanent position, and their wider rights and entitlements. Specialised recruitment literature was produced and site meetings held. Much of the initial effort relied on two or three committed people who were prepared to approach and speak to people during breaks and after work.

The second key development included raising the awareness and gaining the involvement of permanent colleagues, but also – critically – people from outside the workplace: other local civil service workers, local MPs, the wider union, local press and the local community. This work culminated in a public rally with guest speakers including the chief executive of the employer and a local MP. Meanwhile, a concurrent exercise was being run to improve the skills of the workforce, leading to 35 level 1 and 2 literacy accreditations, which helped agency workers apply for permanent posts.
Organising vulnerable workers

To ensure that they can reach those in vulnerable employment unions have to change their ways of working. In order to organise and recruit among these groups, union organisers and representatives may have to review union literature, communications and working practices to ensure that they better reflect the ethnicity, culture, languages and needs of their current or prospective members. Examples we heard included enabling workers without bank accounts to pay subscriptions in cash, providing organising officers with access to translation services, recruiting stewards from migrant workers’ groups, and offering reduced rates to some groups of vulnerable workers. Respondents to our research told us of changes they had made:

“Also having people that speak the language from their group. If we recruit from those communities they know the language and culture and how to deal with issues, it’s much better. We have difficulties in recruiting and training them because there aren’t so many available. There aren’t many people speaking English very well or well enough. We need to work with the union in having the skills to learn fast.”
(Trade union officer)

“They hold a monthly meeting and it’s open to anyone who works in the hospitality industry to come along and talk. They do cultural evenings. It’s a very diverse branch. At each meeting someone volunteers to bring food and music and they give a ten-minute talk about their culture. It’s a way of breaking down barriers.”
(Trade union officer)

Some trade unionists reported to us that membership and participation structures can appear rigid and hierarchical to workers with no prior knowledge or involvement in trade unions and that existing benefits are not always relevant or attractive to certain groups of workers (for example, homeworkers). Responding to the challenges and difficulties involved in tackling vulnerable employment may, in the words of one respondent to our research, therefore require trade unions to go “outside their comfort zone” (Trade union officer).

There have been many successful initiatives specifically around encouraging and enabling migrant worker members to become active in unions or helping to establish migrant networks. Identifying migrant workers and enabling them to become union reps and organisers can be key to such approaches, in the latter case especially when there is a large group of workers from a particular background and/or who speak the same language.

Some unions have set up separate migrant worker branches and/or migrant worker networks, which can play an important role in providing relevant information and support and creating a collective voice. The evidence presented to us suggests that a flexible approach is needed to balance the instinct to integrate all members into the wider union with the need to be relevant and responsive to specific needs of migrant workers through separate branches or subgroups. Unions also need to be able to signpost and/or refer to other services (for example, welfare, housing and tax issues may be particularly important for migrant workers, who are more likely to be unaware of what services are available locally, how the system works, and how to access services). Referral and partnership arrangements with other services can play an important part in being effective. A strategic approach is important. We are, for example, aware that several unions are in the process of introducing defined strategies on recruiting and organising migrant, and sometimes agency workers.

Individual solutions are however needed, given the particularities of regional and national governance structures for each union. Respondents to our research told us about their experiences:
“A challenge for us is to actually probably think beyond branch structures. We have traditionally organised it in a branch way, our voluntary workers on our behalf who organise. And maybe we just have to have something that goes alongside that.”

(Trade union officer)

“Unions have to look at their internal structures and how they see their role in particular sectors and industries. We have to understand the world is not about traditional workplaces and structures of those workplaces. It’s new employment profiles we have to engage with. There have to be new ways of organising. It doesn’t mean running away from traditional values and principles. It’s a contradiction of what trade unions stand for. We cannot assume that every workplace is like Ford’s with a shop steward structure, tradition and a proper workplace organisation. That is not the world we’re operating in now.”

(Trade union officer)

“To become active as stewards, learning reps, branch secretaries, members of the NEC, whatever, so that they become part of our activist base. And the reason for wanting that is because working with migrant workers should not be about doing things for people. It should be what trade unions have always done, which is to empower people to do things for themselves.”

(Trade union officer)

We have also encountered several examples of unions establishing relationships with faith and voluntary and community organisations in order to build profile and trust among vulnerable workers. For example, from their two pilot projects to organise new migrants, the GMB has highlighted to us the importance of linking such community partnership activities to specific workplaces and collective campaigns. Further examples of trade union work with migrant workers include Unite’s new Migrant Worker Support Unit, which is designed to ensure that the union has the structures, resources and facilities in place to provide support for migrant workers and provides advice and support on individual cases. The Unit is putting templates in place for the reporting of incidents relating to the treatment of migrant workers, which will include information about contact points at enforcement agencies. UNISON has also set up successful migrant worker networks, and in addition helped with legal representation, workplace problems, support for ESOL classes, the accreditation of overseas qualifications, immigration status and opening bank accounts; and USDAW has sought to address the problems relating to the language barrier faced by many migrant and agency workers by negotiating with companies on the use of multilingual notice boards, health and safety notices, posters and translation services in company induction programmes.

Trade unions have also responded through initiatives including funding dedicated officers to coordinate organising efforts among migrant workers, providing their officers and stewards with training on employment law and the rights of vulnerable workers, and providing translation services to their organisers. Many respondents to our research discussed the importance of making a clear offer to vulnerable workers, noting that where collective agreements were not in place unions had to be able to offer other benefits to new members and develop new organising agendas.

“You have to appeal to the fact that the membership is portable and they can take it from one employer to another. There are still people that can assist them in the workplace and this is like an insurance policy.”

(Trade union officer)

“When somebody is coming to you saying they’ve not been paid for three weeks, they’re not interested in what next year’s pay levels are going to be and conditions. They want somebody to step in and help them solve their problems right there and then.”

(Trade union officer)

“We meet on a Saturday morning, go into that community, ask them what they want, can we help with your English, do workshops, then they have an affinity and will join because they see it as protection and someone to turn to for advice during that six months.”

(Trade union officer)
Working together to support migrant domestic workers

The long-running and productive partnership between Unite (then the Transport and General Workers Union – TGWU) and Kalayaan (an advice, advocacy and support service for migrant domestic workers) began shortly after Kalayaan was established in 1987 and continues to develop. At the core of the relationship is the decision of hundreds of migrant domestic workers to join the union over the years, supported by both the union and Kalayaan.

The partnership was initially prompted by the horrifying treatment of migrant domestic workers at the time. They had no legal status in their own right – causing them to essentially have the status of bonded workers to the family they accompanied to the UK – and if they left their employer because of abuse, or were dismissed for complaining about their treatment, they had no right to change employer and were immediately subject to deportation. As a direct result of the joint campaign between Kalayaan and TGWU, the then opposition Labour Party adopted a campaign pledge to change the law, ending modern day slavery and allowing movement between employers, which was enacted when Labour eventually came to power in 1997.

Alongside this achievement, the partnership was also able to deliver immediate, ongoing, limited but nevertheless meaningful benefits to workers. Kalayaan views the fact that the union recognised migrant domestic workers as workers as a significant step forward. Moreover, the issuing of union cards was greatly valued by migrant domestic workers because it transmitted a sense of identity and legitimacy.

The employment relationship and immigration status of migrant domestic workers presented the union with some significant challenges. Its response was largely the result of a strong commitment from individuals in the union to end this injustice as part of a new agenda for women, black and minority ethnic workers, and a willingness to adapt usual practices to the needs and situations of migrant domestic workers. This included:

- Union officers regularly attending Sunday meetings at Kalayaan to highlight the potential benefits of union membership and to discuss the campaign
- Involvement of the union branch in providing practical and welfare support, and agreement that Kalayaan’s address had to be used as the member’s address in some circumstances
- Organising jointly with Kalayaan and the TUC to ensure the function and potential benefits of being in the union are explained and demonstrated in a way that relates to migrant domestic workers
- Developing model agreements for use between an individual worker/employer
- Supporting a small number of individual members faced with deportation.

There are also significant logistical problems: domestic workers are very low-paid and have very little time off, which makes engagement in union services and activities difficult. This, plus the fact that they rarely have British bank accounts, also makes the paying of union dues problematic. Unite have responded to these challenges in several ways:

- Migrant domestic workers are eligible for reduced membership fees – however, some have chosen to pay the full rate in order to qualify for the union’s sickness benefit.
- There is special training support for migrant domestic workers to become union collectors, and new procedures for union dues payments have been agreed.
- There has been early promotion of ESOL provision and Union Learning Rep training.
- Latterly, provision of computer classes at union premises have been arranged.

Part of the planning for this last measure has specifically been with boosting union membership in mind.

The Government’s proposed points based system now poses a threat to the hard won right for migrant domestic workers to change employers, and Kalayaan and Unite are now once again campaigning together, this time to protect it.

To see our short report go to www.vulnerableworkers.org.uk
The GMB’s Southern Region has been highly successful in providing ESOL to migrant workers and in recruiting and organising workers through an education-based strategy. With financial support from the Union Learning Fund, the union has established a learning centre in the heart of the city of Southampton.

The GMB’s learning centre opened in 2007 and funding to support its activities will be available until 2010. The GMB has arranged for a local further education college to provide ESOL classes at the learning centre and, to date, between 600 and 700 migrant workers have taken classes. Those who wish to take an ESOL course are first assessed and then assigned to one of four classes, which vary in terms of their level. Workers who successfully complete a course receive a qualification. The cost of the courses is met through a combination of worker and employer contributions. Furthermore, the fact that the GMB has its own facility has enabled it to negotiate cost reductions with the education provider. The ability to offer migrant workers courses at less than full cost is regarded as vitally important to access, given that these workers are often employed in jobs that offer extremely low wages.

In addition to helping migrant workers improve their English language abilities, the union has linked the provision of education to its recruitment activities. Through the provision of ESOL the GMB has created opportunities to meet migrant workers, discuss the issues and workplace problems that confront them and explain the ways in which trade unions seek to address the needs and concerns of working people. The learning centre has developed into a meeting place for local migrant workers and a venue where they can access advice and guidance. Knowledge about the existence and role of the learning centre has been disseminated through the GMB’s links with local community organisations and through word-of-mouth.

The union has been successful in its recruitment efforts. While access to ESOL classes is not conditional on workers joining the GMB, more than 90 per cent of the migrant workers who have studied at the learning centre have joined the union. The union has established a separate migrant workers’ branch, which has more than 500 members. The branch has been established as a means to facilitate the integration of migrant workers into the union. The aim is to develop the self-confidence, knowledge, skills and collective identity of the union’s migrant worker members, many of whom have had little direct experience of trade unionism prior to working in the UK. The branch is regarded as a key step in a transitional process that will lead to migrant workers forging links with indigenous union members and activists and becoming fully integrated into the union. The union has also developed a training course to build awareness and understanding of workplace issues relating to migrant workers among both its British and migrant worker activists.

An important element in the union’s success has been the employment of three project workers, all of whom are Polish. In addition to recruiting workers onto the ESOL courses, the project workers act as an initial point of contact with the GMB. Migrant workers who contact the union regarding ESOL classes therefore immediately come into contact with people who share their nationality and language. This has been crucial in establishing trust and credibility in the eyes of the local migrant workers’ community.

The union is currently building on its successes in Southampton by developing support for migrant workers in Bournemouth and Wiltshire.
To be successful, we believe community alliances need to be targeted on certain issues or cases, pursue links with a clear understanding of the objectives of all involved and make relationships reciprocal. Strategies need to be focused, linking back to workplaces where community members are employed. Trade unions and voluntary, community and faith organisations have a fairly minimal and patchy track record of working together, and there are often substantial differences in structure, approach, objectives and culture to overcome.

Respondents shared their views of these challenges with us, noting that unions had to consider equalities issues within their organisations, and often had to act to encourage their workplace stewards to accept the benefits of organising among vulnerable workers:

“Do we have enough black officers? Do we have enough Polish officers? Disabled officers? The bottom line is that if the trade union is not reflective and not being seen as inclusive, people will not want to be a part of it. Migrant workers specifically will not want to be a part of it. That is why we do need to be more innovative, more open.”
(Trade union officer)

“It is also clear that unions have work to do internally to ensure that workplaces recognise the importance of engaging vulnerable workers.”
(Trade union officer)

“A couple of years ago I used to do a lot of work with this company and their employer development schemes. One of the thorns that was always there was for catering and security and cleaning staff on their sites who weren’t eligible for employment development and people doing those jobs were saying ‘but my employer will make a contribution, can I join and come to your class’. And the unions were quite exclusive about that. It may have changed. There was a reluctance to show solidarity.”
(Employment rights adviser)

Thorouhg our work we have seen examples of unions using the principles of community unionism to organise among vulnerable workers. Respondents to our research explained to us why they consider community unionism as an important means to organise vulnerable workers:

“We think of unions as something divorced from the local community... In reality our membership is as diverse as the local community. If we’re going to have successful alliances we need a clear understanding of each other’s objectives... The bottom line is you have to go where the workers are. If they’re in the church, mosque, the unions need to go where the workforce is...
We’re all committed to social justice and the way to achieve this is by working together rather than separately. It brings a synergy to it. We don’t multiply by two, we multiply by 10 whenever we work together on these campaigns.”
(Trade union officer)

“But I do think actually one of the things that we have to do as a trade union is actually to get back involved in the community. One of the ways, one of the things we sometimes miss, and one of the things we’ve learned and we’re doing at the moment with a couple of groups, a Polish group and an African group, is actually being part of, joining their group as an organisation and actually helping... I think the answer ultimately is somewhere in there, it’s about getting involved back in those communities and being the leaders, quite honestly, in those communities and showing people how you can start to feel confident, empowered and all that sort of thing. I don’t think there is another way you can do it. That’s long, hard and difficult but I think it is the only option that the unions will have.”
(Trade union officer)

Some organising staff also told us of their efforts to demonstrate to their existing membership that there were clear benefits from organising among vulnerable workers:

“We had to balance what our existing members felt about migrant workers coming to work in this country. From a membership view there’s a tremendous potential there. Look after terms and conditions of existing members and, where we can get recognition, marry those conditions up for the migrant workers. Things are not going to change. More are going to come in. If we let those people come in unorganised or we try and get them organised. That’s the only way we can get recognition agreements. Get these people on board with us. Try and get indigenous people on board with us and get a better deal all round.”
(Trade union officer)

Effective partnerships with community and voluntary organisations can also provide a means to make more effective use of organising budgets. For example, partnership with groups representing local communities or specific groups such as homeworkers can enable trade unions to develop new ways of organising, building upon established community contacts.
Our research also identified that training for officers and stewards was key to ensuring that they had accurate employment rights knowledge, and were able to support vulnerable workers. Some respondents from civil society organisations told us of problems they had encountered when union reps provided vulnerable workers with inaccurate information about their employment rights.

“We have a lot of callers who have had wrong advice from their union or haven’t found their union helpful. We always try to be supportive about the union and say it’s better to be in a union in terms of getting help or enforcing your rights. The shop steward in your workplace couldn’t be expected to know the detail of maternity law, which is quite complicated. We are happy to talk to union reps as well... it’s a complicated area of law. Union reps are going to be dealing regularly with things like grievance procedures and maternity isn’t going to come up so frequently. I do a lot of training for union reps and they’re all eager to know about it. It’s not a lack of will.”

(Employment rights adviser)

Organising among non-traditional groups brings costs for unions, and organising among vulnerable workers can be resource-intensive. We do not however believe that this provides an excuse for avoiding action – unions have a moral responsibility to protect those with the least bargaining power. If unions are serious about organising vulnerable workers, significantly more resources need to be committed to organising. Research respondents told us of their experiences:

“There’s an awareness that if you do go through organising the migrant workers then the likelihood is you won’t get the resources and finances to be able to do it seriously and properly. I don’t think unions are geared up for doing this in terms of resources, finances and structure.”

(Trade union officer)

“These projects can be very resource hungry; you’re not necessarily dealing with people who’ve got a knowledge of what trade unions do and how they work. Obviously language issues, and issues of trade union education. And also, you know, if people are working for example, two jobs 16 hours a day, it’s difficult for them to organise. And if it’s the only job they can get, they also don’t want to put that in jeopardy. So they’re not insurmountable problems but they are significant problems.”

(Trade union officer)

Ensuring that unions have sufficient paid organising staff, and that stewards and officers have appropriate expertise, are however essential to successfully organising vulnerable workers. Employment rights advisers in our survey said that that around 90 per cent of clients experiencing problems with dismissal, pay or working time were always or usually not union members. However, even members had not always received adequate trade union support. A number of respondents commented on why union members brought their problems to a CAB or law centre. A common perception was that too many unions employed insufficient numbers of full time officers to deal with the volume of contemporary workplace grievances, while lay shop stewards were not always sufficiently experienced and trained to handle the complexity of employment issues. Comments included:

“The reason why they come to the law centre or the CAB is that, first of all you have to understand, most regional officers, or whatever their title is, their workload is very heavy. You will find that one regional officer is taking care of hundreds of members. And the union rep, what they used to call the shop steward, the one that is actually on the ground is not necessarily trained up. A union member might have been paying their dues for ten or twenty years, but when they actually need help they are not necessarily getting help.”

(Law centre adviser)

“They come to me because they’ve tried the union and found them wanting. I find that, certainly in this area anyway, the unions have got one person in the locality, in the vicinity, who deals with employment matters. They’re not trained to do so; it’s simply been dumped on them because they happen to be active in the union. They do what they can; they negotiate and liaise between the employer and employee. But when that negotiation has failed they are out of their depth, they don’t know what they are doing.”

(CAB adviser)

The research also found that in general advisers were in favour of unionisation, but felt that the trade union movement had to take on a greater role in supporting and recruiting non-unionised vulnerable workers, and that it needed to make itself more visible and accessible:
“The trade union movement has lost a foot hold in the workplace. Vulnerable workers have no representation, no one to go to when their rights are being infringed. Unions need to recruit and inform in the workplaces of these workers. Go back to basics and their original roots.”
(CAB adviser)

“First of all, I have people coming in and when I ask them routinely ‘are you a member of the union?’ who say, ‘what’s that?’ So that is a failure on the part of the unions to make their mark…”
(Law centre adviser)

Alongside community unionism, we also believe that the trade union movement’s increased commitment to learning has the potential to become a key means to engage and empower vulnerable workers. Although much of union learning provision benefits existing members, it is increasingly being used in conjunction with recruitment activities. The kind of flexible, accessible, workplace learning that unions are now able to offer represents a real potential benefit for the many vulnerable workers who have no or few qualifications and/or ESOL needs. The TUC reports that, in the 12 months to July 2007, around 4,000 learners accessed ESOL training through a trade union.20 Research respondents told us of existing initiatives linking organising to learning agendas.

“Engage people in a learning agenda and get people on language courses and help people update their skills. In the process it’s meant that people have been recruited into the union. Project workers have been fundamental in that.”
(Trade union officer)

“We’re trying to set a negotiating strategy around raising standards, particularly around training because it’s a new qualification that’s come in. There hasn’t been any recognised qualification before. This is called a practitioner qualification and it’s based around skills and competencies. Now that’s in place we’re trying to link that into the industrial agenda.”
(Trade union officer)

In particular, union-enabled learning and skills are increasingly central to engaging and organising migrant workers. ULRs are therefore now playing an active part in helping members access ESOL classes and trade unions are working in conjunction with employers and education providers to make them as accessible as possible.

Overall there is great potential for trade unions to have new organising successes. There are already examples of unions using such organising strategies to improve the lives of vulnerable workers. Research respondents told us of recent victories:

“We had one situation where a night freight company refused to pay the wages of a migrant worker. We went to the company and eventually negotiated that if they didn’t pay this individual they would be taking on the union. That went round the migrant workers’ community like wildfire. The union works. When the union stands up and does what it should do, i.e. fight for workers, other workers tell other workers.”
(Trade union officer)

“There was this issue around chambermaids not being paid the minimum wage; we just trained up about 12 people who were working in housekeeping on how to write grievance letters and how to take a grievance with another colleague. And as a result of that there were quite a few claims against the employer; they were willing to actually put the effort in rather than us saying: if you’re not being paid, come to us, we will sort it out.”
(Trade union officer)

“One company, fair play to the shop stewards, they’ve said any agency staff employed on the shop floor will be employed on the same hourly rate as a guy working next to them who’s employed by the company and the agency and the company have had to bow to that.”
(Trade union officer)

An effective union response to vulnerable employment needs to be diverse. Unions need to make tailored offers (including training) to particular groups of vulnerable workers. Union structures need to be accessible, and broad strategies to work with employers are needed, including both collective bargaining and broader consultative relationships. Resource sharing and campaigning alliances with civil society organisations are also important.

We welcome unions’ strategic attempts to support the most vulnerable workers, and encourage trade unions to continue in their efforts to ensure that recruitment and organising among vulnerable workers are prioritised across their organisations.
At a Scottish manufacturing site, USDAW has demonstrated how unions can engage with migrant workers, as well as influence the use of agency workers. The site employs nearly 900 permanent staff, 20 per cent of whom are migrant workers. Of those migrant workers, 95 per cent are now union members – thanks to the efforts of on-site reps, with the assistance of their area organiser.

A variety of measures has been put in place to reach out to migrant workers:

- Union and safety reps’ positions have been put on their hard hats in English and Polish.
- A union statement on agency workers, along with other letters and leaflets, have been translated into Polish.
- An audio tape in Polish is played to new starters.
- Extra effort has been put into identifying migrant worker union reps.

USDAW reports that one outcome of these efforts has been integration in the workforce, with everyone treated equally; reps are able to take up issues on behalf of all members, regardless of their nationality.

The high membership levels and a united workforce also put the union in a stronger position to engage in meaningful negotiations with the employer on terms and conditions of employment. The biggest breakthrough has been an agreement with the employer to have an annual review on the use of agency staff and the development of criteria by which agency workers are offered permanent jobs. In addition, reps have had more success in annual pay negotiations and the union has made progress on lifelong learning. It is now close to delivering a learning centre on site.
The GMB London Region covers London and eastern areas including Essex, Norfolk and Suffolk. The region has developed a strategy on migrant workers over a number of years. The aim is to encourage self-empowerment within the union’s structures. The union has therefore made efforts to recruit and organise migrant workers into the existing branch structure and to train and develop reps from the migrant communities in branches and workplaces. The region has two organisers from migrant communities and three full-time project workers. Recruitment to the union is largely done by supporting workers with workplace issues and learning (ESOL) needs. It often takes place outside the workplace (in community centres, pubs, cafés, etc.) because of workers’ initial fears of the employer or agency. The ULF learning project works closely with organisers to reach migrant workers and has elected and trained a number of migrant worker union learning reps.

The union education project has designed a course for migrant workers called ‘Know Your Rights’, which combines ESOL and employment rights. The course is covered in a 3–4 hour session and runs about once a month in community venues. The course is particularly targeted at agency workers. It highlights what rights they have and how the union can help them to claim these. The course is delivered in English but with an ESOL element and migrant learning reps attend to reinforce points through interpretation. In the first session the workers are asked to outline and prioritise their main workplace problems: the majority identify racism and exploitation as the first problem and the need for English language classes as the second. The union has also found it important to explain exactly how the union works and that it is independent, since people from other countries have different experiences of trade unionism. They report that many workers speak of loneliness and isolation and the inability to communicate with their colleagues.

The GMB has been able to establish several ESOL workplace learning courses around the region, which are free to members. ULF project workers work with local organisers to negotiate a training room with employers and, if possible, release for learners. Workplace ULRs/reps monitor and support the learning and recruit the learners. The union reports that some companies can be persuaded to release their learners; others allow one hour in company time and one in the learners’ time, and others insist that it is done in their own time. No company has been willing to pay for the classes. The project has also delivered ESOL classes in local community centres out of working hours and ULRs have been able to deliver informal English classes to people from their own communities.

The union also uses interpreters (who are mostly ULRs/project workers or organisers), and has found them to be enormously helpful in:

- recruitment campaigns – to talk to workers in their own language
- assistance with representation
- recruitment to courses
- assistance with delivering courses
- supporting learners on courses
- assistance with housing/benefits problems.

Recent GMB London Region migrant organising successes include a food wholesaler. After the media exposed poor treatment of workers at the workplace GMB managed to obtain 60 per cent membership. While the company previously directly employed only 50 workers out of 350, there are now only 50 agency workers. The union has also organised and successfully delivered an ESOL course for workers at the factory in partnership with a local college.
‘Wiedza with the BFAWU’ (Wiedza is ‘knowledge’ in Polish) is one of more than twenty ‘pathfinder’ workplace learning schemes under way in the northwest, enabled by unionlearn linking up with unions across the region. The project represents a concerted effort by the Bakers, Food and Allied Workers Union (BFAWU) to encourage Polish workers in the baking and food industries to take up learning opportunities.

By facilitating and encouraging take-up of ESOL classes and NVQ Level One and Two literacy and numeracy, the BFAWU anticipate that Wiedza will not only improve workers’ skills but also improve communication and relations in the workplace, as well as increase union membership.

The initial approach is for the projects’ two ULRs (one of whom is a native Polish speaker) to go to workplaces with a high proportion of Polish workers and organise open days where there will be a chance to speak to people and explain what the union has to offer. They then arrange for suitable providers to go into workplaces to assess the potential learners and organise courses accordingly, with the emphasis on literacy and numeracy.

Having a Polish speaker on the team has been useful in engaging people and the project is now seeking to recruit more Polish ULRs from the workforces.

Justice for Cleaners is an international trade union movement, led in the UK by Unite. The movement was started in the USA in the 1980s by the North American Service Employers International Union (SEIU), with whom Unite (then TGWU) collaborated to start the British version in 2004. Since then, Justice for Cleaners has thrown a spotlight on the previously hidden low-pay and poor conditions among UK office cleaners working for some of the world’s largest and richest firms, and has brought about pay increases and improved conditions for several cleaning workforces.

The Unite Justice for Cleaners campaign targets multinational firms with offices in London’s City and Canary Wharf districts. Cleaners are generally employed through subcontracts with large cleaning services suppliers. The campaigns aims to secure for cleaning workers:

- a London ‘living wage’
- sick pay
- 20 days’ paid holiday (plus bank holidays)
- pension provision
- collective bargaining through the union.

The strategy for the campaign involves identifying cleaning employers and approaching them for talks about workers’ pay and conditions. This has yielded direct results from some companies, which have been progressive in their responses. Those companies who will not talk are then targeted for rallies and demonstrations outside their offices – gaining media attention and highlighting the contrast between cleaners’ pay and the high salaries earned by many of the firms’ workers. Unite has linked up with civil society organisations to boost the resource and support base, notably London Citizens (in conjunction with its ‘Living Wage’ campaign).

Beyond the ‘quick-win’, one-off commitments from employers to raise pay, Justice for Cleaners continues to recruit and organise workers and work towards gaining union recognition agreements. The campaign is clear that collective bargaining provides a base from which cleaning workers and the union can ensure improved pay and conditions are upheld and improved in the long term.
Trade unions have started their work to protect vulnerable workers, but there is much more that can be done. Protection from exploitation is best obtained where a trade union can bargain collectively on behalf of workers, and act swiftly when legal and agreed standards are violated. Strategic approaches to organising and recruiting among those in vulnerable employment therefore need to be consistently high across all levels of the trade union movement, and across all workplaces.

We believe that unions should be aiming for 100 per cent membership in every workplace where they have a presence. In some workplaces, the view prevails that temporary workers and those working for external contractors do not need to be organised. In our view, this is not acceptable – unions need to develop whole workplace strategies to organising.

We therefore call on unions to pledge to undertake well-resourced national organising campaigns to increase membership among vulnerable workers, in particular in workplaces where there are already recognition agreements. The TUC has a role to play in developing and co-ordinating these campaigns, helping unions to focus on working cooperatively, facilitating joint working to organise in particular sectors, and developing focused organising training and support for union officers and organisers.

We anticipate that making such a commitment would require trade unions to develop their work in various areas, including:

- mapping unorganised workplaces where there is vulnerable employment
- developing active policies of recruiting representatives who have experience of vulnerable employment, for example workers from migrant communities or homeworkers
- building partnerships with community and voluntary sector groups
- running outreach programmes to reach groups at risk of vulnerable employment, for example reaching young people through schools and colleges
- committing significant resources to organising campaigns
- enabling organising officers and union reps to access specialised employment rights training
- ensuring access to translation and interpreting services where appropriate
- utilising community organising strategies that engage with workers through additional services and activities, for example credit unions, learning services and information and advice
- ensuring that union structures are flexible enough to facilitate non-traditional forms of organising
- developing union policy on organising among informal and undocumented workers.

Recommendations
Pooling funding, or coordinating projects centrally, could enable unions to provide better support for those in vulnerable employment. Reviewing the membership offer they make to those in vulnerable employment could also support recruitment and organising in previously non-unionised workplaces or among groups that are not traditional union members. Unions could consider whether, in some instances, there could be flexibility in their policies on membership subscriptions, and on the length of time for which membership is necessary before advice and legal support are made available to members. These are issues that we encourage individual trade unions to consider.

We also recommend that the **regional TUC is enabled to play a greater role in challenging vulnerable employment**. There are already many examples of regional work proving invaluable as a means to support workers in vulnerable employment, for example through supporting unions and unionlearn to run training for workers, providing employment rights training in partnership with community groups and running local advice services. We recommend that the regional TUC is enabled to play an even greater role, supporting trade unions to develop their local labour market intelligence on where the most vulnerable employment is – a process that could be boosted by improved links with the voluntary and community sectors. Their role could also involve the development of strategic forums for sharing local information, and coordinating efforts to organise among those in vulnerable employment and/or reporting information to employment rights enforcement agencies. Regional trade union portals could be set up to provide shared organising resources for unions working with those in vulnerable employment – for example, translated information on employment rights, examples of good practice when organising, links to other organisations (including trade unions overseas and voluntary and community organisations) and contacts for local reputable translators and interpreters.

Trade unions have already started to develop partnerships with unions overseas, as a means to provide information to workers on their employment rights before they arrive in the UK. We believe that there are many benefits to such work, and that unions could therefore give consideration to working with partner **unions overseas to develop proposals on cross-border trade union membership**. This has potential to take the form of a passport that provides access to trade union membership across national borders.


6 This analysis is based upon the number of union members among workers who have no qualifications and earn less than £6.50 an hour, workers who are temporary and earn less than £6.50 an hour and workers who are homeworkers and earn less than £6.50 an hour. Labour Force Survey, Autumn Quarters, 2007.

7 29 per cent of permanent workers are trade union members, compared to 17 per cent of temporary workers, cited in Grainger H and Crowther M (2007), Trade Union Membership 2006. London: DTI.

8 Ibid.

9 Professional occupations and associate professional and technical occupations account for 43 per cent of all union members. Cited in Ibid.


12 This analysis is based upon the number of union members among workers who have no qualifications and earn less than £6.50 an hour, workers who are temporary and earn less than £6.50 an hour and workers who are homeworkers and earn less than £6.50 an hour. Labour Force Survey, Autumn Quarters, 2007.


15 Ibid. p14.


20 unionlearn Union Learning Fund Learner Outcomes 2006/07, unpublished.
Chapter 4

Escaping vulnerable employment

In this chapter we consider the impact that UK skills policy has for vulnerable workers, and the potential that it has for better enabling workers to progress from vulnerable employment. We also give consideration to the welfare benefits system, demonstrating that the current system can both exacerbate and alleviate the impacts of vulnerable work.

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Jozef’s story

Jozef is a Polish migrant worker in his thirties. He is highly educated (with a Bachelor degree in Enterprise Management and Masters in Political Science) and has nearly 15 years’ management experience in the manufacturing sector. Despite this, Jozef found he could not rise any further in his career without English, and it is partly for this reason that he moved to the UK. Shortly after arriving, Jozef found out about available work in a food processing factory through a friend. The job is low paid, precarious, and has caused Jozef’s health to suffer, but he has been unable to find anything better and has now worked in the job for 18 months. Jozef spoke to us with the help of an interpreter.

Jozef reports that nearly all workers on the factory floor are migrants, and all are directly employed and on the minimum wage. Jozef receives the minimum 24 days’ holiday pay but no company sick pay. He has been given health and safety information translated into Polish, although only after he had already been in the job for over a year. He works 43 hours per week, spread over four 10-hour shifts and one half day. Although work is generally fairly steady, Jozef does not feel very secure in the job and reports that workers can be sent home on any day if there is not enough work: “With some of the managers, if they don’t like somebody, it’s very subjective: ‘I don’t like you, you go. I like you, you stay’. Although I have a contract, I never know what will happen and whether I will keep the job.”

Jozef also says that the factory management has a poor attitude to workers and sometimes treats them badly. In particular there has been friction between his line manager and the Polish workers. Jozef says that the manager does not have the training or experience to do the job properly and is paranoid about workers speaking about her in Polish. She has used foul language towards him and other Poles and even thrown things at him – an experience he found humiliating.

Drawing on his skills and experience in manufacturing and management, Jozef has tried – with some success – to mediate for better relations with senior management, and on one occasion advised on how to run production more efficiently. He reports that management has changed some practice as result of his advice, but that there has never been any recognition or appreciation (financial or otherwise) for this, or for all the Polish workers’ consistent punctuality and hard work.

Jozef also reports that there is unequal treatment between the Polish and non-Polish workers (who are mainly of Pakistani and Afghanistani origin). These workers are given a share of their supervisor’s bonus for meeting production targets, while the Poles are not. Jozef says that the Polish workers are “too afraid to ask” for this because they are not confident in expressing themselves in English and fear for their jobs: “if the supervisor uses language we don’t understand there is no way we can have a discussion about it. That’s why we don’t ask. [Also], there were situations when we asked [for other things] and the supervisor said, if you don’t like it you can look for a different job.”

Jozef’s role as a packer means that he is constantly exposed to the cold from open refrigeration containers. This has lead to frequent illness (mostly colds and flu). Jozef says he is almost constantly on antibiotics and struggling with illness because of the conditions but has to go into work because he cannot afford to lose any pay. A former trade union member in Poland, Jozef has also joined a union in the UK. However, he says there is no trade union presence and little membership in his workplace: “In small companies you don’t join the trade unions or are stigmatised [if you do].”

Although he remains keen to improve his English, Jozef has not been able to get as far as he would like, as at work mostly Polish is spoken and the study for his ESOL classes is difficult to manage with a full-time job and his illness. Jozef is also aware of the end of free ESOL for people in employment, and says he will not be able to afford to pay for ESOL once these changes hit.

Jozef says he would like to stay in the UK because he likes British culture and society. Nevertheless he knows that getting a job at a level equivalent to the one he had in Poland will be impossible without better English, and says that the job, lack of money and not being able to learn English as he wanted to are all making things difficult: he told us, “life here is a shock”.

(We were introduced to Jozef through Oxfam’s UK Poverty Programme)
There is a clear government commitment to increasing the skills of Britain’s workforce, but few would disagree that there is much work still to be done. Low-skilled workers are least likely to be trained by their employers, and low-paid employment is strongly associated with low skills.

The case for increasing skills right across the workforce was given further weight and urgency by the findings of the Leitch Review of Skills, the government-commissioned long-term strategy on skills published in December 2006. We endorse Leitch’s case for increased investment in skills provision.

For the most vulnerable workers workplace learning may never be available. For example, for homeworkers, workers on temporary contracts or those working informally, accessing ongoing provision in the workplace may not be feasible. Skills policy needs to take account of this.

The Union Learning Fund provides great potential to support vulnerable workers to improve their skills. It can provide opportunities for unions to undertake collaborative work across sectors and workplaces, increase union engagement with Train to Gain and the Skills Pledge and enable unions to undertake outreach work to engage those facing the greatest labour market disadvantage in learning.

The UK Commission for Employment and Skills has now started its work, with its membership drawn from business, trade unions and civil society organisations. It has potential to consider how access to education and skills could be improved for vulnerable workers.

Further support for vulnerable workers could be provided by improved access for all workers to national advice and guidance on education and skills. This could enable more workers to make the transition from insecure and low-paid jobs to better jobs with prospects.

The Government has made substantial investment in ESOL, but recent changes will deprive many vulnerable workers of language skills. Both the restriction of free ESOL to those on in-work benefits, and the expectation that employers will provide or facilitate ESOL for their workers, will cause real difficulties. Very few people with ESOL needs access means tested or income related benefits even if they are eligible – and many in vulnerable employment are not. Vulnerable workers, by definition, are unlikely to work for responsible employers willing to pay for ESOL, not least because many work through agencies or on casual contracts.

Many vulnerable workers depend on benefits, both while they are in work and when they are between jobs. Yet they can face real problems when the benefits system is too inflexible to respond to changes in their circumstances, leaving them trapped in vulnerable employment.

One obvious injustice is the way that seasonal workers can be treated by Jobseekers’ Allowance ‘remunerative work’ rules. These can be used to hold that seasonal or temporary workers have a ‘recognisable cycle of work’ that includes periods out of work.
Inflexibility with respect to earnings ‘disregards’ is also acting to increase the insecurity experienced by vulnerable workers.

Delays in the administration of welfare benefits can place low-paid workers at risk of vulnerable work, and need to be addressed if vulnerable workers are to be effectively supported. In part, such problems arise from inherent complexities in the benefits system.

The sanctions regime provides another example of policy that can increase workers’ exposure to vulnerable employment. While sanctions are needed for those setting out to defraud the system, we believe that a new approach is needed that reserves benefit stops for the worst cases.

Vulnerable workers can have their confidence destroyed by insecure and low-paid jobs, and need tailored support to help them re-enter the labour market and progress into better jobs.
Recent government policy has given growing recognition to the importance of increasing workplace training and skills. In England the Skills for Life strategy was launched in 2001 to tackle the problem of poor literacy and numeracy, and to support those who struggle with English because it is not their first language. To implement Skills for Life in 2006, a new national skills programme, Train to Gain, was introduced in England, rolling out free training provision to NVQ Level 2 (or a Skills for Life qualification), with some entitlement to paid time off for workers and compensation for small employers. The programme, delivered by the Learning and Skills Council (LSC), provides Skills Brokers to carry out a free review and analysis for small businesses to assess present and future skills needs and help identify appropriate training and funding. The LSC has focused on engaging ‘hard-to-reach’ employers who would not otherwise have invested in training. In its first year, Train to Gain has engaged with 52,730 employers, of whom 72 per cent were classed as ‘hard-to-reach’.

The case for increasing skills right across the workforce, supported by both employers and unions, was given further weight and urgency by the findings of the Leitch Review of Skills, the government-commissioned long-term strategy on skills published in December 2006. Leitch set ambitious targets for improved skills provision and attainment by 2020. The key outcomes of the Review with potential to impact upon vulnerable employment are an increased investment in adult skills at all levels, and the launch of a new ‘Pledge’ for employers to commit to try to train all eligible employees up to Level 2 in the workplace. The Skills Pledge was launched in June 2006 and will be voluntary until 2010, after which it may become mandatory if progress has not been to target. By October 2007, over 400 private and public sector employers, covering almost 2.5 million workers, had made the Pledge.

Leitch’s case for increased investment in skills provision, which we strongly endorse, is based upon both economic advancement and social justice. The review states: “Skills are increasingly critical for the UK to meet the long-term challenge of increasing prosperity through higher productivity and employment at a time when the global economy is changing rapidly. These global changes are increasing the number of high skilled jobs and increasing skills demands within most existing jobs. Increasingly, no one is immune from the increased demand for skills. Skills are also increasingly critical if the UK is to become a fairer society, reducing inequality and poverty and ensuring everyone has a fair chance in life.” Evidence presented to us supports this confluence of business, social and personal benefits of accessible skills provision, supported by the Government, employers and trade unions. During our research and consultation, respondents also emphasised to us the importance of skills as a means to enable workers to avoid, and challenge, vulnerable employment:

“The more marketable your skill set the more in demand it is, the less likely you are to get pushed around by an employer.”

(Education and skills policy officer)

“The union’s experience is that many women’s working lives and career options are fundamentally affected by their caring responsibilities. This seriously restricts their opportunities for training at all, let alone retraining opportunities. It also means that women workers have less time to build up the experience and skills that equivalent men workers are building up at the same age so they find it harder to move from low paid and vulnerable work.”

(Unite)
Although in 2007 8.6 per cent of the working-age population still had no qualifications, there has been return on the Government’s substantial investment in basic and vocational skills provision. The Government reports that by the end of 2006, 1.76 million adults had improved their basic skills, while 1.14 million more adults had achieved at least a Level 2 qualification. The number of working-age adults with no qualifications has also dropped substantially since 1997, when it stood at 13.6 per cent.

However, low-skilled workers are least likely to be trained by their employers, and low-paid employment is strongly associated with low skills. Labour Force Survey (LFS) figures indicate that only 14 per cent of people with A-level or degree qualifications are paid £6.50 per hour or less, compared to 32.3 per cent of workers with GCSE grades A–C or equivalent and 52.2 per cent of people with no skills. People with the lowest skills are also the least likely to be trained by their employers, and to be paid the minimum wage (29.8 per cent of workers with no qualifications are paid the minimum wage, compared to 18.4 per cent of those with GCSE grades A–C). Moreover, those with low or no skills are more likely to be affected by job ‘cycling’ (moving in and out of short-term employment): around two-thirds of annual Jobseekers’ Allowance claims are repeat claims, and around half of repeat claims are from people with no or low skills. Ethnicity impacts on qualifications, with Asian, black and other minority ethnic groups all more likely than white groups to have no qualifications. Women are slightly more likely than men to have no qualifications.

Agency workers are unlikely to receive training. Only 8 per cent of temporary agency worker respondents to the 2007 LFS had received any job-related training during the past four weeks, compared to 16 per cent of all employees. Over twice the proportion of temporary agency workers had never been offered training by their employer than the proportion of all employees (61 per cent compared to 30 per cent respectively), and in the elementary occupations and administrative and secretarial occupations where they are most over-represented agency workers are even less likely to receive training than permanent workers in the same occupation (50 per cent less likely and 33 per cent less likely respectively).

We therefore agree with the Government that improved skills are an essential means to enable labour market progression. We give our backing to the Skills Pledge, and encourage the Government to make it absolutely clear to all stakeholders that if the Skills Pledge (a commitment from employers to try to train all eligible workers up to Level 2 in the workplace) does not lead to a major change in employer behaviour and culture in the coming years, a statutory approach will be implemented in 2010, supported by government funding.

We also recognise that for the most vulnerable workers workplace learning may never be available. For example, for homeworkers, workers on temporary contracts or those working informally, accessing ongoing provision in the workplace may not be feasible. If the most vulnerable workers are to benefit from the Government’s commitment to increasing access to education and skills we therefore believe that it is important that opportunities are available outside of Train to Gain.

The TUC, in collaboration with the Department for Innovation, Universities and Skills (DIUS), is currently taking forward a pilot project to develop Collective Learning Funds (CLFs). The CLF model is designed to optimise employer and employee contributions to broad workforce development that falls outside the direct responsibility of employers (for example, job-specific training) or government-subsidised provision (for example, Skills for Life, first Level 2). These funds have the potential to optimise employer and worker contributions to broad workforce development that is not related to employability, that is, up to Level 2 (the cost shared between employer and state) or specific business requirements (the full cost borne by the employer). Such provision could also cover: transferable skills related to progressing through broad occupational pathways; continuous professional development; and personal and social development. Employer contributions to a CLF fund are in cash or in kind, while worker contributions focus largely on time, as well as some financial contribution (particularly for development of higher-level skills).

Four main approaches for Collective Learning Funds were identified prior to the establishment of the pilot projects: a joint employer-union fund at workplace level; a union-led fund for a specific workplace, sector or geographical area; a joint employer-union fund for a specific sector in a specific geographical area; and a joint employer-union fund for a specific learning venue. These funds could therefore have a positive impact for vulnerable workers, who may currently fall into government target groups but are unlikely to be
able to access training. Respondents to our research agreed that Train to Gain alone would not provide access to learning for vulnerable workers:

“Groups on the margins of the labour market really do lack confidence and are not ready to learn because they don’t believe it can transform their lives... With the best will in the world the Government’s current skill campaign is not going to reach most of those people” (Education and skills policy officer)

We therefore welcome the joint TUC/DIUS pilot, and urge the Government to consider the impact which CLFs could have for vulnerable workers when developing future policy.

A key aim of the ULF is to integrate and develop the key role of union learning representatives (ULRs) in raising demand for learning in the workplace, especially among workers with low skill levels and those from disadvantaged groups. The ULF currently stands at £12.5 million a year and is jointly managed by the Learning and Skills Council (LSC) and unionlearn (the dedicated learning wing of the TUC, established in May 2006). Over 118,000 learners are supported every year on programmes through ULF projects – most on ICT learndirect courses, Skills for Life and further education programmes. Unionlearn’s key target is for 250,000 learners to access learning and skills through the union route by 2010. Under the Employment Act 2002, ULRs have the right to paid time off. The TUC has reported that the number of ULRs had now grown to almost 18,000, and that this has been accompanied by an increase in the number of learning agreements with employers.

The Union Learning Fund provides great potential to support vulnerable workers to improve their skills. For example, providing opportunities for unions to undertake collaborative work across sectors and workplaces, increasing union engagement with Train to Gain and the Skills Pledge and undertaking outreach work to engage those facing the greatest labour market disadvantage in learning. We therefore welcome the recent increase in resources for the ULF, and support the potential it provides for unions to engage vulnerable workers in learning.

The UK Commission for Employment and Skills has now started its work. With its membership drawn from business, trade unions and civil society organisations, the Commission will advise Ministers on strategy and policies relating to employment and skills; assess progress towards achieving national employment and skills ambitions for 2020; and have responsibility for the performance of Sector Skills Councils, advising ministers on re-licensing. At the same time new policy agendas are developing around the concept of employability skills, broadly defined as the skills that workers need to enable them to move into and progress in work. While we recognise the importance of workers being equipped with the functional skills that will enable them to get on in the workplace, we believe it is important that available learning options are broad in their scope, and focus upon transferable skills that will provide real opportunities to progress and participate in active citizenship. Given the lower likelihood of vulnerable workers being able to access workplace learning, and the importance of them accessing learning options that provide them with a realistic chance of progression at work, we believe that the UK Commission for Employment and Skills should be mandated to undertake a review of access to training for vulnerable workers.

Further support for vulnerable workers could be provided by improved access for all workers to national advice and guidance on education and skills. Before joining the Government, the now Secretary of State for Innovation, Universities and Skills recently called for a national network of advancement agencies, as a means to enable “the transition from an insecure, poorly paid job to a higher skilled, better rewarded job”. He noted that making this transition can be as hard as moving from benefits into employment, and called for “a network of Advancement Agencies to guide and support people through the process.” We agree that such support could provide a key means for vulnerable workers to access information and advice on opportunities to progress from precarious work. We also note that Union Learning Reps (ULRs) already provide such advice to colleagues in the workplace, offering guidance and support to learners and potential learners. We therefore call on the Government to recognise that ensuring effective information, advice and guidance on advancement at work is an important means of enabling labour market progression for vulnerable workers.
Building skills at Norfolk County Services

The learning programme at Norfolk County Services (NCS) demonstrates the positive role that trade unions and ULRs can have in engaging workers in learning. The facilities management company was awarded the FirstGroup Skills for Life (‘Big Tick’) Award in 2007 for its Learning Lift-Off project, which has successfully opened up a range of learning opportunities to the firms’ 4,400 staff.

The genesis of the project came when the GMB Training and Development Manager convinced the NCS Human Resources Director that the way to tackle the literacy and numeracy learning needs in the workforce was through the unions. The project was launched after all five unions in the company, led by the GMB and UNISON, subsequently attained funding through a joint bid to the ULF.

The company management had been aware of the need for some form of basic skills training provision but admits to having been unsure how to go about it. Under union direction, the programme initially sought to engage non-traditional learners through fun courses, such as cake decorating. The programme was stepped up after GMB and NCS secured a further two years’ backing from the European Social Fund (ESF), offering literacy, numeracy and IT qualifications as well as NVQs.

NCS staff are spread across 1,100 sites – many in remote areas – so, in order to be accessible, courses were put on after work in a variety of venues in different localities. NCS encouraged participation by paying learners half their hourly rate when on training and encouraging managers to take the national tests in literacy and numeracy to reduce stigma.

The programme has produced clear benefits for workers, the company and the unions. Hundreds of NVQ and other qualifications have now been completed. Accident rates have fallen and recruitment costs have been cut. NCS has already picked up new business as a direct result of the programme and finds that it is a strong selling point in negotiating for new contracts. Meanwhile, the programme has enabled the unions to raise their profile and demonstrate part of the value of being a member.

The role of the ULR has been key in this. GMB’s training and development manager told us that: “ULRs have been able to show the whole workforce that trade unions can deliver a positive partnership with the employer and help members to organise and improve their lives and gain qualifications”. The partnership approach has unquestionably been a key element of the programme’s success. NCS’s Human Resources Director also told us that from the employers’ perspective, a key benefit was that “unions could get to parts of the organisation that we couldn’t reach”.

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The union Community’s South West region has led a project that has enabled migrants working in and around the town of Yeovil to access ESOL classes. The project, which began in 2007, is being funded under the ‘Learning Works for All’ programme, which has received substantial funding from the South West of England Regional Development Agency and is managed by the South West TUC.

The project came about as a result of Community’s networking activities. Community has developed links with local community organisations as a way of gaining access to migrant workers, who are often employed in jobs that have low visibility and variable shift patterns. Many of the migrant workers are supplied by employment agencies. Community has therefore taken the relatively unusual step of developing a relationship with Smart Group, an employment agency operating in Dorset and Somerset. Smart Group is one of the project’s ‘stakeholders’. Many of its temporary workers have taken the ESOL courses that have been provided through the project. The agency has benefited by being able to supply workers who have a better understanding of English than the migrant workers supplied by its competitors. In return, the agency provides its temporary workers with access to the union and information about Community, including membership application forms.

Most of the Yeovil office’s permanent members of staff have joined the union.

Over 100 migrant workers have taken ESOL classes, which are provided by the Workers’ Educational Association (WEA). The project’s initial aim has been to focus on workers with relatively less well-developed English language abilities. Workers who wish to take ESOL classes are first assessed and then allocated to one of two groups, which are pitched at different levels. They take a six-hour initial assessment course, for which they receive a certificate from unionlearn (the dedicated learning wing of the TUC). They are then able to progress onto a 30-hour ESOL course. Those who complete the course and pass an assessment receive a certificate of achievement. Learners are also able to take a National City and Guilds ESOL test. Access to the classes, which are provided free of charge, is not conditional on workers becoming members of Community. The classes have, however, provided the union’s full-time officers with an opportunity to meet migrant workers, discuss the issues that confront them at work and describe the activities of the union and the benefits of membership.

In addition to providing advice and guidance on work-related matters, the union has provided migrant workers with support and advice in respect of problems outside of work, including issues relating to pensions, housing and benefits. The union has also invited representatives of advice organisations to meet the learners, and in so doing has facilitated access to information about possible progression routes and further education and training opportunities.

The project’s liaison worker, who is an ESOL tutor and responsible for conducting initial assessments of workers’ English language abilities, has played a key role in the success of the project. She is a bi-lingual Polish/English speaker and is also able to speak a number of other European languages. As a Polish worker living in the UK, she has the same nationality and first language as most of the migrant workers who enquire about the ESOL courses. Migrant workers who wish to take an ESOL course thus come into contact with somebody to whom they can relatively easily relate and who, as a member of Community, actively promotes the union. This has proved important in terms of establishing trust and credibility and thus aiding recruitment.

The migrant workers have benefited from the ESOL classes in a variety of ways. They have become more confident about dealing with issues at work and outside work and feel less alienated. The benefits they have reported suggest that social cohesion has improved as a result of the project. However, the project’s steering group is deeply concerned that it will prove impossible to continue to provide free ESOL classes and liaison worker support beyond October 2008, when the current funding will come to an end. The changes the Government introduced in 2007 to the funding of ESOL, which have resulted in reduced access to free provision, are regarded by steering group members as having created a major obstacle to the development and continuation of initiatives such as that taken in Yeovil.
English for Speakers of Other Languages (ESOL)

The Government has made substantial investment in ESOL, but recent changes will deprive many vulnerable workers of language skills. A tripling of enrolments between 2001 and 2005 was matched by a tripling of spending (to just under £300 million). A new form of qualification, ESOL for Work, was launched in 2007, designed to provide a tailored, functional solution to employers and migrant workers’ language needs. However, as of August 2007, the existing universal entitlement to free ESOL training up to Level 2 was removed. Instead, fee remission will be available only to priority groups – primarily people who are unemployed or receiving means-tested benefits. Employers who have recruited workers from outside the UK will be expected to bear the full cost of any necessary English language training. There will, however, be no legislative requirement on employers to provide the training, and therefore no means to enforce the proposed measures.

In justifying its changes, the DIUS argues that: “the funding situation is not sustainable” and that it is not best serving learners in priority groups – with the most disadvantaged, often those with the longest UK residency, missing out. It also claims that “those who benefit economically from migration should also bear some of the costs: it is essential that employers train their workers to the required standard of English for safe and inclusive working”. At the time of writing, the DIUS was consulting on proposals that local authorities and their partners will determine, within national priorities, how ESOL funding allocations are best aligned against community need. Vulnerable workers are not currently identified in the consultation proposals as a national priority group. In their current form, the proposals would therefore afford people who are in poverty but not in work priority status, while denying it to those in work but also in poverty.

In response to a Race Equality Impact Assessment (REIA) of ESOL funding policy that identified potential negative impacts on spouses, women and low-paid workers, the DIUS has made an additional £4.6 million available through the discretionary Learner Support Fund for spouses and low-paid workers. However, significant concerns remain about access. While free ESOL is available for those in receipt of means-tested or income-related benefits, in reality very few people with ESOL needs access these benefits even if they appear to fit the eligibility criteria. For example, as low-paid workers under 25 who do not have dependents or a disability are not eligible for Tax Credits, any low-paid migrant workers in this group will not receive subsidised provision. Many other migrants who could benefit from ESOL provision (who, as we discuss in Chapter 6, are extremely likely to be in low-paid work) are not entitled to access public funds, and will not therefore be able to access provision despite their low incomes. Evidence from the Home Office also shows that in fact only 3 per cent of workers from European Union Accession States receive Tax Credits, despite the fact that around 8 in 10 are earning between £4.50 and £5.99 per hour; while some of these workers may be eligible, low levels of English are likely to be contributing to a low awareness of their entitlements.

Many workers with ESOL needs are therefore in a Catch-22 situation where without English language skills they are less likely either to be aware of or able to access their employment and citizenship rights, thereby limiting their capacity to navigate the administrative mechanisms that would trigger access to free ESOL. Many are likely to be deterred from applying for benefits by the length and complexity of benefit application forms – and because of their poor English. The proposals therefore have the potential to further destabilise ESOL provision in relation to low-paid workers.

The overall effect of the changes to funding for low-paid workers with ESOL needs will be that, unless they are in the relatively rare position of having ESOL provided by their employer, it will now be much more difficult for them to access provision. Even prior to the recent changes, there was strong evidence that access to ESOL was limited. For example, in a quantitative survey of over 700 migrant workers, over half of respondents had neither been offered nor received any help with improving their English language skills. Only 20 per cent of respondents said that they did not need any help, and were more likely to cite friends or colleagues as sources of support rather than employers.
The Government has stated that it is looking into further options for “removing barriers to engagement [in ESOL provision] for employers, especially for small and medium enterprises”\(^5\). While there are genuine barriers to ESOL provision for employers, especially small and medium-sized enterprises (SMEs), that these and other proposed measures may help overcome, evidence suggests that the engagement of employers in ESOL is also substantially dictated by attitude. Research undertaken by the LSC into employer perceptions of migrant workers found that most employers would not pay for ESOL: “Especially for lower skilled workers, employers saw the onus of improving standards of English language skills on the employee themselves since the worker would be the prime beneficiary.”\(^6\) This is supported by a TUC online survey of ULRs and project workers that also suggested employers are not willing to pay.\(^7\) The majority of employers in the large-scale West Midlands Migrant Worker Employer Survey did not provide ESOL training or provide other help with English language skills for those workers whose English language skills needed further development. Of those employers surveyed who were able to confirm whether or not their organisation provides ESOL training for migrant workers who do not have good English language skills, 10 per cent indicated that they provided ESOL training, 11 per cent paid for or arranged training at a local educational establishment and 7 per cent provided information on English language tuition; 59 per cent reported that they did nothing, and 11 per cent provided informal English language tuition.\(^8\) Respondents to our research told us of the difficulties they had had attempting to access work-based ESOL for vulnerable workers:

“The employer does not provide ESOL provision because it’s cheaper to employ one girl as an interpreter.”
(Trade union officer)

“I’d be surprised if the workers could get there [to ESOL classes] because of the hours they work. Nights, evenings they work as and when they are told to work.”
(Trade union officer)

“Yes. The last I heard, in our area there was still a long waiting list. It was very difficult to get it. The level of support for migrant workers is dreadful.”
(Employment rights adviser)

The likelihood of employers facilitating the meeting of ESOL needs appears even lower as a large proportion of vulnerable workers are often left outside existing employer training and skills provision, as a consequence of their atypical employment status. A recent research report commissioned by Assetskills (the sector skills council for the property, facilities management, housing and cleaning industries) surveyed 152 employers across six sectors (all of which had employed workers with low levels of English language in the last two years): around half recruited workers through agencies and around half by word-of-mouth (of whom many may be recruited on casual contracts). Given their employment status, many of these workers may therefore not quality for employer provision.\(^9\)

Our research shows that the provision which employers and employment agencies have made for English language training is often limited and seldom sustained.\(^10\) It also identified strong opposition among employers and employment agencies to the new ESOL restrictions. Several employers specifically told us that it was becoming more difficult to provide English language training as government funding was no longer available. Some highlighted that trade union learning was now the only effective remaining option for employers who wanted to ensure they had a workforce with adequate English skills.

Unions have played an important role in supporting access to English language training, particularly through the union learning agenda. For example, in the 12 months to July 2007, around 4,000 learners accessed English language training through their union. ULRs have been at the forefront of providing this support\(^11\) (this provision is discussed in more detail in Chapter 3). With a universal entitlement to ESOL up to Level 2, unions were able to broker provision with local colleges based on free provision. The new arrangements, however, require flexibility from providers, or bargaining with the employer to obtain funding, further reducing the scope of ESOL provision for workers in vulnerable employment.

We believe that low-paid migrant workers may be some of those in greatest need of provision. During our consultation particular concerns were raised around the increased vulnerability to illegal treatment experienced by those workers unable to understand employment rights or health and safety information. These concerns are supported by further research, including a 2005 study that found that 65 per cent...
of migrant workers interviewed did not know whether they had paid holidays and 13 per cent did not know if they were entitled to sick pay.\textsuperscript{22} Research commissioned by the Health and Safety Executive (HSE) similarly concluded that not only were migrant workers “more likely to be working in sectors and occupations where there are existing health and safety concerns” but that “their status as new workers placed them at added risk”\textsuperscript{23} stemming from lack of language skills. Respondents to our research and consultation also raised concerns about the vulnerability of migrant workers (discussed in more detail in Chapter 6) being exacerbated by poor language skills:

“It seems to me that if we want this high skill economy, we don’t exclude people by excluding them from acquiring language skills. And those same language skills can also be a barrier to people asserting their rights. It’s very difficult to argue with your employer if you can’t articulate your arguments in English.”

(Trade union officer)

Evidence presented to us identifies multiple ways in which access to ESOL could act to reduce vulnerability. Understanding English increases workers’ abilities to understand and to enforce employment rights, and also improves their confidence to report violations. An understanding of English further enables workers to make better use of their existing skills, allows them to engage in workplace development, and encourages interaction and integration with the wider workforce and community.

The proposals also ignore the important role of the workplace in building community cohesion and social inclusion. We believe, however, that ESOL has a significant role to play in facilitating cohesion in the workplace. The Commission on Integration and Cohesion (CIC) has concluded that “lack of English language skills is one of the biggest barriers to integration, particularly for new migrants”.\textsuperscript{24} The ability to speak English is also essential for job progression; the Audit Commission has concluded that: “The ability to speak English is a cornerstone of wider integration and cohesion. For many migrants, better English is a pre-requisite for improving their employment position.”\textsuperscript{25} The negative impact for cohesion and integration of workers not being able to communicate in English was discussed by respondents to our research and consultation:

“Unless you understand basic English, how can you understand your contract or how can you have a chance of understanding when the union’s trying to organise?”

(Trade union officer)

“The language barrier stops people integrating in the factory – which is what the company would like anyway. They don’t want people talking to each other... A factory is a community within the community. That’s being broken down. Migrant workers don’t feel part of that community.”

(Trade union officer)

The business case for ESOL is also widely recognised. In a joint statement with the TUC, the Director General of the CBI stated that: “For business there are clear benefits from investing in English language skills for employees. These can include better communication, improved customer care, greater efficiency and higher productivity.”\textsuperscript{26} These views are backed up by research. A report from Lantra (sector skills council for the environmental and land-based sector) for the Department for Environment, Food and Rural Affairs (DEFRA) into the business needs of employers of migrant workers in the land-based sector found that communication skills were the most common skills gap reported by employers, and that language barriers meant that some migrant workers did not understand the training they did receive at work. One of the report’s six recommendations is that “ESOL needs to be more accessible to migrant workers, and more funding available wherever possible”.\textsuperscript{27}

Previous studies,\textsuperscript{28} as well as evidence from our own contact with vulnerable workers, show that many workers with ESOL needs are working in low-paid jobs below their skill level. ESOL can remove the barrier to these workers fulfilling their potential and thereby help to fill skills gaps and boost the economy. This was demonstrated in a large survey of employers undertaken in the West Midlands, which concluded that there is an economic risk from migrant workers filling labour shortages in sectors unattractive to UK nationals, therefore delaying capital investment and restructuring of labour processes and reinforcing a ‘low-skill’ equilibrium. The report concludes that there is an economic case for helping aspiring migrants who
wish to stay in the UK to make better use of their skills. A study published in 2007 considering the UK poultry sector similarly found that language is commonly perceived as a barrier to promotion and/or transition to permanent status for both permanent and agency workers in sites supplying poultry products. Consequently, the research concluded that: “There is a business case for the industry sponsoring development of workplace-relevant [English language] training materials and delivering the training in hours before and after shift changes.”

We therefore urge the Government to reconsider its position on ESOL for low-paid workers, and to work with trade unions and employers to ensure that access is improved. We believe that until such time as employers are required to pay for ESOL provision should be paid for from the public purse.

We are also concerned that ESOL access for low-paid workers is declining at the same time as a proposed reduction in the availability of translated materials. Following the abolition of universal free remission, the Department for Communities and Local Government (CLG) has issued guidance to local councils to curb use of translated materials. This is claimed to implement an argument in the CIC’s report that: “Local Authorities and their partners should consider moving from a position of automatic translation of all documents into community languages, towards a more selective approach – driven by need, and set firmly in the context of communications strategies for all residents.”

However, our work identified that workers who were not fluent English speakers require particular resources to enable them to understand their employment rights, with access becoming even more pertinent as ESOL availability declines. Research with migrant workers undertaken for the Welsh Consumer Council also found that most respondents thought they should be able to access more information on public services in their own language, and that many did not know who to ask for such information.

However, in our survey of Citizens Advice Bureaux and Law Centre advisers few had sufficient language support to assist those whose first language is not English. Most either used translation, or improvised using friends, family and neighbours to translate. Interviews also suggested that, while local councils were not providing sufficient funding for translation, they also had insufficient funds to finance free or cheap classes in English for speakers of other languages or bi-lingual employment rights advisers. Workers were losing out both with respect to ESOL access and translated resources.

The net result of the Government’s selective following of the CIC’s recommendations on translation and on creating greater flexibility of ESOL provision is a situation in which there will be both fewer translated materials and less ESOL provision available to many migrant workers – thus placing them at greater risk of vulnerable employment. We therefore believe that a progressive shift from providing translation to encouraging a common understanding of English will be effective only if supported by the necessary language provision to enable it.
Delivering learning for all

Unite reps at the Argos distribution centre Basildon are demonstrating how learning can be integrated into mainstream union activity to the benefit of the wider union, the employer and workers themselves. Basildon is one of six Argos distribution centres where Argos recognises Unite. It employs around 400 permanent employees and up to another 400 temporary workers during busy periods. Many temporary staff are migrant agency workers.

The senior shop steward reports that lack of English can be an issue in the workplace, leading to lack of integration between migrant and domestic workers and causing communication difficulties, particularly in relation to health and safety. He also reports two common barriers to engaging staff in learning: the rotating shift patterns, which make attendance in external learning courses near impossible; and a reluctance among many people who may have essentially given up on education.

These barriers have been overcome through the introduction of a workplace learning centre. Now entering its third year, the centre offers courses in literacy, numeracy, ESOL, IT, Spanish for beginners and NVQs in distribution and warehousing. Courses are run by the local college and funding comes through the ULF and a learning budget from Argos. The employer funding is decided annually depending on previous performance and proposals for the coming year. Having secured new funding at the Basildon site, workers will continue to receive half of the time spent on a course back in wages on its completion – an effective incentive to taking part.

There have been clear benefits from the learning programme for workers, union and employer. ESOL has greatly aided staff integration and allowed British and migrant workers to join together behind common interests and causes. Meanwhile, the literacy, numeracy and NVQs have improved workers’ ability, confidence and speed in performing day-to-day tasks.

Learning provision has also led to increased recruitment for the union, especially among migrant workers but also among formerly anti-union British workers. It has further improved relations between unions and management, which, as the shop steward told us, have been hostile at times in the past: “We’ve had some quite tough times here in the management/union relationship. There’s been a lot of animosity towards the union. We’ve had massive battles here, tribunal cases and all sorts, but this was an area that demonstrated that we are not anti-management and that we can work with management, and work together well... You’ve got to know when to wear your dancing shoes and when to put on your boxing gloves.”
Many vulnerable workers depend on benefits, both while they are in work and when they are between jobs. Yet they can face real problems when the benefits system is too inflexible to respond to changes in their circumstances, leaving them trapped in vulnerable employment.

There are several ways in which the benefits system affects people’s chances of being in, and moving on from, vulnerable employment. During our regional visits we met with workers who told us of how problems with welfare benefits had exacerbated their experiences of vulnerable employment. We have therefore undertaken an analysis of specific aspects of the benefits system that support those in vulnerable work, and have identified a number of ways in which increased flexibility could better enable progression from vulnerable jobs into sustained employment.

Limited access to welfare benefits for migrant workers plays a key role in exacerbating their workplace vulnerability. The specific restrictions placed on these workers are discussed in more detail in Chapter 6.

Employment can become more insecure if welfare benefits do not provide workers with security to leave work that is exploitative, or support them should temporary work come to an end. Similarly, if there are poor incentives to enter formal employment, benefits can encourage informal work where respect for workers’ employment rights is low. On the other hand, welfare to work policy has potential to limit the impact of vulnerability at work through, for example, offsetting the insecurity of temporary jobs and enabling access to education and training. We therefore believe there are several ways in which the benefits system should be reformed to prevent it contributing to the existence of vulnerable employment.

During our work, the Social Security Advisory Committee (SSAC) highlighted to us instances of seasonal workers being refused benefits when work was unavailable to them. This can occur under an interpretation of the Jobseeker’s Allowance (JSA) ‘Remunerative Work’ rules, which holds seasonal or other temporary workers to have a ‘recognisable cycle of work’ (even if it includes periods out of employment and there is no employment contract) and therefore to be in continuous remunerative employment and not entitled to claim benefits. As a result of a mismatch between eligibility criteria for benefits (run by the Department of Work and Pensions (DWP) and Tax Credits (run by the HMRC), such workers can be excluded from both ‘out of work’ and ‘in work’ support, considered to be employed by Jobcentre Plus/DWP but unemployed by the HMRC. One of the largest documented instances of this taking place was in Lincolnshire in 2005–06, when several hundred seasonal workers were denied benefits during the winter months when work was scarce, causing real hardship for many.

The SSAC concludes that effective penalising of people in casual, precarious employment in this way is likely to have the perverse effect of deterring people from entering such work in the first place.

While in Lincolnshire the decision on the application of the Remunerative Work rule was eventually changed there have been other similar instances, and the SSAC warn that more could crop up in the future unless the rules are reviewed and clarified. The Committee further recommends that the eligibility rules for benefits and Tax Credits be aligned, adding that: “The outcome of the review would ideally ensure that employers cannot unreasonably use the benefits system to subsidise their employees when they are unable to offer employment.” We agree, and support the Committee’s call for the Remunerative Work rules to be reviewed to prevent the benefits system from exacerbating the precariousness of casual work.

We believe that inflexibility with respect to earnings ‘disregards’ is also acting to increase the insecurity experienced by vulnerable workers. Disregards are the amount that can be earned before benefits begin to be withdrawn. As soon as earned income increases over
the applicable disregard amounts, claimants have a responsibility to notify Jobcentre Plus, and face cuts to their benefits. Disregards are very different for each particular welfare benefit. For those on income support or income based Jobseekers’ Allowance disregards are low, and have seen hardly any increases in recent years. The Housing Benefit system also includes some earnings disregards, which have also been largely frozen since the late 1980s, and Council Tax Benefit contains similar rules. In contrast, the permitted work rules for Incapacity Benefit appear to place a greater emphasis upon a gradual move into work from benefit, allowing much higher weekly earnings prior to benefit withdrawal. 35

During our regional visits some respondents told us of difficulties they had encountered with benefit reductions, as short-term temporary work meant that their weekly earned income regularly fluctuated. This left them continually insecure, uncertain that their combined income from work and benefits would provide them with enough to live on. In some weeks they would find themselves earning above the disregard limits for various benefits, and in other weeks below them. This had caused real problems for their benefit claims, meaning that they could find themselves without support as new entitlements were calculated or in violation of benefit rules as a result of changes in shift patterns. Overall several had been discouraged from entering work, wary of being left without support should their temporary job come to a sudden end, or their hours rapidly decrease. These mirror previous findings, for example respondents to participatory research undertaken by the Government’s Social Exclusion Task Force found that participants called for a “simplified and more responsive benefits system – so that people can take part-time or temporary work where that is available.”36

Research also suggests that low levels of benefit disregards can discourage people from moving into formal work, and may therefore encourage them to take jobs in the informal economy.37 Respondents told researchers of the dilemmas that they faced:

“Our boss employs four other boys apart from me. This work is not reliable, you may be busy for few weeks and then work dries up, you can’t go off benefits just because you’ve got a bit of work like this, it’s very hard to get back benefits once you lose them.”

(Research respondent)

“I got a student to move in with me, I resumed my chambermaid evening shifts to four times a week. She stayed with the kids and I managed to do my cash-in-hand work, this gave me £120 per week on top of benefits and the student stayed with us rent-free. During holidays she would go away and I would not be able to work. If I told benefits people about this income, they would just cut me off benefits, and because I know I can’t do without them, I take the risk not to tell them.”

(Research respondent, lone parent)38

We believe that one way to address this situation would be for the Government to consider allowing a higher level of income to be disregarded prior to benefits being withdrawn. In particular, we believe that disregard limits for Housing Benefit, Council Tax Benefit, income based Jobseekers’ Allowance and Income Support could be reviewed. In our view, this could enable more workers to remain in employment, and would make them less vulnerable to sudden drops in income as a result of the risks associated with very short-term precarious work. Research shows that entry-level jobs are five times more likely to be temporary and 50 per cent more likely to be part-time, meaning that vulnerable workers are likely to be affected by problems with the disregard limit, and with moving quickly between work and welfare benefits.39

Delays in the administration of welfare benefits can also place low-paid workers at clear risk of vulnerable work, and need to be addressed if vulnerable workers are to be effectively supported. During our regional visits we heard from workers seeking to progress from cycles of informal temporary work hindered by fears of delays in re-accessing the benefits system should their attempts at formal employment fail. Similarly, a study from the Joseph Rowntree Foundation found that some participants risked continuing to claim benefits when starting temporary or seasonal work because they feared that delays in the benefits system would leave them in difficulty if they declared and then lost this work.40 Given the high rates of cycling between welfare benefits and employment for those in low-paid temporary jobs, as documented in Chapter 1, these concerns are real.

In part, these problems arise from difficulties inherent in the benefits system. As the National Audit Office has concluded, much error is “generated by the complexity of the system”.41 Complexity can also lead to low awareness and unclaimed entitlements, which are by
no means unsubstantial; during the financial year 2005/06, Community Links calculated that the financial worth of unclaimed benefits was double that of overpayments. Recent research published by the Child Poverty Action Group (CPAG), Community Links and the Low Incomes Tax Reform Group has shown that systemic complexity can also lead to unpredictable outcomes for individuals moving back into work. It concluded that social security benefits and Tax Credits are intrinsically complicated in their interactions with each other, and that Tax Credit claimants can be affected negatively when the granting of one benefit leads to the withdrawal or curtailment of another, making them worse off. Respondents involved in the study, and those taking part in our research, described their experiences of problems with the benefits system:

“I still don’t understand how they worked it out. Again, the accompanying document that they give you to work your way through... well, it’s terrifying. It is a huge pamphlet and it’s in fairly easy-to-follow English, but the actual arithmetic... I couldn’t understand one single bit of it. I’ve had to rely purely on the fact that they understand my figures and that I’m getting the right rate.”

(Research respondent)

“I don’t have a clue about my entitlement, how the calculations are made or anything.”

(Research respondent)

“A lot of vulnerable workers would be entitled to Tax Credits, there needs to be greater awareness.”

(Trade union officer)

Respondents to our research also made particular reference to the difficulties that complex administrative requirements could cause for migrant workers and asylum seekers making use of the benefits system:

“So some people find it difficult to get housing or navigate their way round the benefit system... There are also situations where people have just come off NASS [National Asylum Support Service] support but they have to wait 28 days to be on benefit. The DWP doesn’t always work very well.”

(Migrants’ rights adviser)

“The processes that Jobcentre Plus (JCP) use to issue national insurance numbers remains a key issue for migrant job seekers/workers. Individuals make an application over the phone to JCP to start the process of getting an NI number and to make an appointment to see an adviser... not every Jobcentre has this facility and these places are not necessarily easily accessible).... Documentation required includes proof of address... then in approx. two months an NI number is sent out. However, often proof of address is difficult for new migrants because they may be staying with friends, B&B’s and hotels initially. However, migrants can start work without an NI number, but this is not widely known by employers [who] usually expect someone to give them an NI number before they will offer them a job. This is a Catch-22 situation.”

(Sefton Equalities Partnership)

There is some government recognition of the difficulties that benefits complexity can cause, which is reflected in the establishment of the Benefit Simplification Unit within the DWP. Since its inception the unit has however faced criticism regarding areas including its lack of decision-making power and the limitations of its remit. The House of Commons Select Committee on Work and Pensions concluded that “there is a lack of vision and drive within DWP and across Government to simplify the benefits system, and we share the reservations of a number of witnesses about what the Benefit Simplification Unit can achieve under its current structure. We commend the role it is playing preventing further complexity being introduced into the system, but this is a very long way from having a plan to systematically introduce simplification.”

The recent welfare to work strategy paper “Ready for work: full employment in our generation” sets out how the Government plans to move towards an 80 per cent employment rate in the UK, and details a range of new policy. It includes a specific commitment to benefit simplification, and proposes consideration of a single system of welfare benefits for all people below pension age. It also commits the DWP to publishing further information about their approach to benefit reform during 2008.

In our view, benefit simplification needs to afford top priority to making the benefits system better support those who may be in atypical work, and who move frequently between work and benefits.
The sanctions regime provides another example of policy that can increase workers’ exposure to vulnerable employment. Under present benefit rules any worker leaving a job voluntarily without good reason or because of misconduct can be ‘sanctioned’ by Jobcentre Plus. When a sanction is applied, workers can be denied JSA for up to 26 weeks, and can sometimes also not be awarded National Insurance credits. In practice this means that workers can be left in severe hardship.

Multiple studies show low awareness of the sanctions regime among workers, suggesting that its deterrent effect on those who have not been sanctioned is minimal. In particular, studies show that awareness is lowest among those who are already facing labour market disadvantage, finding, for example, that “lack of understanding was noticeable for customers with ESOL needs, literacy needs and learning difficulties”. Research also suggests that improved communication at different stages in the process, essentially a system of warning clients of likely sanctions, could provide the best means to deal with small-scale violations of benefit rules.

We believe that while sanctions are needed for those setting out to defraud the system, a new approach is needed that reserves benefit stops for the worst cases with a system of warnings for first small-scale violations of benefit rules.

Our investigations suggest that the most vulnerable workers may have had their confidence destroyed by the worst jobs, and will need tailored support to enable them to re-enter the labour market. Since 2004, the Government has recognised the importance of providing individuals with access to a menu of appropriate support to move into work, as set out in Building on New Deal, its strategy paper for a more flexible and developed set of welfare to work programmes. This year, the Government has set out its proposals for the development of a new ‘flexible new deal’, which will provide claimants with support based upon their individual needs rather than rigid programme requirements. While we have some concerns regarding the proposed delivery mechanisms for this programme, we agree with the need for programme flexibility when supporting workers into sustainable jobs.

There are, however, increasing moves towards unpaid work experience as a key means of enabling workers to re-enter the labour market. The TUC has received evidence that Jobcentre Plus have recently been placing a greater focus upon the role of work trials and work experience in enabling claimants to enter work. We recognise that government does not intend for workers to be mistreated during work experience placements, and that such opportunities can provide an important means to re-enter the labour market. However, it is also our view that without proper regulation compulsory unpaid work experience for extended periods (in jobs that would otherwise be taken by workers paid the rate for the job) risks exploiting claimants, unfairly discriminating against companies not benefiting from such free labour and undercutting the pay and conditions of existing workers. While we acknowledge that there is a role for work experience in supporting claimants into jobs, we therefore believe that this process needs to be very carefully managed to ensure that it does not increase workers’ risks of vulnerable work. To reduce the risks of poor treatment faced by workers required to undertake such placements, we therefore believe that they should be provided with a clear statement of the standard of placement they can expect. We also believe that a transparent monitoring system needs to be put in place to ensure that workers are not simply providing unpaid labour for exploitative employers.

More widely, we believe that flexible support tailored to individual workers’ needs is vital if people are to be enabled to enter sustainable jobs with prospects for progression. Local Employment Partnerships (LEPs) provide a strong example of how such policy could act to reduce the incidence of vulnerable employment. LEPs are a new government initiative, requiring Jobcentre Plus to work with businesses to deliver the ’Jobs Pledge’, the promise of an extra quarter of a million jobs for people who face additional barriers in the labour market, such as lone parents and disabled people. The Prime Minister has indicated that the target for this policy is people who have been on benefit for a long time, disabled people and lone parents in particular. Some, but not all, will be claiming JSA; many will be claiming Employment and Support Allowance, the new benefit for working-age disabled people, due to be introduced this year.
There is no list of measures which businesses have to guarantee they will provide, but we believe there are a number of positive measures they could be asked to commit to which include, for example, induction and technical training for people who do not have the right work experience; guaranteeing interviews/jobs for people who complete training or meet 'agreed job requirements'; and sympathetically considering requests for flexible working.

At present, however, there is no requirement that employers sign up to any particular types of provision, and there is no guarantee that individual claimants will actually receive any of these types of support. We therefore believe that, to ensure it meets its potential as a means to reduce vulnerable employment, it is important that the Jobs Pledge delivers secure jobs for the disadvantaged people it is meant to help, and provides a varied menu of tailored support to participating claimants.

Overall, we believe that there is strong potential for the benefits system and wider welfare to work policy to be reconfigured around enabling vulnerable workers to enter sustainable jobs. However, in our view this will require greater recognition of the need for flexibility in both the administration of welfare benefits and the menu of support on offer to individuals.
John is 42 years old and has been working as a film and TV extra since 2000. Previously he worked as a postman for 12 years until he suffered a back injury. He got involved in extras work after seeing an agency’s newspaper advert. Although he has worked on numerous projects, he has found that work has been drying up and that agents have been getting ever-more unscrupulous. As a freelance worker John does not receive any holiday pay, sick pay, pension or paternity leave.

John has had over a hundred parts over the last eight years and the longest job has lasted nine months. He reports that when he started he could be working one to three days a week and each day would be about 12 or 13 hours long. He now rarely gets a job once a month.

As with all supporting artists, John is charged an initial ‘book fee’ by agencies with no guarantee of getting any work: “£50-60 every year to be on their book and then you’d get one day’s work with them and with that book fee taken out and also their 15 per cent commission I’d end up with £7 for a whole day’s work. Then I wouldn’t hear from them... You'd get promised work, 3–4 days on something and they’d cancel at the last minute. That’s happening more and more now.” He reports that, although there is now more use of foreign locations for filming, much of the insecurity and irregularity of the work is down to agencies getting greedier: “The agencies employ lots and lots of people. They have thousands of people on their books. More people and less work. They’re taking the book fee from everybody. A lot of people are having 1–2 days’ work.”

Union involvement or any dissent against such practices is liable to lead to loss of work: “A lot of people in the union, agencies won’t take them on. The committee, union officials, they haven’t had any work for years... People are frightened of complaining in case they don’t get any work. It’s awful.” He also cites the emergence of completely fraudulent agencies: “These scam agencies put ads in local newspapers saying come to this hotel this weekend and they quote Harry Potter. Parents and children come along, they say we can get you in this film, charge £100 for photos. One company is charging £250 for photos. They never hear from them again.”

John further reports that the film and TV business is very status-orientated and that extras often have to work in poor conditions and can be treated disrespectfully by other staff. He has also found that workplace issues are not taken seriously: when he was repeatedly and badly bullied by a co-worker, his complaints led to nothing.

All of this has had a negative impact on John’s quality of life. He has little money and damaged confidence: “I get depressed about the state of things. I’m really conscientious and turn up on time.”

(We were introduced to John through his union)
We believe that for workers in vulnerable employment, improved skills can provide a key means to progress into better jobs. For informal workers, formal skills and qualifications can provide confidence to move into the formal labour market. For those who are in precarious temporary jobs, improved access to education can increase their chances of finding permanent work, and for all workers opportunities to advance in the labour market are improved by increased access to education and skills. We agree with the Government that “without increased skills, we would condemn ourselves to a lingering decline in competitiveness, diminishing economic growth and a bleaker future for all”.53

Our investigations show that many workers in the most insecure and low-paid jobs are not able to access development opportunities. In particular, agency workers can find themselves unable to access training provided to others in the workplace. To ensure that improved access to skills is a reality for vulnerable workers, we believe that the Government needs to make it absolutely clear to all stakeholders that if the Skills Pledge does not lead to a major change in employer behaviour and culture in the coming years, a statutory approach will be implemented in 2010 (supported by government funding). In the meantime, we encourage employers to commit to the Skills Pledge, ensuring access to NVQ2 for all workers. We also believe that the new UK Commission for Employment and Skills should give priority to a consideration of how the training needs of vulnerable workers can best be met. New policy on Collective Learning Funds could also better provide vulnerable workers with opportunities to progress.

It is clear that improved access to information and advice regarding advancement at work could provide an important means for those in vulnerable employment to progress into better jobs. We therefore support calls for the development of a network of advancement agencies, providing those in insecure and low-paid work with local access to support to improve their skills, secure their employment rights and leave vulnerable work. We further believe that trade unions could play an important role in the delivery of such services, particularly through links with regional union learning funds. These agencies could be linked to increased local authority efforts to co-ordinate employment rights provision, as discussed in Chapter 2.

Access to English language training for migrant workers is an essential means to improve workplace health and safety, ensure that workers are aware of their employment rights, and create cohesion in the workplace. The situation in England now contrasts markedly with that in Scotland, where ESOL is free at the point of use for all who need it. The Scottish Government’s ESOL strategy (published March 2007) contains plans for new funding which, over the next three years, could deliver up to 7,000 more places for migrant workers, asylum seekers, refugees and others who are eager to learn English.54 Although demand for ESOL still outstrips supply in many parts of Scotland, this strategy does at least recognise the importance of English language as a means to improve individuals’ opportunities, enhance the skills base, meet the demands of employers and the economy and aid integration. We therefore believe that the Government should review current changes to the targeting of ESOL provision, recognising the importance to community cohesion of enabling low-paid migrant workers to access subsidised English language training.
We also believe that there is an important role for trade unions in the development of good practice in the provision of skills, including English language training, through the ULF. **We encourage trade unions to continue to make use of the Union Learning Fund and the regional learning funds to support projects aimed at helping vulnerable workers into learning.**

Welfare to work and benefits policies contain potential both to offset the impact of the most precarious work and enable workers to progress from vulnerable jobs. However, there are a number of changes we feel are necessary to ensure that policy solutions reflect the flexibility required to meet these aims.

The SSAC has highlighted the potentially negative impact of the Remunerative Work rules, highlighting cases where seasonal workers who have undertaken cycles of temporary work have been deemed to be in ‘continuous’ employment and therefore ineligible for welfare benefits when not in work. **We agree with the SSAC that these rules should be reviewed.**

In general, we also feel that the benefits system lacks the flexibility to respond to the needs of workers in short-term, insecure work, where incomes regularly fluctuate and job security is low. To better support these workers **we believe that earnings disregards should be extended.** Improved administration of welfare benefits, and a commitment to consider how benefit simplification could improve clarity and consistency with respect to income levels for those in insecure work, would also contribute to this aim.

It is clear that awareness of the Jobcentre Plus sanctions regime is low, and that its power to affect the likelihood of workers voluntarily leaving work is negligible. On the other hand, there is great potential for the sanctions regime to force workers into informal employment, where their chances of mistreatment are high. **We therefore believe that a warning system should be developed for benefit sanctions (as has been recommended by the unemployed workers centres), raising awareness and reducing the likelihood of workers being unnecessarily left to seek informal work.**

Welfare to work policy also provides potential to offer the range of support that vulnerable workers need to enable them to progress to sustainable jobs with prospects. Evidence shows that this requires a flexible menu of support for each individual. **We are, however, concerned with the increasing focus on unpaid work experience, which we feel unless closely monitored has potential to place more workers in vulnerable employment, rather than enabling them to leave.**

**We are also clear that it cannot be a replacement for a wider menu of support, and that as new welfare to work policy is developed, for example the Local Employment Partnerships, success will be contingent on providing meaningful opportunities for workers to develop their skills and confidence.**
Jerzy is a 25-year-old Polish man with a BA in teaching English from Poland and a Masters in Education from a major English university. He has been living in the UK for two years during which time he has balanced full-time work with his studies. Jerzy has worked as a chauffeur and on a building site; but his longest period of employment has been in a hotel. At the hotel Jerzy has encountered several problems: unreasonable demands for overtime, unpaid holiday and bonus entitlements, and what Jerzy considers an unfair dismissal.

Jerzy started in the hotel as a waiter on the minimum wage. When the hours for this position were cut below those he needed to earn enough to get by, he was offered a role as full-time night manager, working for £7 per hour from 10:30pm to 7am. This was supposed to be for five days a week but, in practice, it was often six or seven days because Jerzy was called in at the last minute whenever there was an absence. His manager would insist that Jerzy fill in. Jerzy reports that on one occasion he came in for an extra shift when he was ill with a fever; his manager had called him and, despite Jerzy’s protestations that he was too sick, pressured him to come in. When Jerzy asked what would happen if he refused, he says the manager told him, “well, you know the consequences”, implying that he would be sacked.

After one year of working there Jerzy was unexpectedly called into a meeting with management, where he was read a number of alleged mistakes and told to take a more junior position or leave. Jerzy was bewildered by this since up until then he had never had anything but praise from his managers. Although he wanted to quit, Jerzy ended up taking the more junior position because he had housing costs to pay and had no time to look for another job in the middle of his studies. He therefore continued to work in the hotel as a night porter on a lower wage.

After his demotion, Jerzy was refused holiday pay and a bonus he was due for hitting targets when he had been the night manager. He eventually went to a solicitor, who advised that he had a strong case and that the employer had acted illegally. Jerzy then secured a meeting with the area manager and finally got his holiday and bonus paid. Next time he went on holiday, however, the same thing happened.

Jerzy finally finished his studies and was able to get a new job. He says that the experience at the hotel, combined with his studies, caused him to become very tired and stressed. Jerzy reports that other migrant workers at the hotel were treated similarly poorly – often given no holiday pay and not paid overtime.

Jerzy has good English and a reasonable awareness of his employment rights and this (along with his strength of will) allowed him to challenge his treatment. He recognises that many Polish and other migrant workers are not as well-equipped to do what he did because they lack the necessary proficiency in English and the confidence that comes from it: “Language is the biggest issue... People feel intimidated in a face-to-face meeting with managers and can’t express themselves.”

Jerzy now has a job in a call centre, which he finds much better than the hotel, and also teaches English part-time. He plans to continue doing this for the time being before going back to Poland and getting a job in education.

(We were introduced to Jerzy through Oxfam’s UK Poverty Programme)


Ibid.

Ibid. p37.


Ibid.


This case study was provided to us by Dr Jason Heyes, who built upon our contacts to inform his research for a forthcoming publication: Heyes, J (forthcoming) Organising Migrant Workers Through Education and Training. Mimeo. Birmingham Business School. University of Birmingham.


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unionlearn Union Learning Fund Learner Outcomes 2006/7, unpublished.


Ibid. p40.


Ibid.


37 Community Links and the Small Business Council define informal economic activity as work that involves the paid production and sale of goods or services which are unregistered by, or hidden from the state for tax, benefit and/or labour law purposes, but which are legal in all other respects.


44 Ibid.


47 Normally a sanction means the loss of all JSA for the sanctioned period, but some sanctioned claimants can receive ‘hardship payments’ – a special lower rate of (income-based) JSA for people who would face hardship otherwise (or who have a family member who would face hardship). Usually these payments are made only after the first two weeks of the sanction, though they may be available straight away for members of ‘vulnerable groups’ – sick and disabled people, pregnant women, parents responsible for children, some carers and some young people.


52 Work trials require claimants to work in an actual vacancy for 15 days whilst continuing to receive any benefits to which they are entitled. They are also paid travel expenses of up to £10 a day and meal expenses of £3 a day.


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Chapter 5

Strengthening enforcement

In this chapter we discuss the enforcement of employment rights in the UK. We discuss the extent of non-compliance with existing employment law, and the limitations of the existing mechanisms for preventing exploitation. We also discuss the role that public and private procurement can play in improving employment practice and reducing vulnerable work.

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Pietr’s story

Pietr is 25 years old and from Poland. He has a Masters in Engineering and is currently working in a food processing factory in northern England. Pietr has only been in the UK for around six months and has reasonable but still fairly basic English. He found work simply by going into an employment agency in the city centre. The agency sent him to work in short-term assignments at various factories before finally assigning him to his current employer, who has provided more regular work. As well as the insecurity of not knowing how much work he would get from week to week, Pietr has also encountered major problems getting his proper pay – which has caused him financial difficulties and stress.

Pietr reports that the work he was initially given would be for as little as a day and no more than a few days at a time. Pay was always at the minimum wage level and there was no extra for overtime. The irregular hours caused financial problems, and Pietr had to borrow from friends to get by. Pietr reports that, because he was temporary, he never received any health and safety information or training in these jobs, even though one involved working next to heavy, dangerous machinery.

After around three months of this experience, he obtained a placement that was supposed to last three weeks but actually ran for three months. However, the agency often either underpaid Pietr or did not pay him at all. He reports that seven of the eight agency workers at the factory experienced similar problems. He also says that the manager at the factory assured him that they had given the agency the money for their wages and he therefore suspects that the agency was spending this.

In the run-up to Christmas 2007, Pietr had been working 12 hours per day and had received no money for three weeks. When he phoned the agency about it he was always told there were problems with the computer system. On one occasion the woman at the agency put the phone down on him. This made Pietr so angry that he decided to act; he was now really struggling financially: “I finish my job before 4.30 and I went to agency office and sat there and I said to manager I waiting for my money now. Manager said this is not possible. I said I need money. I am working every day, 12 hours one day and I don’t have money for rent, food. I need money. My last salary was 2–3 weeks ago. Manager called security. Security said get out.” Shortly afterwards he received his unpaid wages.

For Pietr there was no other option but to take this type of independent action: he has never received employment information or advice and would not know where to start. He is not familiar with the words ‘trade union’.

Things have improved now that Pietr is permanent. He is still on the minimum wage but now gets paid time-and-a-half for overtime, has full-time, regular hours and receives his wages on time. Pietr is keen to improve his English, which he sees as a big barrier to finding better work. He has been able to access free ESOL teaching and in the future hopes to get an engineering job: “I want to find a better job with my qualifications. Now I speak English a little bit. I want to learn to speak English better and after find better job.”

(We met Pietr through Oxfam’s UK Poverty Programme)
During our work we identified non-compliance with nearly all employment rights to which workers are entitled.

Our research found that the three most common client problem areas were dismissal/termination, followed by family-friendly rights, pay problems, working time and discrimination and bullying. Secondary analysis of the implementation of specific employment rights also documents extensive non-compliance.

There is evidence that young people, people from minority ethnic groups and workers employed by small businesses or working informally may be at greater risk.

Our investigations have shown us that some of the most extreme employment rights’ abuses involve employment agencies and temporary labour providers. However, there is no licensing of most employment agencies in the UK, despite increasing fragmentation of the sector.

Generally it is recognised that Employment Tribunals (ETs) play an important and effective role in resolving many employment disputes. However, during the course of our investigations we have been struck by particular weaknesses in the support that the ET system provides for those in vulnerable employment.

Vulnerable workers can experience considerable personal and financial costs from taking a case to tribunal, and also face real fears of losing their job if they challenge their employers.

Even if workers successfully challenge exploitation at tribunal, many find their awards remain unpaid. In our survey of employment rights advisers, over a quarter of respondents (28 per cent) reported that ET awards that were upheld were not then enforced and a further 60 per cent indicated this was occasionally the case.

The existing state enforcement infrastructure is poorly resourced, meaning that often the necessary proactive and preventative work is simply not feasible. The ratio of inspectors to organisations and businesses covered by the different agencies shows extreme variation.

Should a worker report a problem outside the remit of an enforcement agency there can be legal barriers preventing officers from sharing information with other appropriate professionals and the powers of different enforcement bodies are varied in their scope.

The configuration of the employment rights enforcement agencies can make reporting procedures for vulnerable workers unclear. These reporting difficulties reflect wider structural problems in the remits of the enforcement agencies: they can enforce only set rights and can each act only on particular types of employment rights’ violation.

Since the 1980s, the UK has seen a major shift towards outsourcing goods, works and services in both the public and private sectors. The stratified labour market that has resulted – with its webs of contractors, subcontractors and ‘sub-subcontractors’ – makes regulation and management more challenging.

There is substantial scope for procurement to act as a key lever for ensuring that fair employment practices, terms and conditions are adopted throughout supply chains.
The enforcement infrastructure

In the UK the main means of resolving individual employment disputes is through recourse to employment tribunals (ETs). This includes all claims relating to dismissal, redundancy pay, discrimination, equal pay and collective rights including failures by employers to inform and consult trade unions or workplace representatives.

In all cases taking a case to employment tribunal currently requires workers and employers first to have complied with statutory dispute procedures relating to grievances of disciplinary matters. If the problem cannot be resolved through this route the Employment Tribunal process starts with the completion of an ET1 form, followed by an offer of conciliation services from Acas.

For a small number of rights, specific state agencies are also charged with enforcement, responsible for undertaking inspections of high-risk workplaces and promoting self-regulation among employers. This is true of the minimum wage, health and safety at work and the operation of employment agencies and temporary labour providers in particular sectors. For these rights, individuals can register complaints about non-compliant employers with the various statutory agencies. A brief overview of these enforcement mechanisms, and the key legislation they cover, is provided below.

The Employment Agency Standards Inspectorate (EASI) is responsible for ensuring that employment agencies are compliant with the Employment Agencies Act 1973, and associated Conduct of Employment Agencies and Employment Businesses Regulations 2003. The legislation it enforces applies to employment agencies and employment businesses. This includes those that provide work-finding services for au pairs, apprentices, the self-employed, work-seekers or those covered by contracts of employment.

The Gangmasters’ Licensing Authority (GLA) was established in July 2004 as a result of widespread consensus among retailers, growers, suppliers, labour providers and trade unions regarding the need to curb exploitative and fraudulent activities by gangmasters. It is responsible, through a licensing system, for safeguarding the welfare and interests of workers while ensuring that labour providers operate within the law. It covers temporary employment agencies and gangmasters supplying labour to agriculture, horticulture, shellfish-gathering and related produce packing and processing sectors.

HM Revenue and Customs (HMRC) has operational responsibility for enforcing the minimum wage, and since 1 April 1999 has operated a helpline and network of compliance teams to fulfil this role. Under the terms of the Service Level Agreement between HMRC and the Department for Business, Enterprise and Regulatory Reform (BERR), HMRC provides information, inspection and enforcement services, and responds to enquiries and complaints from workers, employers and third parties. This includes visiting employers about whom no complaints have been made, identified through a risk-assessment process, to check that they are meeting their obligations under the minimum wage legislation. Agricultural wages inspectors from the Department for Environment, Food and Rural Affairs (DEFRA) enforce the minimum wage in the agricultural sector, and the agricultural minimum wage.
The Health and Safety Executive (HSE) aims to protect the health, safety and welfare of workers and safeguard others who may be exposed to risks from work activities. Since its inception, the Health and Safety at Work etc. Act 1974 has been supplemented by Regulations, Approved Codes of Practice (ACoP) and HSE guidance. The European Union also regularly issues health and safety directives that all member states are required to incorporate into their own laws.

The employer’s duties are to ensure, “so far as is reasonably practicable” the health, safety and welfare of workers, including dealing with stress at work. This has to be done by carrying out a risk assessment, consulting safety representatives and safety committees, providing information, instruction and training to workers and others who are in a contractual relationship. The protection provided by health and safety law extends beyond an employer’s own workers to other workers and visitors to the employer’s premises.

Local authorities have statutory responsibilities for the enforcement of health and safety legislation mainly in the distribution, retail, office, leisure and catering sectors. They are also responsible for enforcing the rights of children at work. The Children and Young Persons Act 1933, and the Children (Protection at Work) Regulations 2000 contain restrictions on the employment of children below compulsory school age. In essence, this legislation provides that no children may be employed in part-time work under the age of 14, with a number of exceptions. The major exception is that children who have reached the age of 13 may work in a local authority’s area if its by-laws permit such employment.
Extensive non-compliance

During our work we identified non-compliance with nearly all employment rights to which workers are entitled. We were shocked by the extent to which some employers are able to disregard employment law, and by the breadth of the evidence on illegal treatment. Survey work backs up our findings: evidence from a national Department of Trade and Industry (DTI) survey found that 16 per cent of respondents reported experiencing problems at work in relation to their employment rights in the previous five years. The most common types of problem concerned issues of pay and written particulars of employment, followed by discrimination and working time issues. Unsurprisingly, those most at risk of experiencing a problem were already those more likely to face disadvantage in the labour market. Non-white respondents were nearly twice as likely to report problems as their white counterparts, and low-paid workers were at greater risk of experiencing a problem than others. Temporary workers were more likely to report problems than permanent staff.

Our research found that the three most common areas where clients of advice providers experienced problems were dismissal/termination, followed by family-friendly rights, pay problems, working time and discrimination and bullying. On a weekly or more frequent basis 79 per cent said they confronted problems with dismissal/termination, 71 per cent reported dealing with maternity/paternity/parental rights and flexible working problems, 67 per cent reported dealing with pay problems, 65 per cent discrimination and bullying and 60 per cent problems with working time.

Analysis of the implementation of specific employment rights also documents extensive non-compliance. The Annual Survey of Hours and Earnings (ASHE) registers that around 292,000 workers (about 1.2 per cent of all jobs in the UK) are paid below the agreed rates of national minimum wage. People in part-time work are almost three times more likely than people in full-time work to be paid less than the minimum wage, with 2.1 per cent of part-time and 0.8 per cent of full-time posts falling below legally specified levels. As a result of their greater rates of part-time employment, women are more likely to be underpaid (1.4 per cent of jobs paid below the minimum wage are held by women, compared to 0.9 per cent of jobs held by men). Young people aged 18–21 were also more likely to be underpaid (2.5 per cent of jobs held by young people compared to 1 per cent of jobs held by older workers).

These figures do not necessarily represent non-compliance as apprentices are exempt from the minimum wage, and if workers receive accommodation from their employers this can be offset against their hourly rate. However, research suggests that in particular sectors it is unlikely that these variables fully explain the recorded rates of underpayment, for example in hotels and restaurants where rates of training are known to be very low. It is also acknowledged that many workers are not picked up in the ASHE data, either because the survey methodology fails to identify them or because their hours are under-reported and their hourly rates therefore inflated, for example as workers are asked to do more work than is possible within the allocated time, being instructed to undercount their hours as they finish their shift, or having pay deducted for lunch breaks.
Research respondents reported examples of employers avoiding paying the minimum wage:

“They might knock on the door. You never see these people other than in the corridor with their trollies. When you look at some of their practices, if a client runs off with a bathroom towel it usually comes out of that worker’s money. Everything is allocated to their trolley and storeroom so if they’re down on their stock they have to pay for it. They need the job. They put up with the conditions because they think if they don’t they’ll have to leave. There is a lot of bullying and misinformation that goes on, which is why we try and run this community stuff. We tell them your employer can’t say pay for those towels or you’ll be sacked. It’s getting them to believe it.”

(Trade union officer)

“Three days’ training before you can work...That three days is unpaid... and there’s then been this practice of not paying by the hour, paying by the rate, so what happens is they don’t get paid the minimum wage. The other problem that they’ve got is that they’re expected to arrive for work at, say, 8 o’clock in the morning but because they’re cleaning hotel rooms the guests might not leave till 10 or 11 so they’re hanging around for the first 2 or 3 hours and they’re not being paid for those 2 or 3 hours... and they’re penalised if they turn up late.”

(Trade union officer)

“The ones that I’ve seen have been not all that clear. They get a weekly wage and they work a few shifts and they won’t get a specific hourly rate but, when you work out what they’re getting for what they’ve done, it falls below £3.50 an hour. It’s never that clear. In practice what they end up working for is a minimum wage on average. Having to work long shifts and working out whether the tips are included in the minimum wage. They’re confused about their situation.”

(Employment rights adviser)

“Not offering the minimum wage, or offering commission only, or no pay at all...they offer pay on commission only, and self-employed vacancies.”

(Employment adviser surveyed by NUS)

Submissions to our Commission also suggest that employers are mistakenly using ‘volunteer’ status as a means to avoid paying workers the minimum wage. BECTU reports that this particularly affects the most junior occupations in freelance film and TV production, for example runners (who fetch and carry messages/materials, run errands or obtain refreshments) or staff used as receptionists. BECTU stated to us: “There is sometimes an alleged training element – but with a complete absence of any training structure or context. This is, unequivocally, the exploitation of young people desperate to gain a foothold in the film/TV sector.”

The NUJ report on misuse of unpaid work experiences as a means to avoid the minimum wage. In their submission they reported a survey they carried out of work experience in the media industry. They state that: “we uncovered dozens of examples of employers in the so-called glamorous industries who take people on post-college on unpaid work experience, not for a week or two but sometimes for a year or to. There are no guarantees of a job at the end of this period of exploitation and few ever receive any training – instead they are used to fill staff shortages”.

Evidence on the implementation of the Working Time Regulations has found that many UK managers do not believe that they have any obligation to address working time issues, and that many UK long-hours workers do not believe that the legislation actually gives them any rights. A survey of workers’ experiences of the Regulations found widespread non-compliance. 44 per cent of those who had signed an opt-out from the Regulations had been told that it was a condition of their employment; 31 per cent of night workers had not been offered health assessments; and 50 per cent of long-hours workers who had raised issues about working time, or knew that someone else in the workplace had raised them, said that the issue had not been resolved.

Similarly, a large survey considering compliance with the Regulations among 416 private sector companies found the preferred response to the 48-hour week had been not to reduce hours but to encourage individual opt-outs, thus allowing long hours to continue with legal sanction. Holiday entitlements, the area of the regulations where the required procedures were least likely to already be in place and where there is no flexibility to opt out, had the highest non-compliance rates, with around 26 per cent of employers not providing their staff with their legal rights. The study
concluded that the flexibilities contained within the legislation meant that, while the Regulations offered apparent protections, their actual impact on working lives was limited.

Many workers do not receive their full holiday pay entitlements. Citizens Advice has recorded extensive non-compliance in relation to paid holiday, reporting that during 2003–10 per cent of the employment-related social policy reports received from CAB involved denial of the right to paid holiday. This was also an issue identified by respondents to our research:

“Basically not telling them their entitlements, outright lies. So that was one of the biggest problems, non-payment of holiday pay and that’s a massive issue. That’s £400–500 for the worker. When you look at some of the size of the agencies, that’s a massive saving you’re actually making.”

(Employment rights adviser)

Evidence of non-compliance with health and safety legislation is also extensive. Recent research published by HSE suggests most legally reportable workplace accidents, including major injuries, are not being reported. Researchers from the University of Liverpool interviewed 581 patients at the Royal Liverpool University Hospital who had suffered reportable work-related injuries and found only 30 per cent of reportable accidents to workers were in fact recorded. The situation was worse still for self-employed workers, where only two of the 15 reportable injuries (13 per cent) were registered. Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR), employers, the self-employed and anyone in control of work premises should report deaths, major injuries or any other injury leading to three days or more away from work. The researchers found, however, that the main reason accidents were reported was time lost from work and that other reasons for reporting accidents (such as major injuries, or four days or more on reduced duties) were largely ignored.

Health and safety issues related to pregnancy appear to be associated with particularly high rates of law-breaking. Citizens Advice has shown that every year mostly low-paid, non-unionised women, many from small workplaces, seek advice regarding their pregnancy and work, and that hundreds have faced dismissal for no reason other than being pregnant. They describe the level of non-compliance as “deeply disturbing”, reporting that pregnancy-related discrimination is one of the problems about which they are most frequently contacted. They report that women have “suffered harassment, abuse, and/or deliberate exposure to health and safety risks all aimed at forcing them to resign from their jobs”.3

Acas has considered the experiences that employers in small firms have of supporting pregnant staff. They found that many of the employers in their focus group sample were not fulfilling their obligations to undertake a formal risk assessment for their pregnant staff, either because they were unaware of the duty or because they felt that it was common sense.4 The Equal Opportunities Commission (EOC) also undertook specific research on pregnancy discrimination at work, suggesting that each year around 30,000 working women are dismissed, made redundant or bullied into leaving their job – around 15 per cent of all women who are pregnant at work annually.5

Several respondents to our consultation provided examples of pregnancy discrimination they had witnessed among workers they were supporting:

“Three or four cases, women who became pregnant, working for agencies, went in and told the agency they were working, asked for a risk assessment and they were just told no more work.”

(Employment rights adviser)

“Around pregnancy there are health and safety issues like people being pregnant and asking to come off lifting or night work and being told you will either lose your job or take a cut in hours or pay. You’re entitled to paid time off for antenatal appointments. There will be an assumption they won’t know and they’ll dock their pay for time off for appointments. If they say ‘I’m finding it hard going, can I do lighter work?’ they’ll say maybe it’s time for you to leave. Sack them basically.”

(Employment rights adviser)

A recently published study has found that migrant workers are more likely to be employed in sectors or occupations where there are existing health and safety concerns, and that their status as new workers may place them at added risk. It found that few checks were made on migrant workers’ skills and qualifications for undertaking the work they were doing. Even in cases where workers were performing skilled and potentially dangerous work, like scaffolding, work was being offered to individuals who had no previous experience in the task. In food production and in catering most workers were not tested for their knowledge of food hygiene, and only a minority was offered training. As a consequence, some workers were handling food products without an
awareness of the steps they needed to take to avoid contamination. Those working with chemicals in general had little knowledge of what they were composed of, and formal training was not necessarily sufficient, especially where technical language was used to explain the nature of the risk. Of the 200 migrants interviewed, a relatively high proportion (one in four) had either themselves experienced an accident at work or had witnessed accidents involving migrant co-workers.

Within the sectors that are covered by the GLA, migrant workers are at particular risk of exploitative treatment. In an analysis of the characteristics of providers whose licences have been revoked, it was found that providers who fully comply with the GLA’s standards are the most likely to use UK-only labour, and the least likely to supply migrant labour. In contrast, labour providers providing only migrant labour were more likely to have their licences revoked.17

Other studies18 suggest that non-compliance may be greater among ethnic minority groups, with analysis of ethnic minority homeworkers finding that three-fifths of the sample were paid less than the adult minimum wage (31 home-workers out of 53 aged 22 and above for whom wage rate data were available), and that Bangladeshi workers were the least likely to have received a pay increase since the minimum wage was introduced. More recently, in evidence to the Low Pay Commission (LPC), the National Group on Homeworking (NGH) found that of 44 homeworkers paid by piece-rates it was possible to estimate the hourly rate of 28; 19 of these workers were earning less than the minimum wage, some around £1 an hour. The average for the 28 workers was £4.41 an hour.

NGH informed the LPC that their small-scale survey suggested that the fair piece-rates system was rarely applied, and that since its introduction many homeworkers were not aware of any change in the way they were paid, and have not received written notice setting out matters, including their rate of pay.19

During our regional visits, we met with women who were still undertaking homework at such rates. Prices per item included 60p for sewing a pair of trousers (retailing at around £12); £1 for sewing a boxing punch bag (retailing at around £40); and 17p per pair of ballet tights (retailing at around £1.3). Research submitted to our public consultation by MEWN (Minority Ethnic Women’s Network) Cymru also highlighted instances of homeworkers being paid hourly rates as low as 28 pence.20

To see our short report go to www.vulnerableworkers.org.uk
Pay was described as “a pittance” and opening hours as “a joke”, as staff frequently worked beyond them, preparing food and doing unpaid overtime with late customers. Trade union respondents also reported to us that enforcement of health and safety standards in the informal economy is limited. In our research some advisers reported that they felt informal work was growing:

“The other problem, which we have constantly, is people not being on the books. This is, I think, one thing I would like to highlight in this interview – one of the advantages I have of having been here for ten or eleven years, is that I have seen things change, and I have seen a remarkable change in ten or eleven years in the deterioration of basic entry level employment rights; I’m seeing far more people who aren’t on the books now. When I came here, it was relatively unusual to see somebody who wasn’t getting Tax and National Insurance, there was the odd dodgy one, there was the odd one where the employer had actually been pocketed for not sending it to the Revenue, now it’s very common indeed.”

(Law centre adviser)

Policy enabling moves from informal to formal work may be one way to reduce non-compliance in this sector. Our research shows that other European countries have introduced initiatives to formalise undeclared work. In Belgium, the Netherlands and Germany rather than trying to eradicate informal work, policy reforms seek to introduce its transfer into the formal economy. For example, in Belgium the Government has introduced service vouchers as a means of paying for everyday personal services. A household can buy a voucher and uses it to pay for an hour’s work, provided by a certified company. The work undertaken includes cleaning, washing and ironing, sewing and general household chores. These companies offer jobs to people who were previously unemployed, which can be short-term and flexible to suit workers needs (although after six-months there is a requirement that a permanent contract of at least part-time employment is offered). Evaluation shows that close to 30,000 jobs were created, and that 25 per cent of households using vouchers reported that work was previously likely to have been done on an undeclared basis.

In Germany, a ‘mini-jobs’ initiative also aims to reduce informal work in the household sector. It allows workers to gradually build up their income tax rates as they move from formal to informal work. In general, employment rights enforcement activity in Belgium places a strong focus upon standards in the informal economy. In the UK, the Hartlepool ‘informal to formal’ pilot aimed to promote enterprise creation by targeting individuals who are currently operating in the informal economy and encouraging them to legitimise and develop their businesses. The evaluation concluded that initiatives including a confidential and well-promoted advice offer to businesses seeking to formalise their activities and increased support for new formal businesses could better enable the transition from informal to formal work. During the pilot there was evidence of improved enterprise rates in the area, with business start-up rates for Business Link and Jobcentre Plus programmes on target to exceed previous achievements.

Community Links point to the success of similar initiatives, highlighting the role that independent business support and subsidised support with business start-up can play in enabling workers to move from informal to formal work. There may therefore be potential for new policy to consider how to encourage moves from formal to informal work, and therefore improve standards of employment practice. (The roles that the benefits system and immigration regulations could play in reducing informal work are discussed in Chapters 4 and 6 respectively).

There is also strong evidence of an increased likelihood of bad practice among small employers. Recent research commissioned by BERR found that the great majority of clients reporting problems at work to CABs interviewed were employed in small workplaces, with 76 per cent employed at a workplace with fewer than 50 workers, and one-third employed (or employed prior to dismissal) in a micro workplace of fewer than 10 workers. Our research reached similar findings, with clear majority of respondents citing micro-businesses (those employing less than ten workers) as the most frequent location of the three main problem areas their clients experienced, while a significant minority also cited small businesses employing less than 50 workers. Respondents also reported the frequent incidence of ‘repeat offenders’. The majority of those citing dismissal, pay and working time as main problems indicated that this was the case. Repeat offenders tended to be smaller businesses in sectors such as retail, hospitality and private services.
Analysis of the DTI Survey of ET applications shows that the applications are disproportionately made by workers employed in small organisations, and in organisations with between 50 and 249 workers.\(^3\) As discussed in Chapter 2, awareness of employment rights among small employers has been shown to be low; it is therefore unsurprising that the risks of poor employment practice are higher.

For those working for small contractor firms, there are often particular concerns regarding trade union safety representation; as there are proportionally far fewer safety reps and those who are registered as self-employed for tax purposes cannot benefit from rights to be consulted on health and safety matters, and do not have any rights as safety reps (for example to protection from unfair dismissal or victimisation). A UNISON survey in 2003 found union safety reps were present in 96 per cent of public authority workplaces, with their numbers dropping to only 22 per cent in contractor firms.\(^3\) The TUC has also received reports that it can be difficult for safety reps to ensure that their employer requires outside contractors to adhere to agreed safety standards, therefore placing staff supplied by small contractors at greater risk.

We believe that at present there are unacceptable levels of illegal practice with respect to employment law, and that such bare-faced rule-breaking should no longer be tolerated.
Mrs Begum’s story

Originally from Pakistan, Mrs Begum is now in her forties and a long-standing British citizen. With no qualifications, limited English and a family to look after, Mrs Begum’s employment opportunities are restricted. For several years this has led her to do sewing work part-time from home. The job pays a low piece-rate and she receives no benefits. Despite this, and the personal stress and family tensions it causes, Mrs Begum feels she has little choice but to keep going, especially given that her husband is currently out of work. She spoke with the aid of an interpreter.

Mrs Begum has been with her current employer for the last six years. She does 16 hours a week of sewing, mostly when her children are in school but sometimes also in the evening. Pay is £1 per item sewn and Mrs Begum can complete three or four items an hour: this gives a pay rate significantly below the minimum wage. During the four weeks Mrs Begum had to take off following a recent operation, she received no sick pay. She does not receive pay slips and does not have a written statement of terms and conditions. Mrs Begum is under the impression, supported by her employer, that pay slips and sick pay are not due to her because she is part-time.

The employer operates by delivering and collecting materials, sometimes in the space of a day. Mrs Begum finds balancing the competing priorities of getting work done on time and looking after the house and family stressful. She told us: “Some days it causes a lot of stress. I get headaches.” The work also affects household relations: “It can cause problems, especially if I’ve been told I have to finish these pieces that day and am still working when the kids come home; they don’t like it. When they come home they don’t want to see their mum on the machine so it causes arguments.”

Since her operation, Mrs Begum says that the work has become more difficult to manage as she finds it hard to sit for long periods.

Although she says that she has built up a generally decent relationship with her employer, Mrs Begum reports that they come round to collect at different and often unsociable times of the day and night. She has not complained about this or attempted to bring up any other issues with the employer, because she knows that this would lead to her losing work, having seen this happen to other people.

Mrs Begum’s husband has not had regular work since the factory he used to work for closed down and is currently unable to find anything. Although she recently started to claim Working Tax Credit, Mrs Begum finds it difficult to manage on her income and feels especially “helpless” when this affects her children: “Sometimes the children want things and we have to tell them that we can’t afford it.” In such situations, Mrs Begum has sometimes borrowed money, and the repayments have caused extra financial strain.

The situation for workers in the small town where Mrs Begum lives has become worse in recent years. Mrs Begum reports that in the early 1990s there was more work available and pay and conditions were a little better. Now that there is less work to go around (due largely to competition from China), workers like Mrs Begum are in a weaker bargaining position and terms and conditions have worsened.

Therefore, although Mrs Begum asserts that workers like her “should be given proper pay and sick pay and holiday pay”, she has little hope of seeing this herself. Instead she hopes that she will be able to leave if she and her husband are able to set up their own takeaway business, as they have planned. She emphasised to us: “Whatever work I do [in the future], I want to be happy. I don’t want there to be tension. I want there to be a regular income coming in that I don’t have to worry about.”

(We met Mrs Begum through a local homeworking group)
It is clear that across the employment agency sector there is much good practice. The research we undertook with employers and employment agencies operating in low-paid sectors of the labour market found that most employers had formal service level agreements with agencies, which in some cases required agencies to comply with high standards of practice. These included providing one interpreter for every ten migrant workers, ensuring agency staff had appropriate protective clothing and providing health and safety training. In some cases good agencies also set standards they expected employers to comply with, for example requiring employers to provide washing machines for workers based on sites.

However, during our fieldtrips we encountered multiple examples of workers who were supplied through employment agencies experiencing violations of their employment rights. This included workers being asked to complete health and safety forms that they didn’t understand (which employment agencies then signed on their behalf), agencies refusing to pay workers for work they had completed, workers being denied breaks during 12-hour shifts and workers experiencing unlawful deductions from minimum wage pay for costs including the renewal of security badges and health and safety training. In extreme cases we heard from migrant workers who had paid hundreds of pounds in bonds to employment agencies, had had their passports confiscated, and been paid significantly below the national minimum wage.

Our investigations have shown us that some of the most extreme employment rights’ abuses involve employment agencies and temporary labour providers. Many workers we talked to during our investigations were working for employment agencies that had denied them even their limited legal entitlements. In these cases there was often extreme confusion as to what rights they did have at work, for example around whether pay deductions were or were not legal. Workers were often powerless in relation to the agencies employing them, being totally dependent upon these labour providers for work, and in some cases accommodation.

Our qualitative research also revealed that some employers had concerns over the treatment of employment agency staff, reporting that they had previously received complaints from agency workers that their agencies were not paying them. In some cases employers had shifted to directly employing their workers because they were unhappy with the poor treatment of agency workers, and some also reported having in the past used agencies which had been found to be exploiting workers and with whom they had then ended the relationship.

A YouGov poll of agency workers undertaken by the TUC contains further evidence that agency workers are at greater risk of illegal action. Only 28 per cent of the sample felt confident that they knew their rights, and the same proportion said that they had had to change their agency because of mistreatment. Nearly half (46 per cent) said that working for an agency made it harder to complain if something went wrong at work, a proportion that rose to 61 per cent for agency workers earning the minimum wage. Among these low-paid agency workers, only 37 per cent said that their agency had always treated them fairly. As we discuss further in Chapter 6, our survey of employment rights advisers found that 62 per cent of CAB and 81 per cent of law centres saw agency workers frequently or very frequently.

We have also seen evidence of low health and safety compliance among private contractors such as employment agencies and gangmasters. We found that, while work that is being undertaken can be particularly risky, legal responsibilities are often uncertain, or are assumed to be someone else’s problem. When the HSE gave evidence to the Select Committee on Work and Pensions they highlighted the difficulties that employment agencies create for
health and safety enforcement. Its Chief Executive said that, although HSE was trying to make it clear that health and safety responsibilities could not be delegated out to employment agencies, as the workforce became more fragmented it could be harder to enforce health and safety policy, and to keep control over its implementation.38

There is no licensing of most employment agencies in the UK, despite increasing fragmentation of the sector.39 While in many other countries the largest companies have a large market share (for example the top five companies have an 85 per cent market share in Sweden, a 76 per cent share in the Netherlands and a 68 per cent share in Spain), in the UK their share is only 16 per cent of the market. The Recruitment and Employment Confederation (REC), the industry body for UK agencies, requires its members to sign up to a professional code of practice as a condition of membership. However, REC is a voluntary body and there is no obligation on UK agencies to join or abide by the code. REC members who are detected to be breaching the code may be expelled from membership, but can continue operating as an employment agency in the UK.

The GLA currently has regulatory responsibility for temporary labour providers and employment agencies working in the agriculture, horticulture, shellfish-gathering and associated processing and packaging industries. Evaluation of its work suggests that it is having success in identifying and challenging poor practice.40 Recently, enforcement actions appear to have been stepped up, with several cases being taken against licenced gangmasters and the GLA obtaining its first prosecution under the Gangmasters Licensing Act (2004), demonstrating its ability to police both its own members and unlicensed gangmasters.41 Research also shows that one of the GLA’s strengths is that licenced labour providers now have an incentive to report informal or illegal gangmaster activity.42 It further suggests that the public, and providers who already hold licences, appear to be playing a very significant role in providing the GLA with information upon which it can take proactive action; 25–30 reports per week are received by the GLA. By March 2007, the GLA had received over 1,700 pieces of evidence on 295 different gangmasters, 137 of these reports related to unlicenced gangmasters. The evaluation further found that “licensing only targets agriculture, horticulture, shellfish gathering, and associated packing/processing industries. However, we found no evidence to suggest that the issues faced by the GLA and addressed by licensing are only restricted to these sectors”,43 suggesting non-compliance of employment law by employment agencies across low-paid areas of work where subcontracting proliferates.

In our research just over half of the employment agencies in our qualitative sample44 were supportive of the regulation of employment agencies. The researchers broadly described these agencies as those that had a direct relationship with a small number of employers for whom they were the sole suppliers of labour, and offering more generous and supportive arrangements to the workers they supplied. A minority of the employment agency participants were strongly against regulation. The researchers characterised these agencies as those who had minimal or no involvement in supporting the workers they supplied.

Views of employer and employment agency respondents on the GLA were similarly split. With some feeling that the GLA had made a positive difference on employment agency standards, and others expressing criticism. Among those expressing criticism, several felt that the GLA was underfunded and therefore not able to undertake the regular checks necessary to prevent all unscrupulous agencies from undercutting the good. Comments included:

“[It is] an effective enforcement body that has had the biggest impact on agency practice. They need more people out there, in the cold to enforce/audit. The GLA needs to be extended to hospitality, construction and catering as these are usually small businesses that are open to abuse.” (Employment agency respondent)

“Some of the poor practices in the industry; it has definitely tightened things up and changed things.” (Employer respondent)

“[There is little rigorous checking so] having a license doesn’t mean anything.” (Employer respondent)

“More inspectors who can inspect without notice. More spot checks. Better relationships should be established between the GLA and migrant workers.” (Employment agency respondent).
The research concluded that employers and employment agencies generally did not perceive GLA registration as a disadvantage, and that there was a general awareness of the need for agencies to be registered. The researchers also note that criticism of the GLA was based on the limitations of its current powers, and its limited resources. It noted that although the sample was small, it was of interest that employers working in sectors not subject to GLA regulation were more likely than those operating in GLA regulated sectors to have moved away from using agency labour, as a result of concerns about treatment of staff or public criticism. They concluded that in low-paid sectors it may be that lack of regulation obliges employers to move away from using agency labour.

Our own qualitative research also identified a strong sense among employment rights’ professionals that there was a case for government regulation of agencies across a wider range of sectors:

“*I think the regulations should not be limited only to certain industries. They should be actually looked at from the perspective of the situation of vulnerability and certain practices where we see loads of vulnerable workers being employed, loads of subcontracting, loads of chains where there is a possible risk of exploitation.*”

(Employment rights professional)

“The same employers are posting the same workers into other industries. You talk to these workers and they will be in one industry one month and then food and agriculture the next... Also, what’s to stop an employer saying: ‘Oh, sod it with supplying supermarkets or being in food and agriculture, I’m just going to major in the construction or hospitality and catering industry, I don’t need this licensing and I don’t need this pressure and I’m back to the old scheme of being able to bend the law without anyone being able to do too much about it’.”

(Employment rights professional)

Many other European countries have licensing regimes for employment agencies. For example in countries including Spain, Portugal, Belgium, Germany, France and Australia, employment agencies are subject to licensing regimes. In Ireland, which already has operated a licensing scheme since 1971, agreement has recently been reached on the need for the improved regulation of employment agencies and agency workers, including new legislation “reinforcing the existing system of regulation by requiring all employment agencies established and/or operating in Ireland to hold a licence”. The new legislation puts in place a statutory Code of Practice covering standards of behaviour for employment agencies, and compliance with the Code will be a condition of licensing. It is proposed that the Code of Practice will include provisions to compel agencies to provide information in the language of job applicants and to require licence applicants to hold a human resources qualification. We therefore believe that in the UK there is a need for tighter regulation of the sectors and businesses where risks are greatest. The GLA has demonstrated that it can effectively enforce standards and their approach could be applied to other sectors where vulnerable workers are exploited.
Radek and Vera’s story

Radek and Vera are a young couple from Slovakia and the Czech Republic respectively. Vera’s parents live in England, but Radek has been here only a few months; before that, he worked in Spain. Neither Radek nor Vera speaks much English and neither understands much of how the system works in the UK. They have both struggled to find regular work and been exploited by agencies. Radek and Vera spoke to us through a translator.

Radek and Vera are unfamiliar with the English labour market system and know few ways of getting work other than going through an agency: “When I asked [peers] about how things work in this country in terms of work, I wasn’t really told anything apart from the fact that you have to go and register at an agency if you want a job.” Unscrupulous agents from their own countries have tried to charge high fees with little work in exchange: “Anybody who comes here from Slovakia, Czech Republic, Poland they might have a contact, they’ll get approached by someone who will say ‘give me some money’, for example £200, ‘and I’ll get you into work’. Basically it’s people who know English – they take advantage of that fact.”

The ‘agent’ who approached Radek was a Slovakian who provided only one day of work in a bakery. Radek explained that this individual would have been contacted by the agency and asked to recruit a certain number of workers, for which he will receive a cut of the agency fees. There are therefore essentially two middlemen – the agency and the individual agent. Radek was surprised at this, because in Spain he entered a similar arrangement and got six months’ full-time work. They report that the system in the UK is open to abuse, with agents giving work first to friends and family and/or to those who will pay the highest fee.

Although they now deal directly with the agency, there has been no regular work. Money has become very tight and the situation has led to tension between the couple and with Vera’s parents. Vera told us: “I’ve been very stressed about it and we’ve been arguing.”

The couple have been getting some help from an advice centre to ensure that they are on the Workers Registration Scheme and have completed all the relevant documentation. However, they have had no contact with trade unions and feel that their lack of English puts them in a highly vulnerable situation: “We feel quite powerless against it because we know that this is happening in every big town in this country…You’ve got these agencies everywhere, you’ve got people who can speak English.” Radek added that, even if he could speak English and knew how to challenge bad agency practice, he would not, because he would be “scared for my life” about retaliation from the agent.

For Radek, the experience in the UK has been one of frustration: “I came here to get some work because it’s not possible to find a job in the Czech Republic. I didn’t come here to sit on my bum and not have a job. I’m basically back where I was before.”

(We met Radek and Vera through a local advice centre)
The limitations of employment tribunals

For many workers an ET is the only way that many employment rights can be enforced. For example, in the recent BERR survey, \(45\) per cent of clients who approached a bureau for advice were advised that an employment tribunal was their only likely source of resolution.

**Generally it is recognised that ETs play an important and effective role in resolving many employment disputes.** However, during the course of our investigations we have been struck by particular weaknesses in the support that the ET system provides for those in vulnerable employment.

DTI survey evidence shows that of those who experienced problems at work, only \(56.1\) per cent sought advice and most did not take action – only two in five. When asked why, \(46.2\) per cent said that it wasn’t worth the hassle, \(43.4\) per cent said that they didn’t think it would solve the problem, and \(20.8\) per cent \(48\) said they didn’t think they would be treated fairly. \(49\) The researchers concluded that those in lower-level occupations, temporary and part-time workers and non-union members were less confident of achieving justice. Even fewer vulnerable workers enforce their rights via ET: Pollert’s survey of unorganised workers who had experienced a problem at work \(50\) found that only \(2.4\) per cent made an ET claim.

In general, women are less likely than men to challenge abuse of employment rights at tribunal, despite being no less likely to experience such problems in the first place. \(51\) Although women represent almost half of all workers in employment they account for only around a third of applicants bringing claims under areas including unfair dismissal, breach of contract and wages protection. \(52\)

Many individuals we met were fearful that if they reported their employer they would lose their job and become destitute, and research shows these fears are real. The DTI’s survey work shows that only \(5\) per cent of tribunal applications were made by those who were still working for the employer against whom they were bringing a claim. \(53\) Research undertaken for the Low Pay Commission reached similar findings about the enforcement system in general, noting that even when compliance officers had made contact with workers they were often found to be “desperate people”, very fearful of taking action because of the risk of losing their jobs. \(54\) Of participants in the BERR survey of CABx, \(55\) \(59\) per cent were no longer in work at the point they contacted the bureau. \(56\) per cent had previously tried to take some action, which for most meant approaching their employer. The approaches were mainly unsuccessful; in only \(6\) per cent of cases did the action improve the situation, with most feeling that the action had made no difference, and \(16\) per cent noted that it made the situation worse, involving threats of dismissal or deterioration in the employer/worker relationship. \(56\) The government also acknowledged these problems when it set up the Minimum Wage Compliance Unit in HMRC to ensure that workers would not have to “rely on taking action against their employer themselves, as intimidation or fear could prevent a worker from making a complaint”. \(57\)

In their submission to us, Citizens Advice and Citizens Advice Scotland quoted from the recent review of dispute resolution in the UK, \(58\) stating that: “There is now widespread consensus that employment tribunals are ‘increasingly complex, legalistic and adversarial’... \(59\) Every year, about one-third of all employment tribunal claims are withdrawn by the claimant, and government research has found that in half of such cases this is because the claimant considers there to be too much stress, difficulty, fuss and/or expense involved in continuing.” \(60\) They also
present evidence that the complexity of the system may be encouraging bad practice among employers, with Citizens Advice noting that the knowledge that few workers will progress to ET can make non-compliance more likely. Evidence from respondents to our research also suggested that low rates of tribunal applications among vulnerable workers were often due to workers being fearful of the consequences of taking legal proceedings:

“And what we’ve found is, well for whatever reason (and reasons vary), people are afraid of the system, they are afraid of the authority, if you like, of the system and don’t understand the procedures and therefore don’t go to tribunals, and employers and agencies in particular are very well aware of that.”

(Employment rights adviser)

“They are stopped by the fear that, even though they might have the strongest case in the world, once the next employer who they go to finds out they took the previous employer to the tribunal, the chances of getting a job go out the window.”

(Employment rights adviser)

“We explain to people you do have an option. You can take legal action against your employer for not allowing your annual leave. The down side is the employer could victimise them and unfairly dismiss them.”

(Employment rights adviser)

For the small minority of vulnerable workers who do proceed as far as tribunal the cost of legal representation at the hearing is likely to be prohibitive. Those already facing disadvantage in the labour market are the least likely to be able to afford additional help. For example, Citizens Advice have found that 40 per cent of black and Asian applicants said that they would have liked additional help (compared to 25 per cent of white applicants), and younger applicants were less likely than their older counterparts to have had legal representation. Groups who are more likely to have had access to legal representation were trade union members, and managers/senior officials, again indicating that those in the most vulnerable work are the most likely to be the least supported. Given the lack of financial help available for employment rights advice (as discussed in Chapter 2) this is unsurprising, and is of particular concern as tribunal applications are disproportionately found in low-paid sectors including manufacturing, construction and hotels and restaurants. Our survey of employment rights advisers, views differed between the CABx and law centres on percentages of advisers who said clients did not use a paid solicitor because they could not afford it. Over two thirds of law centres, but only a third of CABx, felt over half their clients fell into this category.

There are other considerable financial expenses associated with proceeding to tribunal. Citizens Advice highlight the growing incidence of intimidation from some employers’ legal representatives, who threaten claimants with possible bills of up to £10,000 should the claim be dismissed. Research shows that these fears are real, demonstrating that between 2001/02 and 2003/04 the proportion of costs against workers rose by 7 per cent, while those against employers fell by the same number. A DTI survey found that 64 per cent of applicants incurred personal financial costs as a result of their case. Almost half (49 per cent) had communication costs (telephone calls, etc.), 32 per cent suffered loss of earnings and 28 per cent experienced travel costs. Our survey also showed that a fifth of respondents felt that costs threats from ET respondents (or their solicitors) deterred their clients from pursuing an ET application (25 per cent of law centres and 16 per cent of CABx), and qualitative interviews indicated that the practice had increased in the past three to four years.

There are also numerous non-financial costs to individuals of taking a claim to tribunal. Findings from the DTI Survey of Employment Tribunals found that when applicants were asked what non-financial negative effects they had experienced as a result of the tribunal process, the most common response was stress or depression, or that the case had been emotionally draining (33 per cent of applicants). The next most common negative effect was loss of confidence or self-esteem, mentioned by 9 per cent of applicants. Other negative impacts included ‘difficulty getting re-employed’ (6 per cent), ‘physical health problems’ (6 per cent), ‘affected personal relationships’ (4 per cent), and ‘felt angry or annoyed’ (4 per cent). Our regional visits showed us that pursuing an ET claim/case can be a lengthy process, and that these personal costs could therefore be extensive.
Employment tribunals also hold significant costs for employers. A recent government review of dispute resolution procedures concluded that the average cost to business of defending an ET claim is around £9,000.69 Tribunal cases are also likely to mean that employers lose the wider economic benefits of good workplace relations, for example the benefits of reducing the number of grievances from 1 for every 355 to 1 for every 400 workers, which would produce savings in management time of around £19 million. Reduced turnover and improved workplace relations also have the potential to improve output and productivity,70 and are more likely in workplaces where workers do not need to resort to the tribunal process. Impacts may be particularly acute for small businesses. The Survey of Employment Tribunal Applications 2003 showed that for small workplaces of 1–24 workers an average of eight days was spent by management carrying out work related to tribunal cases, and that the negative side effects of the process included interruption to business, increased stress and low staff morale.71

We therefore believe that ETs can prove a costly and often intimidating means for vulnerable workers to enforce their employment rights. We believe that all statutory rights that involve only questions of fact and monetary based claims should be enforced by a state agency, as well as by employment tribunals.

Michael’s story

Michael is originally from Nigeria, and has spent ten years living in Austria. He moved to the UK around two years ago. When we met him he had had two security guard jobs. Both had involved him providing services to large UK employers, who have contracted an employment agency to provide them with security staff.

His first agency consistently underpaid him. Michael told us: “I was working, doing 12 hours, they were only paying me for 10...they said sorry we will rectify it but next month when my payslip came I found it was still the same.” Michael reported the agency to Jobcentre Plus, who had provided him with the vacancy, but they were unable to help. They told him to access their website. He then contacted a CAB, who told him to get in touch with his local law centre. With their help he took the employer to an employment tribunal to reclaim his unpaid wages. He was not confident of getting the money back, as he knew the agency had a poor history of refunding money owed.

Michael then found another job. His new employer was better – but not much. Although he was paid he found that his payslips were often inaccurate, and he only has a verbal contract as the agency refuses to provide him with a written statement of terms and conditions. He has also had money deducted from his salary to pay for his new security badge, and for training – which he has never received.

Michael has tried to stand up for his rights, and is committed to fighting on. However, he is depressed and saddened by the way that he has been treated since coming to the UK. In ten years working in Austria told us that he never experienced any problems like these.

When we caught up with Michael six months after our first visit he still had not been paid, despite taking his claim to county court. It had been a year since his original claim. He told us: “I am still waiting for the payment”. He was also clear that if he had the chance again he would not bother to pursue his employer – the time and stress it had involved had brought him to the conclusion that it was not worth it.

(We met Michael through a local law centre)
An issue consistently identified during our field trips was the difficulty faced by some vulnerable workers when obtaining their ET awards. In England and Wales, tribunals do not have the power to enforce their awards. We therefore met with workers who had been through lengthy, expensive tribunal processes, only to find that their successful claims led to nothing because employers refused to pay. The only option a worker has in this situation is to take their employer to the County Court, incurring further upfront fees (which the employers will be liable to pay should they honour the award, but which workers have initial responsibility for paying) for various enforcement actions. Even when these actions have been taken there is no guarantee that they will be successful, and Citizens Advice has identified a number of strategies by which employers can try to frustrate such enforcement action; for example, claiming that their assets belong to others. As a result, workers lose out on the compensation to which they are legally entitled.

In our survey of employment rights advisers, over a quarter of respondents (28 per cent) reported that ET awards that were upheld were not then enforced and a further 60 per cent indicated this was occasionally the case. Furthermore, a quarter of advisers suggested that following non-enforcement, clients frequently or very frequently simply gave up. Approximately a third thought it was frequently or very frequently the case that the client registered with the County Court still did not achieve their award and therefore gave up. Less than a fifth said that it was frequent or very frequent that clients obtained their award from the County Court process. Advisers shared their experiences with the researchers:

“We’ve got a case with a company that basically the client won £10,000 at tribunal and very shortly after the company ups sticks and disappeared, converted into something else and we are lost as to how we can recover the money. Basically my client is saying that the people who are running the business ... are operating a very similar business in a different location and I have difficulty in not being a specialist in enforcement. I’m just fishing around for someone who can help them but it’s very frustrating.”
(CAB Adviser)

“Once you’ve got your employment tribunal claim you then have to pay to enforce it as a County Court Judgement which is a nightmare of a complicated form and it used to be £70 but I think it’s even more, which you have to pay upfront. Now that gets added to the bill but then of course you have to start paying bailiffs and so on.”
(Law centre adviser)

“We took an employment case to the tribunal, got an award for non payment of redundancy, unfair dismissal, non payment of holiday pay. Altogether the guy was awarded £14,000. That was last August by the time we got the award. It’s taken him from then until last Friday to get the money and in order to get the money he’s had to register the complaint with the County Court. He’s had to take out a County Court action which was rejected because it was over £5,000. He then had to take out a High Court action; he had to employ a Sheriff’s Officer to enforce the award. But for the fact that his wife was a really determined character and was determined that this employer was not going to get away with it, this guy would never have got his money ... and now he’s so deeply in debt, his £14,000 will barely cover the costs that he’s involved in fighting the case and trying to get back the money.”
(CAB adviser)
Evidence gathered by Citizens Advice reveals that in England and Wales bureaux deal with around 650–700 cases of non-payment annually. Its recent analysis suggests that the number of unpaid awards amounts to around 1 in 13 of awards made by tribunals each year, and that as only around 7 per cent of claimants will have support from a CAB many workers who find themselves in this position will have to negotiate the enforcement processes unsupported, action that those who lack representation from a trade union or a solicitor may be reluctant to take. The Citizens Advice survey also revealed that no bureaux felt that the problem was decreasing, with most considering it to be stable (65 per cent) or increasing (35 per cent) in scale. In their submission to us, Citizens Advice and Citizens Advice Scotland further noted: “Not only do the employment tribunals have no powers to enforce such unpaid awards, but the legal, financial and practical obstacles to enforcement through the County Court system by individual claimants are so immense that many do not even try, while others initially try but soon give up. This lack of teeth not only undermines the credibility of the employment tribunal system as a whole. It means that, in the relatively rare event that an employment tribunal claim is brought against a deliberately exploitative employer, he or she can simply ignore it without fear of sanction.”

Respondents to our research also identified this as a key issue they were facing in their work:

“It’s difficult to know who you’re going against. It’s a risk against a small employer because you don’t know whether or not they’re going to be solvent. The enforcement order isn’t enough in itself. You need to take action with bailiffs, attaching earnings or winding up to make that work. If it’s a limited company you get it wound up... When they’ve done all the running, gone to an employment tribunal, gone through the process, which is excessively formal, it doesn’t seem particularly fair. A case we had the other week was a client who won her claim for £10,000 but when she tried to get the money back the firm had gone into administration. The company wasn’t wound up, it was left dormant.” (Employment rights adviser)

The recently adopted Tribunals, Courts and Enforcement Act 2007 seeks to accelerate the enforcement process. In addition, the Act provides that unpaid awards will be entered on the Register of Judgements, Orders and Fines, that may be searched by banks, building societies and credit companies when considering applications for credit. However, while these procedures will speed up enforcement proceedings they still fall short of providing tribunals with the powers to enforce their own awards, and in the judgement of Citizens Advice and the TUC remain inadequate to ensure that unpaid awards are enforced. It is also important to note that, even when awards are paid, they still apply only to individual claimants. Problems experienced by others in the same workplace therefore remain unchallenged, even when ET claims are successful.

We therefore believe there is a strong case for providing ETs with the powers to enforce their own awards, and, where there is evidence of wider employment rights abuse, to issue recommendations to employers to change workplace practice more widely.
Scarce resources for proactive and preventative inspection

For certain specific rights and sectors of employment, government enforcement agencies have responsibility for ensuring compliance with employment standards, and during our work we have been impressed by the commitment of the civil servants supporting the work of these important organisations.

However, it has also become apparent to us that the existing enforcement infrastructure is poorly resourced, meaning that often the necessary proactive and preventative work is simply not feasible. The HSE has the greatest resources, but has experienced cuts in recent years. Other agencies have received limited increases, but still have very scarce capacity for enforcement activities and publicity. While there has been a recent increase in the resources available to the HMRC Minimum Wage Compliance Unit, in relation to the scale of its task capacity remains limited. HMRC has around 5 per cent of the number of inspectors that are available to the Department for Work and Pensions (DWP) benefit fraud unit, and overall numbers remain at 89.5 inspectors nationally (excluding 16 team leaders who manage teams and become involved in more complex cases). In the Agricultural Wages Sector, there are currently 24 trained inspectors in total.

Metcalf has calculated that in fact it is “amazing that so many employers do comply with the minimum wage”, given that the probability of being caught is so low. His research found that a typical employer could expect a visit from HMRC once every 320 years. He also notes that inspection rates are significantly lower than those of the Wages Councils in the 1980s, and that since 1988 the number of wage-related enforcement visits undertaken has fallen by 14,930 per year. Similarly, research undertaken for the Low Pay Commission has found that there are only half the number of compliance officers in post compared to the number of Wages Council inspectors in the 1950s, despite “the considerable expansion of ‘at risk’ populations such as part-time ethnic minority and women workers”. The researchers also found that in the USA research has shown a link between levels of non-compliance with the minimum wage and the number of inspectors.

The EASI has fewer enforcement officers still, with just under 30 inspectors nationally even after recent resource increases. The GLA employs 18 officers with responsibility for locating labour providers operating without a licence. In addition, there are nine compliance officers, who are responsible for ensuring that those who hold a GLA licence are complying with the terms of their agreement.

During recent years HSE has faced a significant reduction in staffing. In 2003 the Executive employed 4,162 staff, which by 2007 had been cut to 3,548. This included a reduction of 217 staff from frontline inspection roles, from 1,508 in 2003 to 1,219 by 2007. Furthermore, annual 5 per cent real term reductions have been proposed in the HSE budget until 2011. These cuts are in contravention to the view of the House of Commons Work and Pensions Committee, which in 2004 recommended that resources should be doubled over the forthcoming three years. Between 1999 and 2004, the number of local authority inspectors with health and safety powers remained relatively constant, and it is estimated that there are 1,150 full-time equivalent inspectors nationally. Enforcement action undertaken by local authorities has also fallen considerably in the last 10 years. In 1999/2000, 313,000 premises received a visit from a local authority inspector with health and safety powers. By 2003/04, this had decreased to 242,000 premises. The steepest decline (183,000 to 147,000) was witnessed in preventative inspection visits.
Recent TUC research shows that the average employer receives a visit from a health and safety inspector once every 12–20 years, and that many small employers will never receive a visit.90 While inspections are not the only way to prevent non-compliance, the Chief Executive of HSE has noted that, all things remaining equal, if there are fewer inspections there will be ‘less safety’.91 Some aspects of the legislation are subject to virtually no enforcement activities. For example, HSE are responsible for the enforcement of the working time directive, but have few staff nationally with this responsibility and do not undertake proactive work to prevent working time violations, instead only investigating complaints.

Evidence also shows that children’s employment rights are barely enforced,92 with 20 per cent of local authorities surveyed having no enforcement strategy, and others only extremely limited provisions usually involving one part-time officer providing ad hoc advice, rather than undertaking continuing assessments.93

Throughout our research, concern was expressed at poorly resourced enforcement agencies, and the limits that resources placed upon their abilities to undertake proactive investigations. For example:

“They should have more people, more inspectors to be able to get in and look at what’s actually happening on the ground. Because that’s the biggest problem. They make a complaint and although we didn’t make many ourselves in our particular projects, I know that the CAB made several. They were just hitting their heads, you know banging their heads against a brick wall because nothing was happening and basically they were saying, well we can’t really do this, we can’t really do that because we can’t get the evidence. Well if you can’t get the evidence, you’ve got to go in and get it, haven’t you?”

(Employment rights adviser)

“To be effective they have to be proactive, not reactive. A number of these organisations are reactive because of the pressures they’re under. We can’t expect them to be proactive without the resources and that’s a position for government.”

(Trade union officer)

“Being a lot more proactive than the agencies currently are. And covering a wider range of rights and not just the areas where they choose to do some enforcement like the minimum wage. And where there’s bad practice that they have responsibility for doing that. It’s not just on the person facing the problem. The flaw in the system we have is that it’s adversarial. The person who is facing difficulties is having to be very together, getting everything done at the time when they’re least able to do it. It doesn’t make sense.”

(Employment rights adviser)

In their consultation responses to us several trade unions also noted that poorly resourced enforcement is contributing towards the mistreatment of vulnerable workers:

“There has been an additional failure of enforcement regimes – in respect of low pay, of agency workers and of health and safety. Lack of resources for enforcement undermines these potential support mechanisms for vulnerable workers and renders them ineffective in practice.”

(BECTU)

“Worker vulnerability is significantly increased by the inadequacy of the current enforcement system. The present regulation of the agency sector and the means available to enforce even the limited standards set out in the 2003 Conduct Regulations and the Agencies Act are insufficient and only add to the precariousness felt by workers.”

(CWU)

Overall, there was a strong sense from many groups we met with, in particular those working with migrant workers and with those working informally, that enforcement officers in their areas act only upon specific complaints from individuals, rather than taking a proactive approach to investigating workplaces. The personal risks faced by workers independently taking action, particularly those without protection from unfair dismissal, were also emphasised.

“There should be a more proactive approach from the HSE, especially in sectors such as agriculture where there are significant health and safety risks for vulnerable and migrant workers. The HSE should ensure that these workers understand and respect health and safety practice.”

(Unite)
“The whole employment law set-up in this country seems to be about closing the door after the horse has bolted. What can you do at tribunal when you’ve been sacked? There’s not so much emphasis on measures to be taken at an earlier stage where you might be able to keep your relationship with your employer and your job.”

(Employment rights adviser)

“If they’re working legally [and they complain], the chances are they will find that the employer will find some excuse to get rid of them. A disciplinary matter or... they’ll be made to feel so unwelcome it’s not worth staying there anymore.”

(Employment rights adviser)

The extent of proactive inspection varies considerably across different employment rights. All enforcement agencies spend between 30 to 40 per cent of their inspection resources on investigating employers about whom they have not received complaints, but who are assessed to be of high risk. Given the vastly varied resources available to each enforcement agency, the practical implications of this split will be inconsistent, leading to considerable differences in the rates of enforcement action taken by each agency.

The HSE aims for the majority of inspections, largely made without warning, to be planned as part of a programme of preventive inspection designed to check on standards, gather information and secure compliance with the law, both at fixed establishments and temporary worksites such as construction sites. Inspectors may also visit the head offices of major national companies to discuss and secure improvements in the management of safety throughout the company. In contrast, 70 per cent of the inspections undertaken by EASI are in response to individual complaints, and notice is generally given of inspections. Similarly, in the agricultural sector enforcement work is undertaken only in response to specific complaints to the Agricultural Wages Board helpline. In general, inspectors give 7–14 days’ notice of an inspection taking place, and are not allowed to undertake inspections unannounced.

Analysis of enforcement activity in relation to children’s employment rights shows that action is currently extremely limited. In many cases local authority by-laws actually conflict with national legislation, and in 49 local authorities the employment of 10-year-olds is still permitted, despite being illegal nationally. Furthermore, in 20 per cent of local authorities there were absolutely no provisions relating to the enforcement of legislation on child employment.

In 2005, the Government announced a strategy of targeted enforcement of the minimum wage in low-paying sectors, starting with the hairdressing sector. For 2006–07 the focus was on the childcare sector, and recently, in line with Low Pay Commission’s recommendations, inspectors have been focusing on the hospitality sector, where it is noted that large numbers of migrant workers are employed. In 2008-09 enforcement will consider the wider hospitality sector, including hotels, camping sites and other short-stay accommodation, restaurants, bars, canteens and catering. Proactive enforcement is therefore focused upon one broad sector per year, rather than upon all employers at risk of non-compliance. Given the resource constraints that the compliance unit operate under we note the logic of this approach. However, we also believe that it is limited in its scope and that confining inspections to one sector risks excluding wider non-compliance.

We do also recognise that the Government has always actively enforced the minimum wage. Indeed, every year HM Revenue and Customs’ compliance officers succeed in recovering about £3 million pounds owed to low-paid workers. The 2007 budget increased the funding available for this work, and the current Employment Bill contains stiffer penalties for employers who flout the law. These measures should help more workers to gain access to their minimum wage rights.

The minimum wage compliance regime has been subject to extensive research, which has allowed academics to highlight the extent to which current arrangements fall short of proactively identifying employers who are mistreating their workers. Research undertaken for the Low Pay Commission considered the experiences of workers and employers who had experience of the enforcement process. They found that, while HMRC wrote to all employers informing them of the arrears that workers were due, there was no mechanism for ensuring that workers were actually paid: while all but one of the workers surveyed had been paid the minimum wage after the investigation, some had not received the arrears that were due to them. A small proportion had also been pressurised by employers to sign false records saying that they had received the money when they had not.
Furthermore, only a small minority in the sample received their rights without detriment (as the law stipulates they should). Approximately half of those still working for the same employer said that their employer had taken action against them, for example giving them work that others were reluctant to do or in some cases being sacked.

A further study also found that among informal workplaces surveyed, only one had ever received an inspection from a compliance officer and, despite non-compliance with the minimum wage and other regulations, no malpractice was detected. Overall, fears of detection appeared to be low.28 Despite significant successes by HMRC in collecting arrears due to workers, there is therefore evidence of continuing undetected non-compliance.

The ratio of inspectors to organisations and businesses covered by the different agencies shows extreme variation. There is not a direct relationship between the numbers of businesses an enforcement agency has responsibility for and the risk of non-compliance (i.e. higher-risk sectors may need more resources, whereas for the others fewer inspectors may be sufficient). However, analysis of the budgets of the main enforcement agencies do not appear to be based upon any analysis of the scale or scope of the problems that the agencies have been established to deal with. There are, for example, proportionally fewer minimum wage inspectors to cover low-paid sectors than HSE inspectors to cover all registered businesses. The allocation of resources between inspectorates can be seen from the table opposite.

We believe that these ratios reveal an arbitrary allocation of resources which would not be acceptable in any other area of public service. It is our view that in order to ensure that exploitative employers face real risks of inspection this needs to be challenged.

Our work suggests that resource increases need not be confined to increasing the budgets of existing enforcement agencies. There may also be much more scope for other organisations to undertake a greater volume of enforcement work. Local authorities have some powers of enforcement with regard to health and safety legislation, but not with respect to other employment rights. The Mayor of Newham and Newham Council have informed our Commission that they would like the legal ability to react to complaints about minimum wage abuse and proactively target those employers who pay below the legal minimum. They believe that this would be a useful power for all local authorities. Their submission emphasised that they are not arguing for councils to replace HMRC, or for extra government funds to undertake this work.

“Pay abuses still continue and too many still do not benefit from this legal minimum. This is particularly the case in areas with high mobility and a great deal of ethnic diversity. This is the situation in East London. The local economy is disproportionately made up of small to medium-sized businesses, often staffed through informal networks of family and friends. In this context we believe that HMRC, a national agency, lacks the ability to effectively enforce the minimum wage. We believe local authority enforcement would be more effective and would be more likely to deter rogue employers....We are simply asking for the legal ability to react to complaints about minimum wage abuse and proactively target those employers who pay below the legal minimum.”

(London Borough of Newham)

Research99 has highlighted the potential positive impacts that such involvement could have, documenting examples of employers complying with the minimum wage as a result of feeling scrutinised by enforcement officials from other agencies, for example with regard to food hygiene. This suggests that if other agencies were able to undertake even a preliminary investigation regarding compliance with employment rights it could have a considerable impact upon employer behaviour.
Table 4

*Ratios of enforcement officers to at-risk sectors that enforcement agencies are charged with regulating*

<table>
<thead>
<tr>
<th>Enforcement agency</th>
<th>Number of inspectors</th>
<th>Size of at-risk sector inspectors are charged with investigating</th>
<th>Approximate ratio of inspectors to organisations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gangmasters Licensing Authority (GLA)</td>
<td>27</td>
<td>Official labour market statistics are not gathered in a way that would allow them to be used to determine the size of the business sectors the GLA covers. However, academic estimates place the number of labour providers at 2000–3000. 100</td>
<td>1:92 101</td>
</tr>
<tr>
<td>Employment Agency Standards Inspectorate (EASI)</td>
<td>26</td>
<td>VAT statistics shows that there are around 17,000 employment agencies in the UK. As the largest five companies employ around 40 per cent of those working in the industry the number of employment agency offices is likely to be higher. 102</td>
<td>1:654</td>
</tr>
<tr>
<td>Her Majesty’s Revenue and Customs (HMRC): Minimum Wage Compliance Unit</td>
<td>98.5</td>
<td>The Labour Force Survey shows that in the seven top low-paying sectors (retail, hospitality, hairdressing, social care, cleaning, manufacture of textiles, and security) there are 350,000 employers in these sectors in the UK.103</td>
<td>1:3,553</td>
</tr>
<tr>
<td>Health and Safety Executive and local authorities</td>
<td>2,574</td>
<td>BERR Small Business Service VAT statistics104 show there are 1,203,980 employers in the UK.</td>
<td>1:508</td>
</tr>
<tr>
<td>Agricultural Wages Inspectorate</td>
<td>24</td>
<td>BERR Small Business Service VAT statistics105 show that there are 53,350 agricultural businesses in the UK.</td>
<td>1:2,223</td>
</tr>
</tbody>
</table>
Across government there are also examples of bodies other than local authorities which could be engaged in limited enforcement activities, but which do not presently give consideration to employment rights. For example, the Commission for Social Care Inspection has responsibility for regulating, inspecting and reviewing all adult social care services in the public, private and voluntary sectors. Last year it conducted 23,351 inspections of adult social care services (93.5 per cent of which were unannounced). However, none of these inspections included consideration of the working conditions of staff employed by providers. Similarly, there may be a potential role for the NHS in supporting the HSE with its reporting, as GPs are often well-placed to identify concentrations of health problems that may be work-related. The Gambling Commission and the Security Industry Authority require workers across these industries to possess a licence, which has to be regularly renewed. Enforcement of this legislation also has potential for overlaps with employment rights’ enforcement activities. For example, this could include requiring inspectors to check pay records, as well as licensing compliance. Respondents to our research further suggested that increased awareness and involvement of bodies such as social services and the police could aid the enforcement process:

“Working together with others who conduct inspections at the workplace, like health and safety, like the Inland Revenue, like the social services and to actually have these agencies connected and have a system of basically being able to provide information or provide an impetus for investigation should they recognise some of the indicators that might suggest that there is exploitation going on. So, just not focus very narrowly on that area of work but also when they spot something such as an employer having a full drawer of passports, that is something wrong and that is actually an offence and there is somebody who should do something about that. And, for example, the police should be informed about that and there should be a procedure. So connection between all the various agencies that have to do with labour standards doesn’t exist, so things are overseen and people are hesitant because there isn’t a clear place where they can go.”

(Employment rights professional)

We therefore believe that as one means to increase capacity to enforce employment rights the Government should give consideration to widening statutory reporting duties to other government agencies who have regular contact with employers in low-paid sectors where there is a high risk of vulnerable employment.
Sam is 17 and comes from a Traveller family. She is bright and intelligent with a keen sense of what she wants from life. She has been coming to the YWCA since she was 11 and still drops in for friendship and support. Despite travelling a lot with her family and moving schools, she was a regular attendee and did well, gaining good grades at GCSE.

Sam thinks her careers advice didn’t come at the right time and was inadequate. She wanted to do a plumbing or car mechanics apprenticeship after school but found being a girl meant she wasn’t taken seriously: “I went in there about three days on the trot to make sure that he was checking my CV and I didn’t even hear back from him, not even like a sorry, we don’t want you, just nothing. Just nothing… I know they were thinking, you’re a girl and you wear make-up, and I was like, so, I’ve still got a brain!”

Because she couldn’t get into anything she was really interested in Sam decided to do a hairdressing apprenticeship. She considered hairdressing to be something that would give her at least some security, although she wasn’t particularly interested in the work.

Sam was only paid £60 a week, which is less than the Learning and Skills Council specified minimum (£80), and much less than most male apprentices receive (their average pay is around 26 per cent more than that of young women who are apprentices). Sam told us about the hard work that she was expected to put in for this rate of around £1.70 an hour: “I was quite naïve in the work area and I thought £60 was a lot of money. I was like yes, £60 but for what I was doing it wasn’t. I used to sometimes, I’d work from 9.00 am to 6.00 pm sometimes and I’d have to clean the shop everyday and I’d have to help do stock checks, make sure everything was always clean, clean and dry and towels, wash people’s hair, make the tea, wash the dishes, you know the little pots with the hair dyeing mix, make sure they were clean, mix up dyes… I used to do quite a lot for £60.”

Sam didn’t stay long at the salon because, she says, “It was the amount of work that I was doing, I started to tally it up in my head, I was like I could go to like night college and I would be able to pay for it if I just did a normal job, like in a chip shop. I know people that get paid £100 odd pound in a chip shop a week. I could have gone and done that and done night college and then learn something that I wanted to learn, instead of getting paid £60 a week for… doing a lot more than I should have been doing for £60…. Some people pay £60 for one haircut!”

Sam is now trying to find a job that will give her some money to go to college. Eventually she wants to get a place at university to study archaeology.

(We heard about Sam’s story through the YWCA England and Wales)
Restricted information sharing

During the course of our work, it has become apparent that, should a worker report a problem outside the remit of an enforcement agency, there can be legal barriers preventing officers from sharing information with other relevant agencies. HMRC inspectors are legally prohibited from telling HSE inspectors about suspected breaches of some health and safety standards. A similar issue results from HMRC inspectors not being allowed to enforce breaches of holiday entitlements, under the Working Time Regulations, which are often identified during their visits. EASI also faces restrictions on the information that they can share with other agencies once a formal investigation has commenced.

In contrast, the GLA has more freedom to share intelligence about potential breaches of employment law and safety standards with other agencies. However, when the GLA evaluation considered the extent to which the partner organisations of the GLA (the DTI, DWP, HMRC, the Home Office and the HSE) had shared information with it, they found that the intelligence provided was ‘quite limited’. In particular, it was found that the HSE ‘rarely detected breaches’ and no intelligence had been reported by HMRC. The DWP had also provided no information, and most evidence provided by the DTI related to cases prior to the GLA’s establishment.

There are also limits on the information that can be shared with workers reporting a breach of employment rights, and with their representatives. Union reps have reported to the TUC that they can be discouraged from making full use of the employment rights’ enforcement systems, as once an investigation has started, they do not always receive feedback on action taken. It has, however, recently become apparent that there are in fact no legal barriers to sharing information on the progress of NMW cases with union or CAB representatives supporting workers to take a case to the HMRC.

Whether or not this is the case with respect to other enforcement agencies is currently unclear.

Deficiencies in enforcement powers

The practical outcome of these barriers is that many breaches go unreported. They can also mean that an individual employer receives multiple workplace inspections with respect to each complaint made. For example, a worker who is not provided with protective equipment by an employment agency would be asked to complain to the EASI, and then separately to the HSE, both of whom would undertake separate investigations. Neither would be able to feed back to the worker on the activities of the other enforcement body.

At a local level, sharing of information between organisations working with vulnerable workers and enforcement staff is also limited. Few organisations we met with during our regional visits had ever had contact with an enforcement officer, though many were able to name local employers they knew to be evading employment law with impunity. Often these organisations did not have faith in the enforcement system as a means to address these employment rights’ violations, or were unaware of the provisions that guarantee workers’ confidentiality if a complaint is made.

It is therefore our view that legal restrictions on information sharing should be lifted, and that enforcement agencies should further inform their work with the local knowledge of trade unionists and civil society advocates supporting vulnerable workers on the ground.

Deficiencies in enforcement powers

Not all employment rights are suitable for enforcement through statutory enforcement agencies. For example, non-discrimination rights, contractual claims and unfair dismissal claims involve complex cases of law, and therefore need to be enforced by tribunals.

In his recent review of Regulatory Justice, Professor Richard Macrory stated: “Sanctions form an important part of any regulatory system. They provide a deterrent and can act as a catalyst to ensure that regulations are complied with and indicate that non-compliance will not be tolerated. Sanctions can help to ensure that businesses are not compromising citizens’ health and safety, polluting the environment,
violating the rights of consumers or distorting a free and competitive market.” In respect to employment rights, sanctions are an essential part of the enforcement infrastructure, aiming to ensure high levels of employer compliance without state intervention, and punishing those who are found to be violating employment law.

The powers of different enforcement bodies are varied in their scope. While some have access to immediate prohibition orders, other enforcement regimes are more lenient. Similarly, the point at which action is taken against employers varies across enforcement agencies. While the EASI has no powers to impose penalties for the violation of employment agency standards, the HMRC will shortly have the powers to impose immediate penalties on employers who do not comply with the National Minimum Wage Regulations. Similarly, the GLA and HSE can apply immediate prohibition orders to employers, while other enforcement agencies cannot. While the HSE has the right to enter employers’ premises without warning, other agencies, such as the EASI, provide notice.

There are also a number of areas in which the powers of enforcement agencies are limited. Officers from all agencies are charged with the investigation of criminal activity; however, none has powers that are comparable with police officers when interviewing employers under caution. Should a police officer suspect a breach of criminal law, they have the power to arrest a suspect and require a Police and Criminal Evidence (PACE) interview to take place. An HSE officer can write to someone inviting them to attend an interview under caution at an HSE office, but a suspect is not obliged to accept and can refuse to attend (though their failure to attend can be brought to the attention of the court at the time of sentencing). Other agencies cannot even require employers to present for interview. Should an employer be found guilty of a serious offence, there are various sanctions that can be brought against them. However, no agency has provision to disbar them from starting a new business in the immediate future, or to disqualify directors.

Employers are legally required to keep records to establish that they are paying their workers at least the minimum wage. If there is a dispute, the burden is placed upon the employer to prove that the worker has been paid the appropriate rate. Failing to keep records, or refusing or preventing an employer from seeing them, is a criminal offence. However, the TUC’s recent submission to the Low Pay Commission notes that a high proportion of minimum wage problems experienced by low-paid workers result from employers keeping poor records, which in many cases are a consequence of employers deliberately trying to avoid paying the minimum wage. Although this is an offence under the National Minimum Wage Act, most employers who ignore this legal requirement are not penalised.

It is therefore our view that the enforcement agencies should have increased powers to take action against unscrupulous employers.

A disconnected enforcement system

The configuration of the employment rights enforcement agencies can make reporting procedures for vulnerable workers unclear. There are different contact points for each agency, and at present the onus is on workers and advocates to report multiple violations to different enforcement bodies. Workers are unlikely to be aware of the multiple contact points, and those who have experienced multiple problems are faced with making several different complaints. At present, calls cannot be directly transferred between call centres; should a worker contact the wrong phone line, they will just be given another number and asked to call back.

The various contact points also have different opening times and translation facilities. For example, workers can report violations of health and safety law to the HSE info line, which operates from 8:30am to 5pm. It provides a call-back service so that people do not have to pay for their own calls and also operates a foreign language hotline. In contrast, the EASI helpline is open from 9.30am to 4.30pm on Mondays to Fridays, and operates only in English. Workers can also report violations of the NMW by a telephone line open Monday to Friday between 9am and 5pm. Agricultural workers who wish to register a complaint have fewer options: they can contact the Agricultural Wages Team between 10am and 12 noon or 2pm and 4pm on Monday to Wednesday, 9am to 5pm on Thursday or 10am to 4pm on Friday. The helpline is available only in English and requires the user to select from extensive options before
connection to an adviser. Respondents to our research noted the confusion that these multiple systems could cause for workers:

“What you would find there is sort of five different phone numbers to different agencies which is confusing even for indigenous workers. But it’s going to be even more confusing for migrant workers. And also, when are they operational, how are they accessible in the reflection of actually the working hours of the workers and the possibility to reach those.”

(Employment rights professional)

None of the helpline opening times is ideal for workers who are likely to be working during the day. The Minister for Postal Affairs and Employment Relations has stated: “If government is really to deliver services which suit the public, there will have to be a lot more extended opening hours and weekend access than there is at the present.”

We believe that this principle should also be applied to employment rights’ enforcement. We therefore believe that reporting processes for employment rights’ agencies need to be reconfigured, to ensure that workers reporting employment rights’ abuse can report all employment rights’ violations at a single contact point, where trained advisers will be able to take responsibility for ensuring that information is shared, and appropriate enforcement actions are started.

These reporting difficulties reflect wider structural problems in the remits of the enforcement agencies: they can enforce only set rights and can each act only on particular types of employment rights’ violation. For many, the nature of their problems means that there is no non-legal, anonymous route, via a statutory enforcement agency, for them to resolve all the employment rights violations they have experienced. As Citizens Advice reported to us there is no statutory body to complain to if: a worker is not employed through an employment agency (the remit of EASI); or is not working on a temporary basis in agriculture, horticulture, forestry, shellfish-gathering or associated processing and packaging industries (remit of the GLA); or if the complaint is not about the NMW or health and safety.

The BERR survey of Citizens Advice clients found that, while the study revealed 10 possible or definite breaches of minimum wage legislation, and 18 definite or possible breaches of health and safety legislation, there were also comparable breaches of rights that were not covered by any statutory enforcement agency: 17 definite or perceived breaches of the right to sick pay, and eight definite or possible breaches of workers’ right to 4.8 weeks’ paid leave.

Extensive evidence shows that vulnerable workers do not experience one-off problems at work, but are much more likely to experience multiple clusters of difficulties. A study of 500 unorganised workers found that most workers had experienced multiple problems with pay, working hours and contractual problems being associated with the greatest number of other difficulties. New research undertaken for our Commission has also found that around 90 per cent of employment advisers felt that clients tended to have experienced multiple problems at work, and the Learning and Skills Council (LSC) Paths to Justice survey also shows that legal problems tend to occur multiply or in ‘clusters’, concluding that to be effective publicly-funded legal services need to be organised in such a way as to tackle problems holistically.

This point was also emphasised by respondents to our research:

“A lot of the cases that would come to us, we would find the minimum wage issue through looking at another event that’s happened. It’s rare for it to come just on minimum wage… [People come because] they may have been dismissed… something that’s become obvious to them. And in looking through them we will say we think you’re being underpaid. And then we will take an action on that.”

(Employment rights adviser)

Unsurprisingly, then, firms that are found to be non-compliant in one area are often non-compliant in many. Research for the Low Pay Commission found that the majority of firms that were non-compliant with the minimum wage were also in breach of Working Time Regulations. Citizens Advice similarly highlight that in many cases employers that are failing to provide legal entitlements to holiday pay are also non-compliant with other statutory rights, including the right to a written statement of terms and conditions, itemised pay slip or entitlement to Statutory Sick Pay.

Organisations we met during our regional visits highlighted to us that workers they supported often faced exploitation in multiple areas, not all of which were covered by statutory enforcement routes. For example, in Manchester we heard from processing
opers who had experienced problems with respect to payment of the NMW, holiday pay and sick pay, entitlement to appropriate rest breaks and provision of appropriate health and safety standards. They were reluctant to engage with a system that was perceived to be limited in its ability to tackle the range of issues they were experiencing. Many organisations told us that the workers they had supported would be more likely to move jobs than bother to individually challenge each of the specific aspects of poor employment practice they had experienced.

We have therefore concluded that there is a need for the scope of government enforcement agencies to be extended to cover a wider range of workplace rights. We believe that this would improve the extent to which enforcement of employment rights takes place, better enable workers to report and navigate the enforcement infrastructure, bring faster and more comprehensive justice to workers and reduce ET claims.

Jamal is a 32-year-old black African migrant worker. He has worked in construction for six months and was previously a self-employed gardener: both jobs were in the informal economy.

Jamal is paid £4.10 an hour as a casual construction worker. He receives no holiday pay, sick pay or other benefits. £4.10 actually represents the higher rate for casual workers with Jamal’s employer: he is paid this rate because he has carpentry skills and a qualification, but says that some of the casual workers are paid only £3.10 per hour. He comments that they had no negotiating power over this, due to the difficulties they experienced in obtaining work.

Jamal generally works an eight-hour day with a half-hour break, though managers sometimes do not allow workers to take their break for reasons including there being too much work, time restrictions caused by threatening weather conditions, or because the site is receiving a visit from the company manager.

Jamal feels that he and his co-workers are treated badly by their managers: “They shout at you, so sometimes it is crazy. It [your work] doesn’t satisfy them... Some bosses they are even more worse. They abuse you very bad.” Jamal and his co-workers are also pushed to work in dangerous conditions without any protective equipment and without training on health and safety. Although Jamal has never been injured, he has felt the effects of dust inhalation and knows many workers who have been hurt.

Jamal observes that large construction companies treated their workers better than smaller ones. He also feels that permanent members of staff are treated better than casual workers and has seen that undocumented workers fare the worst of all: “A lot of people are not allowed to work and have to survive to pay the rent. People are working for £3 an hour. Also you have to work 12 hours.”

Jamal is worried about being laid off or dismissed. He would prefer to work in a more secure job, but considers there to be little chance of obtaining one. He is not especially worried about the financial impact of such a low wage or of losing his job because his girlfriend is financially secure. However he appreciates that if he did not have this support he would have suffered considerable financial hardship, as he knows many of his co-workers do.

Jamal’s ambition is to have his own construction company.

(We met Jamal through the Migrants’ Resource Centre)
Since the 1980s, the UK has seen a major shift towards outsourcing goods, works and services in both the public and private sectors. The public sector now spends over £125 billion a year (over half of discretionary spend) on procuring a wide range of goods, works and services, from stationery, building maintenance and security to major IT systems and construction projects. Of this, around £33 billion is spent on public sector construction (excluding expenditure on the construction elements of Private Finance Deals). The trend for increased contracting and subcontracting is also mirrored within the private sector, where supply chains have become longer and increasingly globalised.

Outsourcing has particularly affected low-skill occupations, such as cleaners, security guards and catering workers, can now be much more likely to be employed by employment agencies or external firms than by the employers they are providing services to. Outsourcing takes two forms: direct, where a whole service is put out to contract, or indirect, where use of agency or other temporary workers is increased to fill particular roles.

The stratified labour market that has resulted – with its webs of contractors, subcontractors and ‘sub-subcontractors’ – makes regulation and management more challenging. When confronted over poor employment terms and conditions, contracting bodies can absolve themselves of responsibility and point to the contractor or subcontractor, while contractors and subcontractors will tend to claim that they are constrained by the terms of the contract and/or by the threat of being undercut by competitors. During our consultation we heard evidence about the impact that increased subcontracting has had:

“The agency is there for years and years and we know agencies that are getting two or three-year contracts for certain hotels... Sort of like saying to an agency, well, for the next three years if we’ve got temporary labour shortages, we need you to supply somebody. We need 10 chambermaids here, seven days a week... Hotel chains who probably wouldn’t get away with paying below the minimum wage or working people beyond the Working Time Regulations and stuff like that, have been paying the agencies while turning a blind eye to all sorts of bad practice.”

(Trade union official)

Some respondents told us about concentrations of low pay in some public sector jobs, which could be challenged through including consideration of pay rates in contracting processes. We also heard about business development grants being awarded to companies that had been found to be non-compliant with employment law.

However, where responsibility is taken, there is substantial scope for procurement to act as a key lever for ensuring that fair employment practices, terms and conditions are adopted throughout supply chains (thereby encouraging their adoption even more widely). Some contractors at the top of the chains – both public and private – are already demonstrating how this can be done. Trade unions are also working to effect change from the top of the supply chain through community alliances and other campaigning activity, encouraging employers to meet minimum standards in aspects of human resources and supply-chain management.

“[They can] subcontract their moral responsibility for what’s going on with the cleaners there via the tenants of those buildings and sub-subcontract it on again to the cleaning contractors. And it is the same with the aviation industry; they say ‘it’s nothing to do with us, you need to talk the contractor’.”

(Trade union official)
Public procurement

The main legal route for implementing fair employment and other ethical conditions in public contracts lies in the EU Public Sector and Utilities Procurement Directives. In the UK, their implementation is the responsibility of the Office of Government Commerce (OGC), which was set-up in 2000 to provide a one-stop shop central procurement organisation to encourage and develop best procurement practice within central government. The Directives were introduced in 2004, and set out the procedures to be followed at each stage of procurement processes leading to the award of contracts above certain thresholds for works, services and supplies by government authorities or bodies. The Directives were transposed into UK law in January 2006.

Success at Work, a recent government strategy paper, recognised that procurement could provide a means to encourage good business practice in relation to skills. It stated that the government would “work with employers and the workforce to determine how best government can ensure that, in its contracts for basic services, such as cleaning and security, workers are given access to basic training and skills, advice and trade unions should they wish them”.

Nationally, however, the Government’s overall approach to implementation of the social, employment or environmental clauses has been minimalist, leaving much of the potential for using public procurement as a tool for promoting fair employment unexploited. We have been concerned to learn that the UK regulations introduced to implement the Directives, and the guidance to support their implementation, have not provided proper recognition of the new social, employment or environmental clauses that are contained within them. This has stemmed from an apparent fear that any additional clauses, however modest, may incur extra costs and deter private sector bidders.

There is, of course, a big difference between lower prices and value for money. Employers who do not train their staff properly get them more cheaply, but whether such staff work to their full potential, maximising efficiency and value, is another matter. Nevertheless, the OGC has seemed to play down the role of social clauses, constantly stressing what cannot be done rather than what can be done, in an attempt to reduce their impact.

Despite this, there are many UK examples of where public procurement is increasingly being used to achieve wider social goals. The Scottish Parliament has adopted a wide-ranging responsible purchasing policy covering ethical sourcing, health and safety, equalities and environmental impact. The policy also stipulates support for the Special Contracts Arrangement (SCA) scheme, participation of small and medium-sized enterprises (SMEs), and procurement training for staff. The policy commits the Parliament to:

- complying with all statutory regulations relating to social and ethical matters (including employment legislation), environmental matters, health and safety, equal opportunities, racial equality and disability
- wherever possible, including issues relating to these considerations within contract specifications
- including sustainable and environmental, equalities, health and safety, and social and ethical criteria in the process for supplier appraisal, contract award and contractor performance management as appropriate
- ensuring that suppliers are able to submit variant bids at tender stage for social labels (e.g. FairTrade) and sustainable and environmentally responsible alternatives.

The policy also contains a further equalities commitment through support for the SCA scheme, which assists eligible employers of severely disabled people within the EU to compete for business with UK government buyers and their agencies. It also recognises the value for money and social/economic grounds for taking steps to remove barriers to participation of SMEs in public procurement, and is committed to taking action to removing those barriers, for example in order support small companies seeking subcontracting opportunities. Importantly, the Parliament has also introduced skills profiles and a formal training strategy to ensure that staff receive the necessary training to effectively fulfil their procurement role.

The Greater London Authority group has also adopted a responsible procurement strategy. The group incorporates the Greater London Authority itself, Transport for London (TfL), the London Fire and Emergency Planning Authority (LFEPA), the London Development Agency (LDA) and the Metropolitan Police Authority (MPA) and Service (MPS). It has a
combined annual spend of over £3 billion. Its policy defines responsible procurement as “the purchase of goods, works and services in a socially and environmentally responsible way that delivers value for money and benefits to the contracting authority and to London.” Each member of the group has responsibility for implementing the Mayor’s Responsible Procurement Strategy (RPS), which is coordinated by a steering committee made up of senior-level management from each organisation and chaired by the Mayor’s Office.

The strategy consists of seven themes:

- encouraging a diverse base of suppliers
- promoting fair employment practices
- promoting workforce welfare
- addressing strategic labour needs and enabling training
- community benefits
- ethical sourcing practices
- promoting greater environmental sustainability.

While implementation of the RPS has varied between organisations within the Greater London Authority group, there have been some significant outcomes. These include: asking contractors to indicate whether they would accept London Living Wage clauses as part of their contracts, and successfully appointing catering and cleaning companies that accepted the clause – leading to almost 400 staff realising the associated benefits; a new Facilities Management Services (FMS) contract that included a number of clauses requiring the FMS suppliers to demonstrate best environmental practice; and the insertion of supplier diversity requirements in contracts let in 2006 for the East London Line Project, with the aim of providing opportunities for SMEs, particularly those owned by women or people from ethnic minority groups.

TfL has been at the forefront of implementing the RPS. Key TfL responsible procurement provisions include:

- introducing payment of the London Living Wage as a condition in two cleaning contracts, covering 170 cleaners
- introducing supplier diversity requirements, incorporating equality and diversity commitments – used in the £500 million contract for the main works of the East London Line to ensure fair opportunities for smaller suppliers
- joining SEDEX (Suppliers Ethical Data Exchange) – a web-based system enabling companies to provide data on labour practices at the factories and facilities they use, thus providing greater ability to manage ethical impacts of wider supply chains.

In December 2006, London Underground (LU) became the first public sector organisation to sign up to the Ethical Trading Initiative (ETI) for its supply chain providing uniforms to over 12,000 staff. The first contract to include ethical sourcing requirements and the ETI Base Code as a part of the contract conditions began in June 2007. The ETI Base Code will now be adopted and included in all future tenders and contracts relating to LU uniform garments. LU is required, as a member of the ETI to:

- submit an annual plan detailing how it will meet its membership obligations in terms of monitoring its suppliers
- submit an annual report detailing its findings from monitoring the supply chain in the previous year
- commit to joining any relevant ETI initiatives or activities regarding the supply of clothing.

The Olympic Delivery Authority (ODA), established by the London Olympic and Paralympic Games Act 2006, is the public sector body charged with the responsibility of delivering the venues and infrastructure for the London Games in 2012. It is responsible for building a multi-venue Olympic park to a fixed timescale but it is also required by the 2006 Act to have regard to “the desirability of maximising the benefits to be derived after the London Olympics from things done in preparation for them” and to “contribute to sustainable development” when exercising its functions. The ODA published its Procurement Policy in early 2007 following a public consultation exercise, to which a number of trade unions responded. The Policy adopts a ‘balanced scorecard’ approach to procurement. It sets out seven key areas upon which tenders will be evaluated. Each of these areas is broken down into critical success factors; for example, including factors such as cost, security,
and environmental and employment practices. This enables a holistic evaluation of each tender, including a range of social and economic criteria.

The seven key areas of the scorecard are:

• cost
• time
• safety and security
• equalities and inclusion (including employment practices and living wage)
• environment
• quality and functionality
• legacy.

The policy states the ODA’s commitment to contract with agencies and companies that will embrace the ODA’s strategy and aims. Within the policy there is explicit reference to working with contractors to promote the London Living Wage, worker representation and to meet the requirements of the ODA’s equality and diversity strategy.

A key component of the Olympic project is the enhancement of the local skills base, particularly in the construction sector, in order to meet the strategic needs of the project (and wider sector) and to provide a legacy of skills and employment to local communities. A range of support services has been put in place for local communities, from training schemes to employment brokerage, incorporating a number of public sector agencies such as the Learning and Skills Council (LSC), Jobcentre Plus, the London Development Agency and the five ‘Host Boroughs’. The ODA has committed itself to using its procurement policy to compel contractors to engage with these supply-side initiatives. The policy states: “The ODA is committed to requiring and encouraging its suppliers (including consultants, designers and contractors) to operate with a commitment to a competent workforce.” Furthermore, it commits the ODA to work with contractors to establish appropriate links “with organisations such as Jobcentre Plus and the Learning and Skills Councils among other public and private agencies so that people get access to jobs and training”.

In support of this, the ODA has recruited a number of work-based coordinators to facilitate engagement between contractors and the public sector and has established a skills and employment forum incorporating contractors, trade unions and public sector representatives to monitor the process. The ODA is therefore providing specific support to contractors in order to meet their contractual obligations. The project is at an early stage but indicators so far show that: 20 per cent of the workforce is employed from within the five local boroughs; 50 per cent of the workforce is from the Greater London region; 90 per cent of workers are employed on the levels of the London Living Wage or above; and ethnic minority representation on site is above the industry norm.

Other European countries have also made use of the Directives to achieve social ends. In Ireland, for example, the recently agreed social partnership agreement states that “all parties are agreed on the importance of public procurement policy as a mechanism for contributing to the maintenance of employment standards and norms”, setting out a number of measures to improve the impact that public procurement has on labour standards. This includes the development of contractual obligations in the construction sector to require general compliance with employment law; obligations on public authorities to seek certification of compliance from contractors; and (for contracts in excess of 30 million euros and in excess of 18 months) placing requirements upon contracting authorities to undertake random checks of the records of their own contractors and subcontractors.

Several government commissions have recently recommended that the EU Directives be given wider application to ensure improved workplace practice. The National Employment Panel’s Business Commission on Race Equality in the Workplace reported in October 2007 on how to increase recruitment retention and progression for ethnic minorities in the private sector. The Business Commission identified public procurement as one of the principal levers for incentivising private sector companies to improve race equality practices. It recommended that the Government use contract conditions to ensure that suppliers promote equality in the workplace and that pre-qualification questionnaires (to obtain information on potential suppliers’ technical and managerial experience and systems) should be extended to collect information on action taken to promote workplace race equality. They further proposed a number of ways in which this could be implemented so as not to impose undue burdens on small companies, including development of publicly approved standards for companies to demonstrate that their HR practices promote race
equality. In its recent report, the London Child Poverty Commission further endorsed these conclusions.

We are cautiously optimistic about the announcement in the Budget 2008 that the government is to publish a new policy framework for procurement, including practical guidance on how procurers can take the environment into account. We believe that existing social guidance gives unnecessarily negative advice on the use of social, environmental and employment clauses and hope that the new practical guidance may be the start of a process to address this.

We believe that the EU Public Sector and Utilities Procurement Directives provide additional scope for contracting authorities to include social, employment and environmental criteria in public contracts. We call on the OGC and the wider government to be bold in their interpretation of the possibilities of those Directives. In extreme cases, we would even urge the government to challenge the approach of the European Commission, so long as legal counsel backs up our case. Other European governments have challenged the opinion of the Commission when they have wished to implement a social clause and have had their right to do so upheld in court.

To put it another way, it is often argued that procurement contracts must remain within EU law. We have no argument with this; but European law is much more creative than the UK Government, and even the European Commission, has sometimes admitted. We wish to see the full use of the law to enable both economic efficiency and social justice to be pursued through procurement.

Social clauses could include requirements for contracting employers to provide basic information on employment rights, and to provide skills and training, such as ESOL or particular health and safety courses. Clauses in the regulations of particular relevance to vulnerable workers include a clause on subcontracting, which contains scope for placing mandatory requirements on contracting authorities to require tenderers to indicate the share of the contract they intend to subcontract to third parties, as well as to indicate whether a subcontractor is likely to subcontract further aspects of the work (‘sub-subcontractors’) and to require subcontractors and sub-subcontractors to comply with the provisions of the legislation. There is also a clause on dealing with abnormally low tenders, which provides scope for providing focus and compliance with employment protection and working conditions. Having considered the arguments, we therefore believe that there is a strong case for central government to build on existing good practice and take further action to promote the use of public procurement to improve working conditions for vulnerable workers.

Private procurement

Large private sector companies are increasingly procuring services from other smaller corporations. Our analysis of the Workplace Employee Relations Survey found that in 2004 84 per cent of employers were subcontracting out some part of their work. Given the extent of contracting, there is scope for larger companies to use their procurement practices to improve labour standards in their supply chains. The ETI provides an example of such an initiative. With a membership of 39 companies, 17 non-governmental organisations (NGOs) and four trade union organisations, the projects’ objective is to promote and improve the implementation of corporate codes of practice that cover supply-chain working conditions. It is based in the UK but has an international scope, with an ultimate goal of ensuring that the conditions of workers producing for the UK market meet or exceed international labour standards.

The ETI’s practice case studies show that there is no easy way to ensure that purchasing meets ethical standards, and that individual solutions are needed for separate companies whose supply chains vary depending upon the types of services they procure and their business needs. For example, when demand for a product fluctuates, last-minute or cancelled orders can lead to poor working conditions for those supplying the goods, who can be asked to work unscheduled overtime, or find their hours are cut at extremely short notice. In this case, ethical procurement does not just involve choosing a supplier appropriately, but taking steps including agreement on minimum order values or volume, and committing to provide notice of changes to orders. Tackling the issues also required steps, including raising buyers’ awareness of the impact their actions has for suppliers, improving their forecasting of likely demand and encouraging suppliers to set up shift patterns for workers, rather than requiring them to undertake unlimited overtime when demand peaks.
Marek’s story

Marek is from Eastern Europe but has lived in England for several years. For two and half of those he worked as a painter and decorator. Although all the work Marek did was for the same firm, he was classified as a ‘sole-trader’ (i.e. self-employed). As a result, Marek received no sick pay or holiday pay, nor health and safety training. Marek reports that the two main issues with the job were the insecurity and the feeling of different treatment between migrant workers and British workers.

Marek’s ‘employer’ was a big firm that did a lot of subcontracted work on local authority buildings. He was paid the minimum wage. Marek reports that jobs could last a week to a month and that, under the invoice-based payroll system, payment of wages was slow and irregular: “For some situations for three months you’re not getting paid. It’s scary and difficult to survive. People have to borrow from relatives and friends.” Marek also reports that the firm took a ‘security payment’ of 4 per cent of each pay cheque. This was supposed to be paid back to the worker after one year: “People who worked for a couple of weeks or months never got that back.”

Marek also reports that there was zero health and safety provision in equipment, information or training. Although he is much more clued up now, he also says that he knew little about his employment rights or the implications of being self-employed: “I registered myself in an office to become self-employed. I was never told what that means. If I start work I have to be raising invoices, book-keeping. You’re never told about safety. There’s a lack of information and that makes people vulnerable in the building sector.”

Workplaces had workers from different firms and with different employment status and terms and conditions. Marek reports that many of the permanent workers on better terms and conditions were British, while most of the bogus self-employed workers were migrants. This created some underlying tension: “People had the feeling they were being treated differently because they were migrant workers.” All of the workers for Marek’s firm were migrant workers. He thinks that this unequal treatment is unhelpful for workplace and community integration; he told us: “If people are feeling that they are treated worse than others it’s not a good feeling and I’m sure it stops personal and social relations. In a big construction business I always hear stories that if you are an Eastern European builder you should expect to be paid less. That opinion comes from real life. People have less trust and confidence in moving forward.”

On an individual level, Marek reports that the insecurity and inequality of the situation caused stress and harmed his productivity: “It has negative effects, if you feel whatever you’re doing you’re not getting paid for or you’re not getting paid fairly.”

(We met Marek through Oxfam’s UK Poverty Programme)
Our consultation also identified examples of the multiple ways in which contracting procedures can impact upon employment standards. For example, we received reports of how very short-term cleaning contracts can lead to job insecurity for workers. We also heard examples of voluntary organisations that are already implementing their own codes of practice among their suppliers contracting only with those who provide learning opportunities for staff, or seeking their contractors’ adherence to agreed wage levels for low-paid staff.

Learning from the ETI indicates that improving labour standards is a continuing and complex process, requiring a strong commitment from senior managers across the company. They also note the importance of taking a collective approach, involving staff across the business, suppliers from other companies, civil society organisations and trade unions and that a focus is needed both on ethics and product as solutions must be economically viable, which can require collaboration between those who procure and those who manage labour standards. Their work has shown that mapping supply chains and learning more about the complexity of buyer-supplier relationships are also important in developing purchasing practices that support labour standards.129

The London Living Wage Campaign130 provides one example of success. It has brought together a range of organisations. Its work has challenged employers to take responsibility for the terms and conditions paid to outsourced workers in London. In 2004 the campaign successfully secured a commitment from the then mayoral candidate Ken Livingstone to introduce a living wage for London. The Greater London Authority Living Wage Unit calculates an hourly London ‘living wage’ on an annual basis: setting a figure for campaigners to aim for.

A growing number of leading companies have incorporated the living wage into their procurement policies. A study has calculated that at December 2007 the London Living Wage Campaign had won pay rises for an estimated 5,800 workers.131

Employers report business benefits including significantly reduced staff turnover and greater productivity, as well as enhanced reputation and image. When, in 2004, Barclays Bank specified to its contractor that cleaners in its new Canary Wharf office be paid at an improved hourly rate and receive 28 days’ holiday, turnover dropped from 30 per cent to 4 per cent along with rising performance and customer satisfaction levels. After coming under pressure again in 2007, Barclays announced it would raise pay to £7.50 per hour for cleaning, mailroom, gym and catering staff across London and has subsequently rolled out its ‘fair wage’ package to its contract cleaners across the UK. Similarly KPMG found that turnover halved after it introduced a ‘living wage’ policy for all in-house and contract staff. Head of Corporate Services, Guy Stallard, noted that: “No-one abused the new sick pay scheme and absenteeism is very low. We get the benefit of reduced training costs and staff continuity. It is a much more motivated workforce.”132

Private sector procurement has the potential to act as a means of lifting standards to remove vulnerable employment from British workplaces. While solutions are not simple, we believe that there is greater scope for corporate Britain to improve workplace practice through tighter management of its own procurement processes.
Many employment agencies operate within the law, and good employers agree with us that more needs to be done to prevent rogue operators from exploiting vulnerable workers. The longer these practices continue the more that reputable business is undercut, and employment rights’ legislation undermined.

Our investigations have led us to believe that being placed in work by an employment agency can in many cases place workers at considerable risk of vulnerable employment. Some of the worst abuses we heard of during our work were experienced by workers whose jobs had been supplied by an agency, a complex employment relationship that currently reduces the employment rights to which a worker is entitled, and can create uncertainty as to whether the supplying agency or the user organisation has responsibility for their treatment.

Our research shows that in most other European countries, licensing of such businesses is a precondition of their operation, despite the agency market being less fragmented than in the UK.

With more resources, we are confident that the GLA could effectively regulate a wider range of employment business sectors. We believe that a clear, nationally agreed set of standards should be established for employment businesses/agencies providing temporary labour, which needs to be closely monitored. It is also our view that the Government should be prepared to extend the GLA licensing regime – a proposal which responsible agencies back – to cover sectors characterised by vulnerable employment. The aim would be to ensure that an employer seriously exploiting workers and undercutting reputable companies would lose their licence to trade.

The GLA was set up in partnership between employers, unions and civil society stakeholders, and was based on agreement between key stakeholders of unchecked bad practice across the sector. We believe that an extension of a licensing regime should, if possible, be based on a similar approach, involving key stakeholders from across the sectors in question. We believe that an extension would support client organisations to use only agencies that have been certified as reputable; better enable enforcement authorities to target inspections and enforcement; and prevent individuals who have been banned from operating an employment agency from simply setting up ‘phoenix’ agencies or from moving from regulated to the unregulated parts of the economy.

We also believe that current mechanisms for the enforcement of vulnerable workers’ employment rights are not fit for purpose. Across a whole range of entitlements there is evidence of extensive non-compliance with employment law. Many vulnerable workers have no meaningful access to either individual or collective employment protections, and most low-paid, unorganised workers who experience problems at work are unable to take any action to resolve them.

As discussed in Chapter 2, this can be addressed in part by providing workers with more information on what their entitlements are, and enabling them to access advice about how to challenge mistreatment. Tackling employment rights violations, however, often requires recourse to the statutory enforcement infrastructure. For those who have experienced specific problems, or work in particular sectors of employment, state enforcement agencies exist to undertake investigations on behalf of workers. However, at present for many the only enforcement route is an ET. We believe that, while there is a role for ETs in an enforcement system, there are many cases when recourse to costly and time-consuming legal action should not be necessary.
The Trade and Industry Select Committee concluded in 2005 that the NMW enforcement model “would seem a model that might be extended beyond enforcement of the NMW to other areas of regulation”. The recently published Gibbons Review of Employment Dispute Resolution recommended that the government introduce a new simple process to settle monetary disputes without the need for tribunal hearings. We therefore believe that a model could be developed to provide an increased role for the state in enforcing statutory rights relating to all employment rights problems that rest on a statement of fact and involve the payment of monetary awards. This could include a written statement of employment particulars, paid statutory annual leave, Statutory Maternity Pay and Statutory Paternity Pay, and Statutory Sick Pay. With careful consideration of its development, we believe that such a model could significantly improve access to workplace justice for vulnerable workers, and create considerable efficiency savings for employers and government as a result of reductions in employment tribunal cases.

At present, the state enforcement system is often dependent upon brave individuals taking large personal risks to report exploitative practice and trigger investigations against employers. We believe that this locus of responsibility is wrong, and that employers need to face real risks of inspections and enforcement action to prevent such poor practice occurring in the first place.

We therefore recommend a commitment from government to significantly increase the resources available to employment rights enforcement agencies for proactive and preventive inspections. The ratios between the number of inspectors available to each agency, and the at-risk sectors they are charged with inspecting, do not currently appear to be based upon a logical risk analysis. We therefore believe that government should undertake to review current resource allocations, and consult on appropriate inspector-to-employer ratios for enforcement agencies. Other European countries recognise the importance of an adequately funded inspectorate to enforce labour standards. In Ireland, for example, the government recently undertaken to trebling the number of labour inspectors who will be available to work in the new employment rights compliance office. The increase is in response to government recognition of “the need for a major enhancement and expansion of the existing labour inspectorate with a view to increasing its effectiveness, particularly in light of the changing labour market in Ireland”.

In areas such as child protection, significant resources have been invested in ensuring that information is shared between professionals with different specialist backgrounds. A focus has been placed on integration of service delivery in processes, strategies and overall governance arrangements. These commitments are set out in ‘Every Child Matters: Delivering Change for Children’, a joint Department of Health and Department for Children and Families approach. It sets out the means to enable organisations involved in providing services for children, including both statutory and voluntary providers, to work far more closely together and to better share information, aiming to protect children from harm and abuse, and to enable them to achieve. The strategy led to the establishment of local multi-agency practitioner teams, lifted barriers to information sharing (and provided practice guidance on implementation of this policy), and committed to improvement of the skills and qualifications of the workforce. It also specifies that when an integrated response is required a lead professional will be designated to coordinate provision and act as a single point of contact for a child and their family. At a local level, the strategy has led to the bringing together of children’s health and social services under common strategic leadership, thereby ensuring a top-down commitment to joint working and that organisational barriers to collaboration between professionals are lifted.

The emergency services also provide a strong example of effective partnership working between different organisations. The Department of Health sees emergency care as a “whole-system issue” and advocates the development of emergency care networks (cross-organisational and multi-disciplinary groups) to take a leading role in developing local delivery, ensuring emergency care is coordinated across all organisations in a community and promoting knowledge of practice among health and social care professionals. The Department has also provided funding to pay for clinicians’ time in the development of these networks. Key aspects of the approach include ensuring that shared data assists in reducing duplication, developing new working practices to look at how individuals and groups can work across organisational and professional boundaries, and ensuring that guidelines and care pathways are developed to work across the entire
network, not just one service. In Ireland, the new Office of the Director of Employment Rights Compliance is intended to operate on similar principles, with new legislation proposed to enable authorised officers from the Irish Department of Enterprise, Trade and Employment to join with the Department of Social and Family Affairs and the Revenue Commissioners to work together in the Joint Investigation Units (JIUs). The Irish government anticipates that “the role of the JIUs will be to address areas where evidence suggests non-compliance exists”. We believe there are aspects of these models that could be directly transferred to the enforcement of employment rights in the UK, which also involves multiple agencies dealing with individuals who are likely to experience multiple problems.

In the area of employment rights such joint work is currently lacking. For workers who experience multiple problems, separate complaints need to be made to different agencies. When agencies become aware of problems that fall outside their remit, legal barriers can prevent them from sharing information with colleagues specialising in different areas, and when workers want feedback on their multiple complaints they can find that information is not available, or that they have to seek it from several different sources.

We believe that much closer working is therefore needed between different enforcement bodies, and that information sharing and joint working need to be at the heart of their operation. We therefore propose that a new Fair Employment Commission is established, with permanent responsibility for promoting cross-government awareness of the problem of vulnerable employment, and taking strategic action to ensure a coordinated and comprehensive response. We anticipate that it would have an advisory role at the highest level of government. The Commission would be responsible for considering the impact of policies on vulnerable employment (across areas including employment law, immigration, skills and welfare), leading debate on proposed policy change and identifying future trends requiring government consideration. It would undertake evidence-based investigations into vulnerable employment, and advise on equitable treatment across the British labour market.

There are already examples of Commissions in various areas of UK policy. The Low Pay Commission (LPC) is an example of an independent statutory non-departmental public body set up to advise the Government about the National Minimum Wage (NMW). There are nine members of the Commission drawn from a range of employee, employer and academic backgrounds. Each year it undertakes extensive research and consultation, commissions research projects, undertakes data analysis, surveys firms in low-paying sectors, takes written and oral evidence and undertakes fact-finding visits throughout the UK. Each year the Commission receives its terms of reference for investigation from the Government.

A further model is provided by the Law Commission, a statutory independent body established to keep the law under review and to recommend reform where it is needed. Its aims are to ensure that the law is as fair, modern, simple and cost-effective as possible, and to conduct research and consultations in order to make systematic recommendations for consideration by Parliament. The Commission submits its proposed work programme to the Lord Chancellor for examination prior to undertaking new work. Before deciding which projects to take forward, it takes views from judges, lawyers, government departments and the general public. Decisions are taken against the set criteria: importance (the extent to which the law is unsatisfactory, and the potential benefits from reform); suitability (whether the independent non-political Commission is the most suitable body to conduct the review); and resources (valid experience of Commissioners and staff, funding available, and whether the project meets the requirements of the programme). Once the Law Commission has agreed to review an area of law, the remit of the project is decided in conjunction with the relevant government department. The Commission then undertakes a comprehensive consultation programme to determine a proposed course of action. A High Court Judge chairs the Commission, and all other Commissioners are experienced judges, barristers, solicitors or teachers of law. All are employed full-time at the Commission, and are supported by a permanent secretariat.

We believe that a Fair Employment Commission should be based on aspects of both of these models. While Commissioners would not be required to work full-time, a permanent secretariat would be
required to support their work, and an agreed time
commitment from all participants would be necessary.
The involvement of stakeholders from trade unions,
business, civil society and academia would be
essential to the Commission’s work. We identify that
the Commission be given a broad remit to propose
measures to reduce vulnerable work. Within this
broad focus, we propose that the Commission is free
to define its own programme of work, based on
evidence and consultation as to the salient issues
affecting vulnerable workers. We also believe that the
Commission should have responsibility for ensuring
that all new legislation relevant to low-paid and
insecure workers be ‘employment rights proofed’ by
the appropriate Department to prevent it from having
detrimental impact on those in vulnerable
employment.

We propose that the Commission would also have
responsibility for the strategic oversight of employment
denforcement in the UK. With representatives
from employment rights enforcement bodies,
business, trade unions and civil society organisations,
the Commission would be well placed to advise on
policy change with respect to enforcement, including
legal barriers to information sharing and adequate
resourcing levels. To support joint working between
enforcement agencies, we believe the Commission
should oversee a joint operational board, including
representatives from all areas of employment rights
enforcement, which would have day-to-day
responsibility for the strategic management of
employment rights enforcement.

Greater integration at the point of service delivery
would require many operational changes including:
the lifting of all legal barriers to information sharing
between agencies, and placing a statutory duty upon
staff to pass information on suspected breaches of
employment rights outside of their jurisdiction to
relevant colleagues; providing appropriate training to
enforcement officers, to enable them to identify signs
of further employment rights abuse outside of their
particular areas of expertise; and providing workers
with the same rights to continuing information as
other victims of crimes (for example, monthly updates
on progress and notification of criminal prosecutions
provided by a single officer co-ordinating all aspects
of their case). A single point of contact should also be
available for workers or members of the public
reporting an employment rights’ violation, with
out-of-hours contact and translation facilities.

We also believe that new strategic approaches need
to be accompanied by more powers. We recommend
that the powers of enforcement agencies powers are
increased to ensure that they are appropriate to the
scale and scope of the offences committed. Where
there are grounds to suspect criminal activity, all
inspectors and compliance officers should have the
power to require individuals to attend an interview
under caution. We also believe that a new fixed
penalty should be introduced for failure to keep and
produce accurate records when requested to do so by
a compliance officer, and that directors who are
responsible for serious and repeated breaches of
safety and employment standards should be debarred.

At present not only is the enforcement of the rights of
working children very limited, but many councils have
inaccurate by-laws which are not consistent with the
national rules governing the employment of 13–16
year olds. Getting hold of any information locally can
also be a problem, with few councils publicising
information about the rights of working children. We
therefore believe a national registration system should
be developed for employers who employ children. This
should be based on nationally agreed standards, and
should replace the current local authority-run permit
system. It should ensure that the duty of registration is
placed upon employers rather than children.

To increase the flow of information between local
civil society organisations, business, trade unions and
enforcement agencies, we believe that enforcement
agencies should develop national and local links with
stakeholders, enabling them to learn about areas of likely
employment rights’ problems, and take proactive action.
We further believe that there is scope for
consideration of a greater role for other government
bodies taking action to enforce employment rights.
Local authorities already have frequent contact with
many employers in their areas, and are therefore in a
prime position to assist with the employment rights’
enforcement process. Similarly, sector-specific bodies,
such as the Commission on Social Care Inspection and
the UK Gambling Commission, have frequent contact
with at-risk employers and are ideally placed to play a
part in enforcing employment rights. This could be
either through new powers or through a statutory
duty to report evidence of employment rights’
violations to an appropriate enforcement body.
For those whose rights require enforcement by tribunal, there should be no doubt that once an award is received it is paid. We therefore recommend that tribunals should have the power to enforce their own awards, as is the case in Scotland. We also believe that when an individual claim is successful there should be benefits for the wider workforce. We therefore recommend that ETs should have the power to issue recommendations in particular in workplaces where it is suspected that there are systematic abuses of employment rights. It has become clear to us that there is a need for greater enforcement in the informal sector of the economy. We therefore recommend the Government should develop of a new strategy to reduce informal work, containing policy initiatives aimed at enabling informal workers to regularise their businesses. Enforcement activities should also target informal businesses.

Some of the poorest practice takes place at the end of long supply chains. We feel that procurement processes therefore provide potential for significantly lifting standards across industries. Investment also provides an important route by which to influence employers and their business practices.

There are many existing codes of practice or conduct aiming to regulate the procurement practices of public and private sector employers. The ETI is an alliance of companies, NGOs and trade union organisations that exists to promote and improve the implementation of corporate codes of practice covering supply chain-working conditions. It describes such codes as: “sets of standards or rules for ethical behaviour. In the context of ethical trade, this refers to a code adopted by a company which sets out minimum labour standards that they expect their suppliers and subcontractors to comply with.” The ETI notes that there are literally hundreds in existence, and that codes fall into three main types: company codes developed by individual employers without reference to external standards; industry codes, usually developed through an industry organisation and referring specifically to companies within a particular industry; and multi-stakeholder codes developed and approved by both corporate and civil society representatives, including trade unions and NGOs. Neither industry nor company codes have universally accepted standards governing their content or implementation, while multi-stakeholder codes are based on agreement between both parties as to what a code should contain and how it should be implemented.

The ETI base code provides an example of a multi-stakeholder code, covering both national and international practice. The code is accompanied by a set of standards for its implementation and aims to provide a generic benchmark for company performance, which the ETI believes constitutes a minimum requirement for any corporate code of labour practice. It covers areas including freedom of association and workers’ rights to bargain collectively, health and safety in the workplace, working hours and regularity of employment. ETI member companies are expected to adopt the base code, or adopt their own code incorporating the base code’s principles. In addition, they agree to implement the base code via the ETI’s principles of implementation. Critical areas of the implementation process include monitoring and verification and transparency and disclosure to determine and communicate whether standards embodied in the code are being achieved.

In addition to existing codes of corporate practice, there are also various other good employment practice standards that employers of choice can aspire to meet. For example, Investors in People (IIP) provides employers with the opportunity to gain accreditation for reaching specified standards in relation to areas including management, learning and development and strategic leadership. There are also examples of codes developed by civil society partnerships to encourage adherence to non-accredited standards that prevent vulnerable employment. For example, Migrant Workers North West has established a voluntary code of practice on employing migrant workers, covering areas including the treatment of workers (for example, ensuring that workers are provided with a copy of their employment contract, that they are provided with details of trade unions operating in the workplace, and that the same pay, terms and conditions of employment are applied to migrant workers as other workers undertaking the same work), travel and accommodation, integration into the community and support for those who speak little or no English.

Our investigations have shown that there is also greater scope for public procurement, across public sector organisations and agencies, to act as a mechanism for improving employment practice and reduce the scope for vulnerable employment. We similarly believe that there is a strong case for incorporating adherence to basic employment
standards into eligibility criteria for government economic grants, to ensure that rogue employers do not benefit from financial support. We note the Government’s announcement of a new policy framework for procurement, and call for new guidance to recognise the range of positive impacts that social clauses can have for vulnerable workers.

Much good practice already exists, and demonstrates the potential that public procurement has to support social outcomes. We therefore propose the development of a good practice dissemination project, aimed supporting public authorities to procure services in a way that has positive impacts on both employment practice and on the promotion of minimum and good practice standards. The initiative would be able to draw together existing examples of procurement practice that have successfully made use of the EU Public Sector and Utilities Procurement Directives to achieve social goods, and could develop practice guidance for public sector employers seeking to make use of these powers. It would also develop guidance for public sector staff on how to meet legislative requirements while using procurement as a means to improve social outcomes.

Specific guidance on action that employers can take to prevent vulnerable employment could act as a resource to inform existing employer and industry codes of practice, and support trade unions seeking to include issues relating to vulnerable employment on their bargaining agendas. We therefore feel that there is scope for joint work between employers and the TUC to build upon existing successful corporate social responsibility practice, and work together to develop good practice principles and implementation standards aiming to minimise the risks of vulnerable employment, and promote good employment practice. The standards could build upon existing guidance, drawing together existing tools to support employers with avoiding specific aspects of vulnerable work. Initiatives to support employers with implementation could be developed regionally and nationally.

We believe that such standards could specify good practice in areas including:

- supply chain audits to ensure that vulnerable workers are identified
- routes to permanent employment for temporary staff
- ensuring staff awareness of trade unions
- undertaking needs assessments of the training and development needs of workers
- promoting cohesion and integration in the workplace
- provision of information about key employment rights
- promoting staff awareness of core employment rights, and of statutory employment rights’ enforcement agencies
- training for contracting staff in using procurement as a mechanism to ensure employment rights’ enforcement.

For quoted companies, corporate reporting requirements could be reformed to require companies to report on progress against the standard as a key performance indicator in their annual audits. Smaller companies could be encouraged by regulatory bodies, trade unions and employers’ organisations to refer to the guidance in their corporate reporting procedures.

Such a set of good practice standards would also be an invaluable tool for institutional investors, particularly pension funds. As major investors, pension funds can have a significant impact on corporate behaviour through their investment strategy and engagement with the companies in which they invest, as well as through collaborative initiatives with other schemes (such as the Local Authority Pension Fund Forum). A set of good practice standards could therefore also be used by pension fund trustees, for instance by requiring investee companies to report on their performance against the standards and by including a reference to the standard in the Statement of Investment Principles for the fund. Trustees could also mandate the professional fund managers who manage their investments to use the standards to inform their investment decisions and in their direct dialogue with investee companies.
The Employment Bill 2007-08 is expected to revise the rules on dispute resolution substantially. These changes are expected to come into effect from April or October 2009.

Acas (Advisory, Conciliation and Arbitration Service) aims to reduce the level and impact of conflict in the workplace, and to promote good relations at work. Established in 1975, Acas is governed by a council made up of leading figures from business, unions and independent sectors to academics. Acas provides information, advice and training, including a national employment rights helpline. It also has a statutory responsibility to offer to conciliate in almost all individual disputes.

The Gangmasters Licensing Authority is responsible for licensing temporary employment agencies and gangmasters supplying labour to agriculture, horticulture, shellfish and related produce packing and processing sectors.


Presentation given by Professor Chris Warhurst Scottish Centre for Employment Research University of Strathclyde (2007) unpublished.

For example, the survey excludes workplaces including large hotels, temporary agricultural accommodation such as caravans, and workers who do not live at an address with a registered landline telephone.


36 Ibid.


38 House of Commons Select Committee on Work and Pensions, Unconnected Oral Evidence, One-off Evidence Session with Ms Judith Hackitt, the Chair of HSC, and Mr Geoffrey Podger, the Chief Executive of HSE 28th November 2007.


44 There were 22 respondents to the research, 11 employment agencies and 11 employers who had previously used or currently used employment agencies.


48 Respondents could give more than one reason so percentages add up to more than 100 per cent.


56 Ibid.


59 Ibid.


62 Ibid.


To see our short report go to www.vulnerableworkers.org.uk
Chapter 6

Closing the loopholes

In this chapter we set out our views on the ways in which employment law in the UK places workers at increased risk of vulnerable employment, and in some cases acts to create vulnerable work. We also discuss current UK immigration regulations, and show how they place many low-paid migrant workers at extremely high risk of exploitation.

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Robert was a coal miner for 18 years before the mine closed around the time he turned 40. He has now worked as a car valet for the last 15 years. Despite his length of service, Robert is registered self-employed, and therefore not entitled to any employment benefits and responsible for declaring his taxable earnings. He is paid per car cleaned and has to cover the cost of his own cleaning materials and insurance. Since Robert began working in this role, the piece-rate paid to valets for cars cleaned has been cut five times.

Robert works an average of 50–60 hours a week, from Monday to Saturday. Because he is self-employed, the company does not set the exact hours, but “strongly recommends” that workers come in at 6am. If a worker should come in as late as 9am, they are sent home. Robert leaves whenever the work has been completed – usually between 6pm-8pm, but it has been as late as midnight. As he is paid per car cleaned, the time he spends at work waiting for a car to come in goes unpaid. Robert has waited up to half a day completely unpaid. Valet workers are also ‘advised’ on when they should take their breaks. In one shift, they take half-hour breaks at 12 noon and 3pm.

Each car cleaned pays between £4 and £9: “We used to do 10 cars a day, that was in 1991, and it used to make £45–50 for 10 cars. It was a liveable wage in 1991. Now if you do 10 cars it makes you £40.” Valets must keep a record of the number of cars cleaned each day. However, these are often not reflected in wage payments, which are processed via an unconventional system whereby the company invoices itself for the total sum of the work valets have done according to its own records, which Robert says are often inaccurate. When he queried underpayments, Robert was told that the payments were correct and that he was mistaken. However, he was subsequently informed that his manager regularly took some of the money for himself and when Robert confronted him about it the underpayments stopped.

Valets are required to pay £9 per month for insurance against any damage done to a vehicle. Robert claims, however, that when his co-worker accidentally drove a car into a wall due to faulty brakes, he was suspended and told that he would be taken off suspension only if he paid the company around £400 for damages. Robert reports that valets also have to pay for their cleaning products. The price for the products has risen in recent years from £15 per month to £20 per week.

The pay and conditions of valets contrast markedly with those of the permanently employed management, who enjoy good salaries and additional benefits such as company cars. Robert says that he and his wife have struggled to manage on the low pay and that his long hours have adversely affected their relationship. However, he says that it is his younger colleagues who have it worst: “I know some of the lads who have mortgages are really struggling.”

Robert became a member of a trade union in July 2007. He heard about the union through his wife, who knew a shop steward. The union now plans to take Robert’s employer to employment tribunal, challenging the employer’s presumption that Robert is self-employed. Robert says that he has been offered money by his employers to leave the trade union and stop the tribunal from going ahead but refused: “I was off for a week, they told me when I started back, ‘if you hadn’t have been in the union we’d have paid you for the week you had off’. I said that would have been a first.”

He hopes that the tribunal will result in himself and his co-workers gaining employment rights and being paid the minimum wage.

(We met Robert through his union)
It is our view that vulnerable employment cannot be discussed without reference to legally permissible inequalities in the treatment received by many atypical ‘workers’ in the UK.

Temporary workers comprise around 6 per cent of the labour market. Around 41 per cent of temporary workers are low-paid (£6.50 an hour or less by our definition) – around 612,528 workers in total.

For some workers temporary work is a positive choice, allowing them to balance family commitments with work, or to work for a short period of time before taking time off. However, many temporary workers would rather be permanent.

Temporary workers are more likely than permanent workers to be low paid, and are much less satisfied with their job security. While some forms of temporary employment have been shown to act as stepping stones to permanent jobs, this is unlikely to be the case for those in low-paid and poorly protected posts.

We believe that in the UK these poor experiences of low-paid temporary work arise in part from the reduced legal protections to which many atypical workers are entitled, and the confusions as to what their entitlements are. The entitlements enjoyed by ‘workers’ place them in a considerably more vulnerable position than employees, providing them with fewer rights and reduced job security.

It can be very difficult to determine whether someone is a ‘worker’ or an ‘employee’, and therefore to decide what their rights are. Around 500,000 low-paid temporary workers are not on a fixed-term contract and are therefore likely to have limited employment rights – but the complexities of employment status means that the actual number of people defined by their employers as ‘workers’ who may be greater.

Following our investigations, we are not persuaded that improved treatment for workers would have negative economic costs. Although inexact, available data therefore indicate that only a small proportion of the labour force would be impacted by legislative change. Any economic effects would be modest.

The complexity of employment status means that its provisions on self-employment are open to abuse. An increasing concern is that growing numbers of workers are being classified as self-employed but in reality are dependent workers who do not have the independence and autonomy over their work that characterise genuine self-employment. There is no means to calculate how many workers may be affected. This means that groups including low-paid homeworkers and construction workers can be falsely classified as ‘self-employed’.

Employment agencies play an essential role in today’s labour market. Providing employers with short-term needs with employees who have short-term availability is a valuable service.

No one knows exactly how many agency workers there are in the UK. The Labour Force Survey undercounts agency workers, but shows that around 41 per cent are paid less than £6.50 per hour. Compared to other countries, the UK has a high agency work ‘penetration rate’, defined as the average daily number of agency workers as a percentage of total employment.

Throughout our investigations we came across examples of low-paid agency workers not being provided with the same rights as other workers undertaking the same jobs. Such unequal treatment is legal, as agency workers can be discriminated against with respect to working terms and conditions.
As with other temporary work, research has shown that temporary agency work does not improve labour market outcomes for low-skilled and low-paid workers.

Low-paid migrant workers with the legal right to work in the UK have the same entitlement to employment rights as UK citizens. However, recent research documents multiple instances of migrant workers across low-paid sectors experiencing extreme employment rights' violations. In a minority of cases, employment practices used by employers of migrant workers fall under internationally agreed definitions of forced labour.

The chances of low-paid migrant workers being in vulnerable employment are increased by the terms associated with their specific immigration status.

While different immigration statuses confer different entitlements to support in the UK, all migrants are limited in their access to public funds. Many migrant workers also face conditions on their labour market participation, including A8 and A2 workers. We believe that these restrictions increase workers' chances of exploitation.

The existing work permit system is in the process of being reviewed. Proposals also mean that many low-paid migrant workers in low-skill jobs, without recourse to public funds, will be unable to resign and change employer without losing their right to work in the UK.

The new proposals have also floated changes to the treatment of migrant domestic workers from outside the UK. If implemented, the changes would mean that these workers would be able to stay for only six months, after which time their employer would be required to replace them with a UK or European national. There is evidence of extreme abuse among these workers.

A key aspect of immigration regulations is that they deem some migrants legal and others not. Undocumented migrants, without the right to work in the UK (though they may be legally entitled to live here), are not entitled to protection under employment law apart from health and safety legislation (which is not actively enforced). Their risks of exploitation are also high.

Asylum seekers waiting for a decision on their claims are entitled to reside in the UK and have access to limited public funds, but since 2002 (prior to which they were entitled to work after being in the UK for six months) do not have the right to seek employment. This can force workers into informal work.
It is our view that vulnerable employment cannot be discussed without reference to legally permissible inequalities in the treatment received by many atypical ‘workers’ in the UK. These workers have poorer employment rights entitlements than permanent ‘employees’, for example not being protected from unfair dismissal, not being entitled to a written statement of terms and conditions or to a notice period, and having no entitlement to maternity or paternity pay or time off in emergencies to care for their children. By definition, their work is precarious and their bargaining power is limited. Workers receive less legal protection; they are therefore at greater risk of illegal treatment, and in a much weaker position to challenge it.

UK employment law draws distinctions between ‘employees’, ‘workers’ and the ‘self-employed’. We define ‘atypical workers’ as UK workers who are not entitled to the full set of employment rights that ‘employees’ can take for granted. These jobs are temporary, in the sense that workers are guaranteed no contractual security (although in some cases workers can do these jobs for many years without the chance to move to ‘employee’ status).

It is difficult to know how many atypical workers there are in the UK, as the official source of statistics, the Labour Force Survey, has some serious limitations when it comes to recording the incidence of these types of jobs. It does show that the UK labour market is mainly comprised of ‘permanent’ employment, with temporary work accounting for only around 6 per cent of jobs, or around 1,486,850 workers (54 per cent whom are female). However, in contrast to the general trend, there have been slight increases in temporary work in some sectors, including retail and hospitality. Temporary work is also more likely among minority ethnic groups; 10.8 per cent of people with mixed ethnicity, 8.1 per cent of Asian or Asian British workers and 9.9 per cent of black or black British workers are in temporary jobs.

The most common form of temporary work is fixed-term contract working, which entitles workers to ‘employee’ status and accounts for 41 per cent of all temporary workers. This is followed by casual work (21 per cent), while agency working accounts for just under 18 per cent. Seasonal work accounts for 8.5 per cent. All other forms of non-permanent employment account for 12 per cent of temporary jobs.

The number of casual workers defining themselves as being on ‘zero hours’ contracts (where the employer had no obligation to provide work, and in theory the worker has no obligation to attend) appears to be declining (although given the limitations of the LFS discussed above, actual numbers working under this type of contractual arrangement may be higher). WERS analysis shows that only 2 per cent of employers nationally employed workers on these contract types. Where they remain, they are most common among personal services, elementary, sales and customer services, and process plant and machine operative occupations. While the majority are in the private sector, 21 per cent of workers on such a contract are employed in the public sector. Many workers on zero hours contracts say that the arrangement is not convenient for home or for family life (28.6 per cent of all workers recorded to be on such contracts).
For some workers temporary work is a positive choice, allowing them to balance family commitments with work, or to work for a short period of time before taking time off. For example, in our research agencies told us of workers who valued the flexibility to take long breaks to return to their home countries:

“[They enjoy] the temporary character of their jobs, because they could choose to return home for longer periods than would be available under most holiday schemes.”

(Employment agency respondent).

However, many temporary workers would rather be permanent. Labour Force Survey analysis shows that only 29 per cent of temporary workers specified that they did not want a permanent job, and that among agency workers this fell to only 20 per cent. This is unsurprising, as on multiple measures temporary work provides poorer terms and conditions than permanent employment.

Temporary workers are more likely to be low paid, with 26.6 per cent of non-permanent staff paid below £5.50 an hour, compared to only 12.6 per cent of permanent workers. Overall only 23.2 per cent of permanent staff are paid £6.50 or below, compared to 41.2 per cent of temporary workers (around 612,528 workers by Labour Force survey analysis). Cycling between jobs is also likely to have negative impacts on pay; 26.6 per cent of workers who have been in their current job for less than six months are paid at the minimum wage, compared to 9.8 per cent of workers who have been in their job for two years or more.

A literature review for the Organisation of Economic Co-operation and Development (OECD) shows that temporary workers in the UK experience a wage penalty of 16 per cent and 13 per cent for men and women respectively. Even after a range of individual and industrial characteristics are controlled for, temporary jobs were still found to pay less, and temporary workers were less likely than permanent staff to be satisfied with their pay. There is also some evidence that working conditions for low-paid workers in seasonal or casual work may be in decline; new research shows that, since the introduction of equal treatment for workers on fixed-term contracts, pay for seasonal and casual workers has seen a fall of around 10 per cent, although average hours of work have remained constant.

Temporary workers in the UK are much less satisfied with their job security than permanent staff. Specifically, the OECD notes that “the flexibility potentially offered by temporary jobs may be attractive to a portion of workers in temporary jobs, but a considerable number of temporary workers would probably prefer a more secure job.” Analysis of the 2001 skills survey backs this up, showing that half of temporary workers thought that they had a chance of going a year without being laid off and becoming unemployed, compared to 85 per cent of permanent contract workers.

The incidence of monotonous tasks and inflexible working schedules has also been found to be higher among temporary staff, and there is scarce evidence that for low-paid workers temporary work is a positive choice enabling flexibility. The OECD highlights that “scheduling flexibility associated with temporary jobs may be more frequently used to satisfy employers’ production needs than workers’ time-use preferences.” This assertion was borne out by its analysis of microdata from the Third European Survey on Working Conditions, which shows that in the UK 68.9 per cent of temporary workers have limited working-time flexibility, compared to 54 per cent of permanent workers, and that 30.9 per cent of temporary workers are required to work antisocial hours, compared to 23.9 per cent of permanent staff.

There is strong evidence that low-paid temporary work is less likely than permanent work to lead to labour market progression for vulnerable workers. A comprehensive literature review undertaken for the Department of Work and Pensions (DWP) found that 12 per cent of benefit leavers who obtain a permanent job return to Jobseekers Allowance (JSA) within three months, compared to over one-third (38 per cent) of benefit leavers who obtain a temporary job. Taking a temporary job had a greater impact on the chance of fluctuating between work and benefits than individual client characteristics. A recent report from the House of Commons Committee of Public Accounts reached similar conclusions, noting that 40 per cent of people moving from JSA into work make another claim for JSA within six months and that one factor contributing to such movement in and out of work is that 1.5 million people are in temporary jobs. It concluded that, if people are able to gain only short-term work, this contributes to benefit cycling and may not help them out of poverty.
Evaluation of the government’s Employment, Retention and Advancement (ERA) pilots has also shown that the relationship between temporary work and unemployment is empirically well established, highlighting that temporary job markets are criticised for contributing to the ‘low pay, no pay’ cycle and finding that participants were made redundant or lost their jobs because they had been working on a temporary contract.

The DWP shows that these negative impacts are greatest for those already facing disadvantage; in a large-scale survey 46 per cent of unskilled workers who took a temporary job had returned to JSA within three months (compared to 16 per cent of unskilled workers who accepted a permanent job) and 47 per cent of people with health problems who accepted a temporary job returned to JSA within three months (compared to 21 per cent who accepted permanent employment). Similarly, in the ERA evaluation respondents who had manual jobs or worked in low-skilled, service-sector work were more likely to be offered seasonal or casual employment. Several of these individuals expressed their frustration over a ‘serial’ employment pattern; as one respondent, a 28-year-old woman who had worked in a series of temporary contracts in office administration, stated: “There seems to be a fluctuation of temporary work – and then if it is permanent it’s part-time permanent... so it can be quite difficult to find a full-time permanent job that pays a decent wage.”

The evaluation found that many participants believed that the biggest threat to their employment retention was the weakness of the local job market in supplying ‘good’ jobs, and the predominance of temporary contract work.

It is not just programme participants who identify that temporary jobs can prohibit progression; the OECD also concludes that advancement opportunities are curtailed in temporary work. Limited access to training is a key factor limiting progress, and temporary workers are less likely to receive it; analysis of the British Household Panel Survey showed that casual and seasonal workers received between nine and 12 fewer days’ training per year than permanent workers.

While some forms of temporary employment have been shown to act as stepping stones to permanent jobs, this is unlikely to be the case for those in low-paid and poorly protected posts. For example, while there is evidence of career progression for skilled workers on fixed-term contracts, this is not the case for those in low-paid, low-skilled seasonal or casual work. Some vulnerable workers are therefore cycling between low-paid work and unemployment, and experience outcomes comparable to those who are long-term unemployed, with very low chances of moving into permanent, better-paid jobs and a high probability of a lifetime of persistent poverty. As the OECD describes, these workers are “trapped in situations where they move between temporary work and unemployment, with little chances of getting a permanent job”. Research for the Joseph Rowntree Foundation has also concluded that “for most manual or lower-skilled workers, however, flexibility means insecurity and unpredictability”. Our research also suggests that ‘workers’ can be at greater risk of mistreatment at work than ‘employees’. For example, a quarter of CABx and law centres frequently helped temporary workers such as seasonal workers.

Temporary workers are therefore more likely to be in lower-paid work with poor working conditions, with poor progression opportunities.
We believe that in the UK these poor experiences of low-paid temporary work arise in part from the reduced legal protections to which many atypical workers are entitled, and the confusions as to what their entitlements are. A mixture of statute and tribunal and court rulings determines the legal rights of UK workers, who have different employment rights’ entitlements depending upon their employment status. As discussed above, three main categories of employment are recognised: ‘employees’, ‘workers’ and the ‘self-employed’. Assignment to a particular category has implications for employment protection.

It can be very difficult to determine whether someone is a ‘worker’ or an ‘employee’, and therefore to decide what their legal employment rights are. The government itself acknowledges that employment status is far from straightforward. Guidance on its DirectGov website states that: “There is no one thing that completely determines your employment status because an employment tribunal decides, based on all the circumstances of a case.” This demonstrates a key issue with employment status in the UK: it requires recourse to an employment tribunal (ET) to determine status in an individual case. As discussed in Chapter 5, this is a costly, stressful and time-consuming procedure for both workers and employers.

Labour Force survey analysis suggests that in the UK there is a total of around 500,000 low-paid ‘workers’ with limited employment rights. However, research undertaken for the Department of Trade and Industry (DTI) demonstrates the extent of the uncertainty around employment status. In a large-scale survey of around 4,000 workers, it was found that, even after applying tests of economic reality, for 12 per cent of those in work it remained unclear whether they were ‘employees’, ‘workers’ or ‘self-employed’. They noted that the legal test of ‘mutuality of obligation’ causes particular uncertainty for casual workers and those on zero hours contracts, and that the legal division between self-employment and employed status does not match the perceptions of those in non-standard employment, meaning that many workers may be presuming that they are entitled to employment rights that a court of law could find they do not have. The confusion can also mean that workers who do have entitlements may presume their rights are more limited – for example, recent research has shown that there is a misconception among some workers that the minimum wage applies only to full-time or ‘proper’ jobs, finding that many of the ‘worker’ respondents “thought they were legitimately underpaid because they were not in a proper job (i.e., they were part-time or casual workers).”

The Scottish Low Pay Unit’s submission to our Commission also highlighted these difficulties, noting that many workers who have contractually poorer conditions than employees may not be aware of what their rights are or that they have fewer entitlements than others. It stated: “It is important to note that the issue of the employment relationship usually only becomes apparent in conjunction with other serious problems at work. The likelihood is that many workers in Scotland are, without their knowledge, suffering vulnerability as a result of a lack of clarity on their employment status.” Research respondents also identified confusion around employment status as an issue:

“There is a lot of confusion about people on temporary contracts or people who describe themselves to us as casuals, having some lesser employment status, and when we explore it they are just normal employees but they’ve been described by their employer as a casual and had their work hours up and downed. When you look at it they should be proper employees.” (Employment rights adviser)
The DTI research also found that, where workers do have legal entitlements, the uncertainty in the law creates a situation where some employers may avoid their obligations by exploiting the lack of awareness that workers could have regarding their actual rights. The study further notes that “the independently self-employed as well as freelance workers can be subject to considerable control from a client or user, in the sense of being unable for economic reasons to refuse work; agency workers and zero-hours contract workers rarely exercise any legal right they might have to turn work down”. Such issues were raised consistently during our visits. For example, the Polish Welsh Mutual Association provided evidence to us of workers on such contracts being asked to work on production lines until the early hours of the morning (itself a violation of their rights under the Working Time Directive). Despite their contracts specifying that they were not obliged to take work offered, it was made clear to them that no more work would be forthcoming if they did not comply. The contract also specifies that their employer is not obliged to provide work – and a week later this clause was used to dismiss many of the workers as they arrived for the morning shift.

Similarly, UNISON has provided our Commission with evidence of full-time care workers in the voluntary sector working on casual contracts alongside permanent staff doing the same job. The casual staff undertake the same work as the permanent employees. They are obliged to work when needed, and would lose their jobs if they didn’t attend. However, they have no legal guarantees of their hours, and fewer employment protections than their colleagues, including denial of the right to request flexible hours to support young children or dependents:

“In practice a lot of those workers are relied upon to do regular shifts and also not simply to fill in, they are relied upon to take on regular key working responsibilities.”

(Trade union officer)

The broader issue, however, is that legal distinctions drawn between ‘employees’, ‘workers’ and the ‘self-employed’ mean that employment rights are not evenly distributed. Many low-paid temporary workers do not qualify as employees, and therefore have fewer legal rights at work. In addition to more extensive statutory employment rights, ‘employees’ often also benefit from better contractual rights and workplace policies than ‘workers’, including agency workers, casual workers and many homeworkers. In particular, many employers will offer contractual sick pay to employees, which may well exceed Statutory Sick Pay entitlements. Good employers also provide higher levels of maternity pay than the statutory minimum. In some limited circumstances, casual workers or homeworkers who are directly employed by an employer may be able to bring a claim for equal pay where they receive less sick pay or maternity pay than employees in the same workplace. However, it is lawful for an employer to pay agency workers less for doing exactly the same job as directly employed staff, or to provide them with less sick pay or maternity pay.
Conchita’s story

Conchita is 48 years old, Spanish British and a qualified and experienced further education lecturer. Conchita was made redundant from a permanent post and is now back working as an hourly paid lecturer, something she has done twice before. Paid only for the hours spent teaching, those teaching hours have transpired to be so variable and unreliable as to put Conchita in a deeply insecure and financially precarious position.

In her present job Conchita is paid around £25 per hour of teaching time. The effective hourly rate is much lower because this covers time on holiday and doing administration work (for example, preparing classes and marking coursework). There is only minimal sick pay and no reimbursement for necessary materials and equipment. Hours depend on course bookings and can be highly variable – from a maximum of 12 teaching hours per week to sometimes half that – and at other times no hours at all.

Because Conchita’s role was teaching classes on behalf of the college in learning centres and workplaces, she was often the loser in the relationship between employer, client and employee: there were no travel expenses even when clients cancelled courses on the day due to low turnout. When courses were cancelled outright, the college would try to find replacement work, but this was not always possible. Further problems and insecurities were caused by a complicated and slow payments system.

Consequently, Conchita did not know if and when she would be given work or when she would be paid for the work she had done, causing stress and making budgeting near impossible: “As an hourly paid teacher I am constantly stressed about money and whether I’m going to get work, especially every time a holiday comes because I spend a long time without earning anything, I don’t know whether I’m going to get work at the other end and, on top of that, I have to wait for a long time to get paid once I do start work. So it’s always a constant anxiety. But that’s not just me, that’s every hourly paid lecturer.”

Since querying the validity of the payments system with the college, on advice from a Citizen’s Advice Bureau, Conchita has been given no work. Although she is a member of a trade union, she found that, because all union representatives in her college were permanent employees, they were unable or unwilling to communicate the problems of hourly paid lecturers. Conchita comments that the current system makes it impossible for hourly paid workers to be effective reps: “The process of union democracy and facilities time simply doesn’t work with hourly paid teachers because we can’t get to meetings, because we can’t afford the lost pay and because students themselves cannot change their timetables to suit their hourly paid teacher’s needs.”

Conchita has spent long periods without work or income and calculates that she has been on below the minimum wage rate for the past three years. This has caused real hardship for her and her husband and has been a source of stress and argument in her marriage. She and her husband have had to borrow money from relatives and have not been able to afford a holiday for more than 10 years. Conchita recalled having so little money that their last Christmas dinner consisted of spaghetti and tomato sauce and at New Year they ate beans on toast.

Conchita is now looking for other work and would like to be able to have a career as an IT trainer.

(We met Conchita after she contacted us via our website)
The following table sets out the differences in the employment rights of UK ‘employees’ and ‘workers’:

**Table 5**

*Employment rights of workers and employees under UK employment law*

<table>
<thead>
<tr>
<th>STATUTORY EMPLOYMENT RIGHT</th>
<th>EMPLOYEES ONLY</th>
<th>ALL WORKERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrimination</td>
<td></td>
<td>✔️ 39</td>
</tr>
<tr>
<td>Protection from discrimination relating to equal pay, sex, race, sexual orientation, disability, age, religion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Employment Rights</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Written statement of employment particulars, specifying pay, hours of work, holidays, sick pay arrangements and disciplinary and grievance procedures</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Itemised pay statement</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Protection from unlawful deductions from wages</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Statutory sick pay</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>National Minimum Wage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to be paid the NMW</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Failure to allow access to records relating to the NMW</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Protection from unfair dismissal related to NMW</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Protection from detriment related to NMW</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Working Time</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights to daily rest, weekly rest and rest breaks</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Paid annual leave</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Right not to be dismissed in relation to working time</td>
<td>✔️</td>
<td></td>
</tr>
<tr>
<td>Right not to suffer detriment in relation to working time</td>
<td>✔️</td>
<td></td>
</tr>
</tbody>
</table>

*Agency workers and home-workers expressly covered*

(Note: Apprentices under the age of 19, or aged over 19 and in the first 12 months of their apprenticeship, are not entitled to the National Minimum Wage)
<table>
<thead>
<tr>
<th>STATUTORY EMPLOYMENT RIGHT</th>
<th>EMPLOYEES ONLY</th>
<th>ALL WORKERS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dispute Resolution</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to a grievance procedure(^41)</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to a disciplinary procedure(^42)</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to be accompanied by a union rep or a colleague in a grievance or disciplinary hearing</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td><strong>Health and Safety</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to a safe and healthy workplace</td>
<td></td>
<td>✓ includes some protection for self-employed workers working in employers’ workplace</td>
</tr>
<tr>
<td>Right not to be dismissed on health and safety related grounds</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right not to suffer detriment for exercising rights on health and safety</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to paid time off for safety reps</td>
<td>✓(^43)</td>
<td></td>
</tr>
<tr>
<td><strong>Job Security / Unfair Dismissal</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statutory minimum notice periods</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>General right not to be unfairly dismissed or unfairly selected for redundancy</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Protection for terms and conditions, continuity of employment and from dismissal in case of transfer of an undertaking</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right for union or workplace reps to be informed or consulted about collective redundancies or transfers of an undertaking of affected employees</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Protection from dismissal on grounds of medical suspension, acting as occupational pension trustee, for making a protected disclosure, for asserting a statutory right</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to statutory redundancy pay</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Protection from dismissal relating to right to be accompanied in grievance and disciplinary procedures</td>
<td></td>
<td>✓ This is the only unfair dismissal right which applies to non-employee workers</td>
</tr>
<tr>
<td>STATUTORY EMPLOYMENT RIGHT</td>
<td>EMPLOYEES ONLY</td>
<td>ALL WORKERS</td>
</tr>
<tr>
<td>----------------------------</td>
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</tr>
<tr>
<td><strong>Family-Friendly / Carers’ Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paid time off for ante-natal care</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Statutory Maternity Pay</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Rights to maternity leave and to return to the same or an equivalent job</td>
<td>✔</td>
<td>May have entitlement under sex discrimination legislation which applies to all workers, but are not automatically entitled</td>
</tr>
<tr>
<td>Protection from dismissal on grounds of pregnancy or maternity leave</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>Statutory Paternity Pay</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Statutory Paternity Leave</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Right to request to work flexibly</td>
<td>✔</td>
<td>expressly excludes agency workers who are employees</td>
</tr>
<tr>
<td>Parental leave or time off for dependents</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td><strong>Trade Union Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to statutory recognition</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Right not to be subjected to detriment on grounds of trade union membership or activities</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Protection from unfair dismissal on grounds of trade union membership or activities</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Right to take industrial action (trade union immunities apply where action taken)</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Protection from unfair dismissal for participating in lawful industrial action</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Protection from employer offering incentives for individual to opt out of union membership</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Rights to paid time off for union duties or training (including for union learning reps)</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td><strong>‘Atypical Worker’ Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equal treatment rights for part-time workers</td>
<td></td>
<td>✔ (44)</td>
</tr>
<tr>
<td>Equal treatment rights for those on fixed-term contracts</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td><strong>Miscellaneous</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protection for whistleblowers</td>
<td></td>
<td>✔</td>
</tr>
<tr>
<td>Time-off rights relating to public duties, occupational pension scheme trustees, non-union employee representative roles</td>
<td></td>
<td>✔</td>
</tr>
</tbody>
</table>
The entitlements enjoyed by workers place them in a considerably more vulnerable position than employees, providing them with fewer rights and reduced job security. Our investigations have also suggested to us that these weaker protections place workers at greater risk of illegal abuse. Their employment is characterised by insecurity, which means they can be dismissed with little or no notice, and that future work may be dependent on compliance with very poor working conditions. For example, Working Families reported to us that they often receive calls from female agency factory workers who have been dismissed immediately upon becoming pregnant, or denied appropriate risk assessments at work:

“We have a lot of calls from agency workers; it’s easier for agencies to cover their pregnancy discrimination by just saying we haven’t got any work for you this week. There are more possibilities for people to discriminate less obviously than if you were in a full-time job.” (Employment rights adviser)

Similarly, trade union officials have reported cases to us of disabled agency workers being dismissed after asking for reasonable adjustments to be made to production line work (such as a slightly higher stool) to enable them to work safely:

“For example, the driver raised the issue about the actual stool where he sits in his machine, in his truck, getting in and out and the seating and that kind of adjustment that he needed because if he was driving he was uncomfortable and also it might have been risky for him to get out of the cab so he might have had a fall... and because he made a fuss they never asked him again... And with the assembly line worker I can’t remember, I think she was sitting and needed again somewhere to sit in a seating plan, maybe a proper chair. They didn’t do it.” (Trade union officer)

For workers with caring responsibilities, flexible atypical working can come at the cost of employment rights. As discussed above, most do not make a conscious choice to undertake temporary work. However, among those that do ‘choose’ this option, our investigations suggest additional caring responsibilities often influence their decision, meaning that temporary work may be the only way to balance both family and work commitments. Research has argued that there is no justice in requiring guarantees of security or progression in the paid labour market to be waived in exchange for flexibility, claiming that “the inability to distinguish between real autonomy and the results of dual obligations or shared commitments has led to the exclusion of the most vulnerable workers from the protection of labour law”. The DTI survey on employment status came to similar conclusions, noting that workers in atypical employment are often making constrained choices, including the need for work to fit in with family arrangements, the costs of retraining as a result of taking time out of full-time employment, discrimination on grounds of age, gender and disability and the lack of availability of regular work.

Following our investigations, we are not persuaded that improved treatment for workers would have negative economic costs. In its response to a review of employment status, launched in July 2002, the government concluded that reform of employment law would not prevent instances of abuse or lack of awareness but could damage labour market flexibility and result in a reduction in overall employment. However, in total, temporary workers comprise only around 6 per cent of the UK labour market, of whom around 41 per cent already have ‘employee’ protections. Although inexact, available data therefore indicate that only a small proportion of the labour force would be impacted by legislative change. Any economic effects would be modest.

We also believe that there is evidence that improved employment protection can lead to economic benefits, even for the smallest of employers. For example, a study of informal small firms who were or had been non-compliant with the minimum wage found that complaints about regulation often focused upon the possible effects rather than what happened in practice. For those firms that had moved towards payment of the minimum wage, guidance and support from the Inland Revenue had often led change to provide a “catalyst for the modernisation of other aspects of the business.” There was also some evidence that firms that paid the minimum wage rate had been able to attract more skilled and committed workers. Other evidence shows similar positive effects, for example finding that better protections can lead to lower levels of sickness absence and therefore enhanced productivity. One study concluded that: “Through the finding that the introduction of the NMW (national minimum wage) helped to lead to a reduction in the rate of sickness absence among low-wage employees, the analysis suggests that minimum-wage legislation can lead to beneficial
productivity effects for firms and public sector organisations that employ significant numbers of low-wage employees.”51 Employers have also found that improved rights to work flexibly impact positively upon productivity, with 42 per cent saying that work-life balance practices had led to a positive effect on workplace performance, and only 5 per cent saying that the effect had been negative.52

We believe that business would also benefit from improved legislation regarding employment status, although we note that not all employers in the UK support this position. While ETs carry significant costs for employers, at present determining employment status often requires legal intervention. Government aims for continuing reductions in the “complexity, administrative costs and other irritants for business associated with complying with employment law obligations – but without diluting existing employee or union rights”.53 We believe that a simplified system of employment status would serve these aims, reducing the current confusion around the rights of different groups of workers, decreasing administrative burdens, increasing certainty for employers and ensuring that regulation is not misused as a means to reduce protections available to UK workers.

Improved rights could also mean reduced turnover, leading to significant cost savings for contractors and their clients (to whom turnover costs are passed on). The Chartered Institute of Personnel and Development (CIPD) calculate the average cost of labour turnover in 2006 to be £8,200 per leaver. The median cost for replacing a manual or craft worker is £2,000 when all turnover costs (including vacancy cover, redundancy costs, recruitment/selection, training and induction costs) are taken into consideration and for someone engaged in customer, personal, protective or sales services, the average cost of turnover increases to £9,000.54 Reducing turnover therefore makes business sense. Research shows that employers recognise these savings, and in some cases are moving to minimise their use of temporary workers in the interests of improving employee performance and commitment.55

As stated in the Chapter 1 of this report, evidence of negative labour market effects from the protections that our labour market does include is negligible. Equal treatment rights for part-time workers did not lead to a decrease in rates of part-time employment,56 and there have been no adverse economic effects from new rights for working parents.57 The DTI’s own research has concluded that there is no evidence that improved rights for part-time or fixed-term contract staff have reduced employer willingness to hire these workers.58 Evidence suggests that the introduction of the NMW has led to no significant employment effects59 and recent evidence shows that its impact on productivity has been positive, as companies innovate and develop new forms of non-wage competition.60 Most countries in the EU distinguish between different employment relationships on the basis of ‘legal subordination’, dividing employment status into ‘subordinate’ or ‘autonomous’. However only the UK and Ireland further distinguish between ‘employees’ and ‘workers’. Most other countries also have statutory definitions of employment status, as opposed to the UK where case law is responsible for determining status. The UK is therefore isolated in Europe in both the complexity of its employment status legislation, and in the limited scope of the rights that it makes available to ‘workers’.

We believe that it is wrong that those in low-paid temporary work are denied the rights that most working people take for granted. We also believe that improving legal protections could have a significant impact on job quality for the lowest paid, improving job security and access to training and therefore improving labour market progression for the worst off. In our view there are therefore strong moral and economic arguments for improving protections available to the small minority of UK workers in atypical low-paid work.
Tina’s story

Tina is in her late sixties, white British and educated to O-level. For 25 years she worked for a large publishing company as a ‘home delivery agent’. Working from home, Tina had to insert leaflets into newspapers and manage their delivery. For this she received minimal piece-rate pay and no benefits. After the minimum wage and other new employment rights came in, Tina’s employers sought to protect themselves by issuing new employment contracts to agents implying self-employed status and responsibility for the recruitment of newspaper distributors. When Tina queried the validity of this she was sacked.

Tina’s role required considerable responsibility. She was assigned an area of 2,500 households to whom she was to ensure that papers were delivered with advertising leaflets inserted. After they were delivered to her home, Tina would spend three days – working around eight hours a day – inserting leaflets. She would then drive the papers to the distributors (often children doing paper rounds in their spare time). As an agent she was also responsible for recruiting and paying distributors and checking whether customers received their deliveries.

Although the job required agents to make three or four car journeys a week, there was no reimbursement for petrol or car maintenance. Pay was unreliable – varying according to size and number of leaflets – but was always very low: “The most I ever got paid was £70 per week... You couldn’t have lived on our wages.” Tina was able to get by only through doing other part-time work and because her husband worked full time. She reports that most other agents (all of whom were women) had partners in work, had other jobs or had multiple delivery areas. While all home delivery agents were casual workers, supervisors were permanent members of staff on full employment entitlements and travel expenses.

Tina says she was concerned about the new contracts because they essentially mean: “that I’d become a sub-contractor and all the employment liabilities that an employer would have were all being sort of piled on to the delivery agent”. As well as implying self-employed status and responsibility for suppliers’ recruitment and wages, they also stipulated further responsibilities such as taking out public liability insurance.

Tina’s complaints to her managers about these developments, and about the low (sub-minimum wage) pay of her distributors, were ignored. After gaining advice from her local Citizens Advice Bureau (CAB), who agreed that Tina was not ‘self-employed’ and should not sign the contract, she confronted her managers again: “I told the company that I wasn’t going to sign it [the contract] and gave them all the details that the Citizen’s Advice Bureau had given me and asked them what were their reasons for saying I was self-employed. Well all I got back about a month later was just a thing to say that my contract was terminated forthwith.” Tina eventually gained an out-of-court settlement from her employer with ‘gagging’ conditions. She also reported the situation to the Minimum Wage Compliance Unit but ultimately it took no action.

Tina was hurt by the fact that the company she had been loyal to for so many years had sacked her by letter. Until she went to the CAB, Tina was unaware that the minimum wage could apply to casual workers. She would like to see more done to raise awareness about minimum wage entitlement and for unions to pay more attention to atypical workers: “I mean, there are probably masses of people who don’t know anything about that they should get the minimum wage and [think that] just because they work from home or only work for a few hours they’re not entitled to it.”

(We met Tina through the National Group on Homeworking)
The complexity of employment status means that its provisions on self-employment are open to abuse. According to the DirectGov website, the self-employed do not have employment rights with the notable exceptions of health and safety and some discrimination protection, as they are their ‘own boss’ and can decide how much to charge for their work, how much holiday to take, etc. However, an increasing concern is that growing numbers of workers are being classified as self-employed but in reality are dependent workers who do not have the independence and autonomy over their work that characterise genuine self-employment. This group are described as the ‘bogus self-employed’. Many construction workers are classified in this way, as are many home-workers engaged in manufacturing, courier or telesales work. These workers can work for the same employer for years without entitlement to the most basic of employment rights, for example paid holiday, maternity leave or statutory sick pay. They can also be sacked or asked to leave at a moment’s notice, and cannot claim unfair dismissal or redundancy pay. Often it is not government but employment tribunal rulings that affects their status. In 1984, some home-workers won cases claiming they were employees. These cases related to people who had worked on a long-term basis for the same employer. However, from 2004 onwards the courts have moved away from this approach, and are now more likely to rule that home-workers are self-employed.

In its submission to us, Thompsons highlighted multiple examples of bogus self-employment. It stated that: “Thompsons sees employment practices which deliberately, yet often legally, define casual, temporary and agency workers as self-employed and therefore exclude them from many basic employment rights.” They provided the following case study to illustrate this point: “Company S operating out of Airport X recruited baggage handlers via a related company. Each baggage handler was set up as a director of a limited company in their own right after S bought several off-the-shelf companies. Each ‘director’ then hired themselves out as labour to S. As far as S was concerned, the baggage handlers were not their employees but were employees of the individual baggage handlers’ companies. The workers received inferior terms and conditions, including pay, to their counterparts directly employed by S for carrying out the same work.”

Our survey of employment rights advisers found that around a quarter frequently or very frequently assisted workers who could be considered to be ‘bogus self-employed’. Advisers provided examples of cases they had seen, for example:

“Something I’ve not come across before I came here, is a distribution centres who employed you as a deliverer. You have to buy your own van, it has to be of a certain age or less, they dictate even the make of van you can have, you have to, at your own expense, paint it with the company logo, they dictate how often it has to be maintained and serviced... – all at your own expense. It’s a very big name. That is common practice.”
(CAB manager/adviser)

The National Group on Homeworking (NGH) and Oxfam have presented us with evidence that the lack of clarity in employment law means that many homeworkers find themselves falsely classified as self-employed. Findings from an NGH survey of 200 homeworkers found that only 33 per cent received holiday pay, and even fewer were provided with sick pay, although only five workers overall (1 in 40) were found to have clear self-employed status. The vast majority of homeworkers were women, around 50 per cent of whom were from minority ethnic groups. 44 per cent had low awareness of their rights, and 40 per cent were not aware that their employment status had an impact on their treatment. Importantly, even among those who were classified as self-employed, very few claimed expenses against tax. The homeworkers were therefore doubly disadvantaged from bogus self-employment, losing employee rights and employment protections, and also unaware of the possible tax benefits.
Recent research also highlights the difficulties that low-paid homeworkers can experience when trying to establish their employment status and claim the employment rights that they are entitled to. In their submission to our Commission the Welsh Minority Ethnic Women’s Network (MEWN Cymru) reported on their research which found that out of a group of nine homeworkers six received none of the rights of ‘workers’ or ‘employees’, despite doubting that they were self-employed. NHG have also recently published a new study on the experiences of homeworkers, based on the experiences of 67 workers across the UK. It found that few of the homeworkers were seen as ‘employees’ and around half were not even considered ‘workers’, instead being defined by employers as ‘self-employed’ – despite lacking the genuine autonomy that characterises self-employment.

UCATT has specific concerns regarding the operation of the Construction Industry Scheme (CIS), which sets out the rules for how payments to subcontractors must be handled by contractors in the construction industry and certain other businesses. The new CIS scheme has been operational since 1st April 2007, replacing the previous CIS scheme which started in August 1999. Its stated aims are to reduce the regulatory burden of the scheme on construction businesses; improve the level of compliance by construction businesses with their tax obligations; and help construction businesses to get the employment status of their workers right.65

In their submission to our Commission UCATT noted that the vast majority of workers on the CIS have the characteristics of employees, as they have set hours, cannot refuse work, have to obey orders and have materials and tools provided. However, many of these workers are classified as self-employed.

Unlike other employees, this group of bogus self-employed workers are taxed 20 per cent at source (30 per cent before registration occurs); however, they can claim much of the tax back through making an end-of-year tax return. The employer pays no NI contributions and the worker pays at a lower level. Due to their self-employed status, many CIS workers have very few statutory employment rights and are denied access to additional workplace benefits. These workers are also less likely to have a full-time union representative in their workplace, and will not be entitled to union representation.

UCATT report that prior to the ending of the previous CIS scheme in April 2007, there were 1.9 million CIS cards in circulation. The new online scheme has also attracted heavy usage, and it is estimated that total CIS applications will be in excess of 2.2 million, in an industry of 2.4 million workers. The scale of the problem is therefore vast. In its submission to our Commission, UCATT highlighted the poor treatment that the bogus self employed can be subjected to: “Companies operating bogus self-employment do not have a stable workforce. Due to the short-term thinking of construction companies using bogus self-employment, ongoing training is virtually non-existent. Research has revealed that sites using bogus self-employment have a higher rate of injuries and fatalities. Sites operating bogus self-employment are almost certainly not going to have union organisation. Therefore they will not have independent safety reps. Excessive hours, which have health and safety implications, are not uncommon. Workers are not in a position to turn down work, as they fear that they can be sacked and easily replaced.”

There is also evidence that bogus self-employment is a significant cost to government. UCATT estimate that the tax revenues lost from the construction industry alone are around £5 billion: £2.5 billion in NI contributions and £2.5 billion in tax revenue from workers.

We therefore believe that action is needed to prevent employers using bogus self-employment status as a means to mistreat their workers. This requires a government commitment to challenging misuse of self-employment status, and immediate review of the CIS in the construction sector.
Rebecca is 34 years old, white British and a mother of two. She has A-levels and vocational qualifications in catering. For the past three years, until she left in January 2008, Rebecca had been working as an agency sales adviser in a call centre for a major telecommunications firm.

Rebecca reports numerous ways in which temps were treated differently from permanent staff doing the same job, despite the fact that they were far from actually being temporary – with people working on agency contracts for up to nine years. Rebecca reports that yearly earnings for agency workers could be less than half those paid to permanent directly employed workers doing the same job. Temps also had to negotiate a complicated agency holiday booking and payment system, which meant they were not always paid their full leave entitlement. There was no entitlement to a company pension, sick leave or maternity leave.

Rebecca reports that there was also a clear demarcation between permanent and temporary staff in the workplace: only permanent staff could use the staff car park or get staff discounts on company products, for example. Rebecca found she had to battle to get child-friendly hours while permanent colleagues were granted the hours they requested. Other examples of unfair practices included managers asking only temps to work bank holidays and threatening them with disciplinary action if they refused.

These conditions, alongside the heavily target-driven culture (whereby not meeting targets would lead to being put on a warning), created an uncomfortable and stressful working environment for Rebecca and her agency co-workers. Rebecca says that temps stayed in the job because of the lack of opportunities elsewhere and because “they dangled this bogus [permanent] contract in your face constantly”.

Although agency workers were generally led to believe that they would get a permanent contract if they worked hard, Rebecca was told by a manager that there was little point in her applying because she was on child-friendly hours. Another manager also warned her off joining the trade union because it would cause her to be seen as a “troublemaker” and lessen the chances of her getting a permanent post.

Although she joined the union anyway and it subsequently proved an important source of support, Rebecca reports that, in common with most other agency staff, she generally felt “trapped” and “stuck”. Rebecca notes that working on an agency contract could be demotivating: “You don’t feel like you’re working for the company that you’re working for because you’re not, but you’re expected to behave in the same way as if you were directly employed but you’ve got no incentive to do that.”

Rebecca found her health deteriorating and at times struggled financially. When she tried to get a loan to get through a sticky patch she was refused on the basis that she was classed as a temporary worker. On reflection, Rebecca now says she is unsure how she would have got by had she not been in receipt of Tax Credits.

All this took a psychological toll and Rebecca says it was often difficult to come home from work and find the energy to properly attend to her two children. She struggled with “trying to remain positive for them”, which she told us was hard if “you’re feeling you’ve got no self-worth and are downtrodden and under pressure”.

With the support of her partner and his family, Rebecca has finally been able to leave the job and begin studying for a law qualification. She is also applying for a new job and hopes to find one with enough job security to allow her to get a mortgage, plan for the future and go somewhere on holiday: “I haven’t had a holiday for seven years. I’ve been living hand to mouth, get paid Friday – by Saturday I’ve got no money left.”

(We met Rebecca through her union)
No one knows exactly how many agency workers there are in the UK. While the LFS says there are 260,000 agency workers, the Recruitment Employers Confederation says that on any one day there are 1.25 million agency workers in Britain. The actual number is likely to be somewhere in between. The Labour Force Survey shows that around 41 per cent of agency workers are paid below £6.50 an hour, around 105,297 workers.

Compared to other countries, the UK has a high agency work 'penetration rate', defined as the average daily number of agency workers as a percentage of total employment. While in 2006 the penetration rate was 4.6 per cent in the UK, it was only 2.1 per cent in the USA, 0.9 per cent in Germany and 2.1 per cent in the Netherlands. The UK also has the largest number of employment businesses in the EU15, which have by far the greatest number of branches (around 10,000 followed by to 7,153 in Denmark, 6,299 in France and 4,200 in the Netherlands). The turnover of employment businesses in the UK is also the highest of the EU15 – around 34,693 million euros, compared to 18,400 million in France and 6,500 million in the Netherlands.

Employment agencies play an essential role in today’s labour market. Providing employers with short-term needs with employees who have short-term availability is a valuable service. Some workers, particularly those with skills that are in demand or in inherently short-term sectors such as parts of the entertainment industry, are happy to work through agencies.

However, most employers do not use agency workers. Analysis of the 2004 Workplace Employee Relations Survey (WERS) shows that around 12 per cent of employers nationally make use of agency workers, the majority of whom are small businesses. At the time of the survey, only 4 per cent of these businesses were using three or more agency staff.

Throughout our investigations we came across examples of low-paid agency workers not being provided with the same rights as other workers undertaking the same jobs. Such unequal treatment is legal, as agency workers can be discriminated against with respect to working terms and conditions. During our regional visits we met agency workers in a factory who had no right to employer sick pay, were paid less than their permanent counterparts, and could be sacked at a moment’s notice. A TUC survey of workplace representatives found similar problems, with 16 per cent of respondents saying that agency workers in their workplaces did exactly the same work as permanent staff but were paid less.

These experiences are not isolated. In an extensive You Gov survey of around 2,500 agency workers, 56 per cent of respondents said that they had not had the same rights to paid holiday as permanent staff doing the same job. Only 13 per cent said that they had the same rights to sick pay as permanent staff and just 36 per cent said that they had been paid the same or more as permanent staff doing the same job, which fell to 22 per cent among those being paid the minimum wage. This is unsurprising, as on average agency workers earn only 83 per cent of the pay of their permanent counterparts.

Some agency workers remain in post for extended periods of time. LFS analysis also shows that 27.8 per cent of agency workers have been in post for a year or more, and that over half have been in a placement for more than six months. 26 per cent of respondents to the TUC You Gov survey reported that their employer always used agency staff for their job, which rose to 36 per cent of respondents in transport, distribution, warehousing and storage, 42 per cent for respondents working in hospitality, and 50 per cent for those working in cleaning; 14 per cent said that they were employed to do a job previously done by permanent staff. In recent research in the poultry sector, most directly employed workers thought that
there were permanent vacancies available on site for agency staff, should companies choose to offer the posts to them.\textsuperscript{75}

During our work we have heard evidence about agency workers being retained on such extensive placements. For example, the RMT union reported to us that they are aware of customer service assistants and chefs supplied by employment agencies working for transport companies for over two years without being offered permanent contracts. In the TUC survey of workplace representatives, 5 per cent of respondents said that agency workers were engaged for over two years.

Other low-paid agency workers are placed daily in different sites. This group would, for example, include a temp called in to cover in a canteen or a factory for the day, or migrant workers who are driven by an agency to different processing lines each evening. These workers also face poorer terms and conditions and have even less security over their hours, as their placements are never even semi-permanent. Their work fluctuates around the needs of the host employer and can mean, for example, workers being laid off on a weekly basis, or being provided with only two days’ work. The agency their contract of services is with is not required to guarantee them specified hours of work and their lives are therefore characterised by the need for extreme flexibility and uncertainty, with their pay often barely enough to live on. During our work we have heard of workers who had been called upon to work 16-hour shifts one week, and were then dropped the next. We also received reports of workers being expected to be available to undertake cleaning duties on a 24-hour basis. Those who refused were liable to be denied placements in the future.

It also appears that regardless of the length of time agency workers are in post, some companies are increasingly using them to replace permanent positions. According to the International Confederation of Private Employment Agencies (CIETT) survey of 500 companies across Europe, 27 per cent of firms said that they used temporary agency workers to replace permanent staff.\textsuperscript{76} Our research suggests that a minority of employers in the UK are also engaged in this practice – analysis shows that for 7 per cent of establishments using agency staff, agency workers undertake work that was previously done by directly-employed employees.\textsuperscript{77} Responses to our research indicated that this practice may be most prevalent in low-paid sectors:

“At the sharp end of the labour market where we are, a meat processing plant where they told the 400 workers, the majority of whom were indigenous, you’re moving to agency terms or take redundancy. We chose redundancy. They are left with 100 workers now doing packing on agency terms... You are having whole operations now agency working.”

(Trade union officer)

“They take people on as agency and initially, of course, you’re led to believe when you’re taken on as an agency worker that it’s only going to be for a temporary time. They keep saying to you, if you work hard, keep your head down, you’ll get a contract. You were led to believe that this is actually going to happen and of course it never does, so they take you on as agency so they can separate the wheat from the chaff. So obviously, if you’re a problem joiner or just not very good they can get rid of you at a moment’s notice, but to keep you in that state for three years is appalling.”

(Trade union officer)

Many agency workers do not want to be doing a temporary job. The YouGov survey revealed that only 31 per cent said that agency work gave them real choice over their working hours every day, which fell to 26 per cent among those earning minimum wage. These findings reflect those found in wider research; for example a large-scale analysis of the views of temporary agency workers in the USA\textsuperscript{78} found that nearly 60 per cent of all temps said that they would prefer a traditional job. The majority said that they were in temporary agency work because it was the only job they could find. In research undertaken in the UK, two-thirds of agency workers surveyed in the poultry sector stated that they would prefer to work directly for an employer, largely for reasons of higher pay and better conditions and greater stability/predictability.\textsuperscript{79}

There are also relatively high levels of dissatisfaction among agency workers. The TUC’s YouGov survey of around 2500 agency workers found that 28 per cent of workers had changed employment agency because they did not feel they had been getting a good deal. Those in lower-paid jobs expressed greater dissatisfaction with employment agencies: 30 per cent of those paid at minimum wage level did not feel that their agency had treated them fairly, compared to 22 per cent overall; 35 per cent of those paid at minimum
A wage level had changed employment agency because of poor treatment. Overall, 14 per cent said that there had been deductions from their pay that they were not expecting or they did not understand, which rose to 30 per cent among those on the minimum wage. Only 53 per cent agreed that ‘the employment agencies I have used have always treated me fairly’.

In the survey 49 per cent of respondents said that they felt they had to keep in with their agency, which made it harder to turn down unsuitable or inconvenient assignments. This increased to 62 per cent among those being paid the minimum wage. 46 per cent of workers said that they did not feel confident about their legal rights as an agency worker (65 per cent for workers who were paid the minimum wage) and 64 per cent said that it should be illegal for an employer to pay agency workers less than permanent staff, increasing to 69 per cent for those on the minimum wage.

Agency workers in the recent research undertaken in the poultry sector also expressed a number of concerns about their work, including a lack of clarity on how they could become permanent; worry about the precariousness of their employment situation; a desire to work more overtime; a desire to receive more training; and a desire to learn English. From directly employed workers, there were concerns about terms and conditions being consistently reduced and about the treatment of agency workers by agencies.80

Our research81 found that 62 per cent of CABx and 81 per cent of law centres saw agency workers frequently or very frequently, and qualitative follow up suggested that there had been recent increases in the number of agency workers experiencing problems at work. For example, one adviser told the researchers:

“Agency workers are a major problem, it is currently the easiest way for employer to avoid their employment law responsibilities, and it’s becoming almost the main way now, because so many other things have been tightened up, so I think agency working is becoming more and more popular for that reason”

(Law centre adviser)

The study found that with many agency workers, the only advice that could be provided was that nothing could be done to resolve their difficulties. For example, advisers told the researchers that:

“There’s nothing very much they can do. I mean, they come to me and say – what can we do? – and basically there isn’t anything that they can do because they are not employees in the ET description of an employee, they are agency workers and their rights are virtually non-existent. In fact, the one thing the Government could do to improve the lot of workers in this country overnight would be to make employees and workers identical.”

(CAB adviser)

We were also presented with evidence that continued use of agency labour can cause divisions in the workplace. Respondents to our research described situations that they had experienced in workplaces with high proportions of agency workers.

“During that process some of the indigenous workers came to us and said, ‘the first job you can do after recognition is get rid of this lot, the migrant workers’. That’s down to the fact that these employers and non-workers have a two-tier system where they’re paying the migrant workers lower rates of pay and the indigenous workers see that as a threat that their terms and conditions will also be lowered to the minimum wage… What would stop the racism is if the Government says, ‘it doesn’t matter where you come from in the world but whoever you work for you get the same money, terms and conditions as the person you’re working by the side of’.”

(Trade union officer)

“An employer had ten Polish workers on a production line. They worked up to 70 hours per week, all at minimum wage – no overtime – with accommodation provided. The Polish workers wanted the same rights as their English counterparts [i.e. a contract of employment and paid overtime] and requested this from the employer. The employer said no. The Polish workers went on strike for a day in protest. The employer told them that things would not change, that if they didn’t like it they had 24 hours to leave accommodation. Rather than end up on the streets, these workers have accepted these conditions.”

(Sefton Equalities Partnership)
Paula's story

Paula is 52 years old, white British and a mother of two. She has no qualifications. Before she started working on ferries and ships, Paula owned a pub for 15 years and before that she was a bus driver. For a nine-year period in the 1990s and early 2000s, Paula worked for a large cross-channel ferry company as a seafarer/steward. For the first eight of those years, she worked through an employment agency, on low pay and with no security of tenure beyond the fortnightly spells she spent on the ship.

Paula was initially paid £4.10 per hour. This was raised when the minimum wage came in, to the then minimum of £5.10 per hour. There was no holiday pay, sick pay, maternity leave or pension provision. Paula reports that after paying the month’s rent, bills and other household expenses she would be left with about £50. About 20 per cent of stewards were permanent and on much better pay and conditions (as well as having greater job security).

Paula worked 14 days on and 14 days off. When she was on, she worked a 12-hour split shift, mostly cleaning cabins. When she was off, Paula was unpaid and unemployed, surviving on the wages earned in the previous two weeks, while hoping to be taken on again for another two weeks: “You were basically laid off every Wednesday you got off the ship.” Although entitled to claim benefits during her 14-day unemployed spells, Paula did not claim anything because of the hassle of having to make and stop claims every two weeks.

An average working day for Paula would start at 5:30am. She would clean cabins until 1:30pm with one half-hour break. There would then be a five-hour gap when Paula would get some sleep before the last shift from 6:30pm to 11:30pm. There were no days off and any overtime was unpaid. Paula reports that if workers complained about their working conditions they would lose their jobs: “You didn’t say anything, you done the job because you knew if you did they’d say well we don’t want you back... It’s like, you know, doing [unpaid] overtime: if you kicked up a fuss you just wouldn’t be asked to come back the following week.”

Spurred by the poor and unfair treatment she and her agency co-workers received, Paula began highlighting the issue of agency workers’ rights to politicians and the media, both independently and through her union.

On one occasion she was suspended for six weeks for petitioning against seafarer working conditions. Paula had become too high-profile to be easily sackable and thanks to her campaigning she and the rest of the agency workers were eventually offered permanent contracts. However, the terms and conditions were far inferior to those given to existing permanent employees – pay was £12,000 (compared to £21,000), with no pension, redundancy or holiday pay provision. A year after she was given the permanent contract Paula lost her job when the company announced they had to make all current staff redundant because the business was no longer profitable.

During her time on the ferries, the poor pay and conditions had a major impact on Paula’s life: “I was doing a 12-hour day for 14 days and at the end of it we were barely living, if you know what I mean, and everything was so stretched, everything was so tight.” She found it impossible to get bank loans if the bank knew of her agency worker status: “I basically had to lie to the bank... it was the only way you could get a bank loan... You can’t get a mortgage because you’re an agency worker.” She continues to worry about how she will manage financially in old age because she was not able to build up a pension while in the job. These financial difficulties and the job itself caused Paula stress and anxiety, and she says that she would have struggled to cope without the hope for change provided by the campaigning work.

Fortunately, since then, things have got better for Paula. She is now in a permanent, secure job working on another ship. She continues her trade union activity and is on her trade union’s women’s advisory committee. Things have not improved, however, for the workers in Paula’s old job on the ferries, many of whom are now migrant agency workers: “All the Portuguese were agency workers and they were only on £2.20 an hour, and it’s still happening now on the ferries. They have to work three months on the ship, 12-hour day, seven days a week and then they get a month off.”

(We met with Paula through her union)
Agency workers receive less training than permanent staff. In the YouGov survey only 25 per cent said that agencies had provided them with training to help them to develop their careers. The TUC survey of workplace representatives also revealed that temporary agency workers did not enjoy the same access to training opportunities as directly employed staff, and as discussed in Chapter 4 the LFS shows that agency workers are less likely than permanent workers to have recently accessed workplace training. This concern was also reflected by respondents to our research and consultation:

“We are concerned with part time and temporary workers on the margins who are never going to be reached by Train to Gain.”
(The National Institute of Adult and Continuing Education)

“I also think it represents a failure of management. I seriously believe that there are managers who prefer having agency workers because they see it as the easy way out. I think it illustrates a failure to focus on quality of service, which is unfortunate because if you want to provide an excellent service you wouldn’t want a whole series of temporary workers or even a long-term temporary worker, you’d want somebody that you could train and develop.”
(Trade union officer)

Evidence has also been presented to us of a trend towards ‘in-house’ employment agencies, where a small minority of employers have decided to deliberately undercut the terms and conditions of existing staff and avoid the expense of payment to an external labour provider. For example, evidence was presented to us of a company setting up a subsidiary employment agency. Despite promoting itself independently, this agency is a part of the same business group, with no evidence that it provides labour to other companies. Although they are (indirectly) employed by the same business, the agency staff can legally be paid less than other workers, and have far fewer contractual rights.

As with other temporary work, research has shown that temporary agency work does not improve labour market outcomes for low-skilled and low-paid workers. A substantial longitudinal analysis of administrative data for 37,000 workers participating in an American welfare to work programme over a four-year period found that direct hire placements led to a 40 per cent increase in earnings above the baseline for low-skilled workers, and also had a significant impact on workers’ chances of remaining in employment in future years. In contrast, temporary placements had a significant impact on earnings and employment only in the first quarter of the first year of work, and within a year the benefits had disappeared and the longer-term impacts became slightly negative. The results ruled out even moderately positive impacts of temporary job placements for programme participants. Further longitudinal analysis also shows there is no ‘stepping-stone’ effect for workers moving from unemployment to agency work, and finds no evidence to suggest that agency work provides a successful route into permanent jobs. Other studies have reached the same conclusions, finding that temporary agency workers experience labour market outcomes that are considerably poorer than direct hire temps and that temporary agency workers endure a 15–27 percentage point lower likelihood of securing a permanent job in the near future than direct-hire counterparts. While highly-skilled agency workers have been shown to experience an increased probability of achieving a permanent contract, evidence shows that agency workers in posts that require low skills experience a lower chance of occupational promotion than those in the general population of unemployed workers.

Agency workers are seldom able to progress into permanent vacancies in their workplaces. In the TUC survey, workplace representatives frequently reported that it would not be difficult to identify permanent staff doing the same or similar jobs in their workplace. However, in only 29 per cent of cases did they always inform agency workers about permanent vacancies. In our research, only a small minority of respondents had procedures that enabled a transfer from agency to direct employment.

Progress from agency to permanent work is further prohibited by the existing conduct regulations that allow expensive transfer fees to be charged by agencies, hindering an agency worker’s chances of making the step into permanent employment. Although these so-called ‘temp-to-perm’ fees are restricted in the time periods to which they may be applied, there is no limit on the amount that can be charged. They therefore seem likely to deter many employers from taking on temporary agency workers on a permanent basis.

Employers main reason for making use of agency workers is the flexibility they provide businesses with. Our research shows that direct cost savings do not
motivate most employers who use agencies. Instead the need for flexible labour, either to respond to production demands or to perform work as and when required was highlighted by a number of qualitative employer respondents. Employers also used agencies to address local labour shortages. Cost was rarely mentioned as a factor. WERS analysis shows that of employers using agency workers, 54 per cent use them to cover for staff absence or vacancies, 37 per cent to match staff to peaks in demand, 23 per cent to fill vacancies for which they cannot recruit, and 13 per cent to cover for maternity leave or annual leave. Other reasons included obtaining specialist skills (9 per cent) and dealing with recruitment freezes (6 per cent).

OECD research on agency work and temporary work also shows that in general there are not financial savings to employers from using agency workers, and in the TUC survey of workplace representatives the most frequently cited reason for the use of agency workers was helping employers to cope with fluctuations in demand. Costs were mentioned by only 4 per cent of respondents. A European Foundation report concludes that factors driving demand and supply of agency workers are linked to comparative advantages (for both the user company and the worker) compared with other contractual relationships. However, it concludes that such comparative advantages can be only partly connected to unequal treatment – specific features of agency work (such as availability of workers at short notice and savings on recruitment costs) count more than the differential treatment of such workers compared to directly employed staff.

The literature on employers’ motives for using agency labour also emphasises that employers’ main motive for using agency workers is flexibility, allowing adaptability to changes in demand or buffering against market turbulence.

Agency work can be a way for employers to avoid employment protections that are available to other staff. Some research has also claimed that employers can use agency labour to avoid unions. Our research also identified that some employers can make use of agencies for reasons including: the ability to drop troublesome staff without recourse to employment law; the ability to recruit with anonymity (for example, when they found it hard to recruit staff locally because of their reputation); their reduced responsibility for the administration of immigration and employment rights; and the opportunity to access flexible workers who would be available on demand for very short shifts. Respondents told researchers that:

“If somebody proves not to be very good for the job and creates problems, the agency can immediately replace [him/her]”

(Employer respondent)

“If they are not obedient or good for the job they are replaced”

(Employer respondent)

We are of the view that improved treatment would not reduce labour market flexibility, either for workers who want to undertake agency work or for employers whose businesses truly depend on labour being flexibly available. Evidence set out in a European Regulatory Impact Assessment actually suggests that, were agency workers to receive equal treatment with permanent staff, productivity could rise as it could lead to improved teamwork and quality of work, particularly important in sectors such as social care and cleaning. A recent CIPD survey similarly found that while one in four employers said that agency workers should never get the same rights as permanent staff, one in five said that they should. Just under two-thirds of employers did not believe that equal treatment would have a negative impact on their workplace. There are however other employers who believe that equal treatment for agency workers would damage business.

Some employers have begun to recognise that in reality agency work can lead to increased business costs, as opposed to savings. The Welsh Assembly of Ministers has recently taken a decision to prevent the existence of a two-tier workforce at the Welsh Assembly. As a result, the Welsh Assembly Government and the National Assembly of Wales (as they now are) use temporary agency workers for only very short-term assignments (of under a month). All other temporary posts, for covering long-term leave, undertaking one-off projects, etc., are filled directly on contracts of up to 40 weeks (with a maximum 10-week extension). Staff on these contracts receive the same terms and conditions as permanent employees, including holiday and sick pay. Line managers are instructed to treat them the same as any other member of staff. Candidates are identified by a recruitment agency, which was selected through an initial tendering process for the supply of staff. Workers can be recruited by request from the agency, which is generally able to supply three candidates’ CVs from its pool of assessed and interviewed prospective workers, within three working days. This arrangement
allows the Assembly and Assembly Government to retain flexibility in getting in staff at short notice while improving treatment.

The Assembly estimates previous Welsh Public Service expenditure on employment agencies at £160 million, around 10,000 staff. Guidance to HR managers issued by the two relevant Assembly Government departments (Value Wales and Public Service Management Wales) states that: “Managers are tempted by the ease and speed of recruitment, and when coupled with the lengthy processes inherent in today’s human resource recruitment for permanent staff, it is no wonder that the market segment has grown. [However] the question is, is it value for money, and even were that the case, is it a sustainable and fair way to deliver public services?”

Car manufacturer Nissan tries to strike a productive balance between fairness and flexibility in its use of temporary workers. At the firm’s Sunderland plant there is a principle of maintaining a ratio between staff on permanent and temporary contracts, whereby the proportion of temporary workers remains at around 20 per cent of the workforce. For Nissan there is a clear operational reason for keeping this proportion of the workforce temporary: they provide a flexible ‘buffer’ against varying demand. However, the management also considers it important to ensure its temporary workforce receives equal treatment and has prospects for progression: all temporary workers are directly employed on six-month contracts, receive the same pay and benefits as permanent colleagues and are offered progression to permanent status where possible. The Nissan Sunderland plant currently employs 4,255 staff, 408 of whom are on temporary contracts. However, in 2008 the plant is due to take on around 800 new staff to meet the demand for production of a new car, half of whom will be temporary employees. In keeping with its HR management principles, the firm will offer permanent positions to all existing temporary staff on a rolling basis throughout the year subject to performance, sustained volume and 12 months’ service with the company. The company say that this move is aimed at reducing high staff turnover among temporary workers and improving retention by providing a clear progression structure and recognising the positive contribution made by temporary staff.

Our research also found that some employers in low-paid sectors have stopped making use of employment agencies. Their main reasons for ceasing to use agency staff related to training and language skills. For example, one food company told us that when they had previously used agency staff they had experienced high costs for induction training, particularly when new workers were brought in daily. Other employers highlighted the high turnover among agency staff, who would leave without notice if a better option turned up. The high cost of recruiting agency workers for short-term appointments was also highlighted, and some were concerned about the poor treatment of agency staff. Employers told us that:

“There are so many problems in working with agencies. I do not want to know about it anymore”

(Employer respondent)

“There is a huge disincentive for agency staff to do a good job; they quickly become aware of these differences and do not want to continue working for their agencies”

(Employer respondent)

“In an ideal world agencies will not exist to determine different conditions for their workers, all will work according to the European mobility agenda and there will be equal treatment for all workers”

(Employer respondent)

In other European countries equal treatment measures are already in place. In countries with a similar percentage of temporary agency workers as the UK (namely Belgium, France and the Netherlands), market penetration of temporary agency workers coexists with equal treatment provisions and, in some cases, without a qualifying period for entitlements.

Many other countries also provide agency workers with much greater security at work. For example, in Sweden an agency worker is regarded as an employee with a permanent or open-ended contract, in Germany it is normal practice to employ agency workers on an unlimited contract and in the Netherlands after three and a half years of continuous employment an agency worker has the right to a permanent contract. Denmark, Greece and Finland provide agency workers with fixed-term contracts.
Many countries also impose conditions on the use of agency workers. For example, in Spain use of agency workers is prohibited in dangerous occupations and in most areas of public administration. Portugal also bans the use of agency workers in dangerous areas, including construction. However, in the UK there are no restrictions on the circumstances under which temporary workers can be provided or on the length of their contracts (apart from a prohibition on the use of temporary workers to replace workers on strike in industrial action).

To ensure fairness for all workers, and to improve the working conditions and prospects of those on agency contracts, we therefore conclude that agency workers should receive equal treatment at work, being employed on terms no less favourable than permanent employees undertaking the same jobs. We are not against flexible working, only against the unfair inequalities that exist between the terms of agency workers and their directly employed counterparts.
Differential rights for migrant workers

Migrant workers come to the UK to seek to improve their life chances and those of their families. Since 2000, the rate of UK population growth has increased, driven mainly by changes in net migration. Evidence shows this is a result of factors including increasing migration among highly-skilled groups, inflows of foreign students, migrants moving to join their families in the UK, and EU enlargement. There is extreme variation between different migrant groups, with respect to factors such as skills, earning power, the regulations governing their immigration status and the types of employment that workers undertake. Many migrant workers are therefore far removed from vulnerable work, employed in high-paying sectors with good terms and conditions of employment.

However, while many migrants are not low paid, in some sectors and industries low-paid jobs are increasingly undertaken by migrant workers, and research suggests the potential emergence of a ‘migrant division of labour’, where some of the lowest-paid work is increasingly undertaken by migrant workers. For these workers, long hours are common, poor employment practice rife, and security extremely limited. Studies suggest it is common for migrants to work exceptionally long hours to afford accommodation, which could be more expensive than they had anticipated, to repay agency fees or to bring family to join them. Research also documents the negative effects on workers’ health and social and family lives of undertaking these jobs:

“After working for the whole day, my legs and feet are in terrible pain. However, we have to cope with it. If you can’t do it, someone else would soon step in to take your place. The employers don’t have any problems hiring workers here.” (Migrant hotel worker)

“The sections were very cold... It could go to minus 6 degrees and there was always humidity and the only thing that they gave us were rubber boots and normal clothes... They provided as well a kind of plastic shoes, in order for us not to wet our feet... but even that, they started to cut, when people from other countries started to arrive... and then, it was too expensive that equipment... Then, not even that they distributed any more. And we had to work, with humidity or without it, we had to. We didn’t have adequate equipment to work in that factory, but those who need it [the job or the money] have to accept it.” (Migrant food processing worker)

“My life here is only working and sleeping. I get up and go downstairs to work. After finishing working, I go back upstairs to sleep. Nowadays, I don’t feel as if I have any feelings anymore.” (Migrant catering worker)

Low-paid migrant workers with the legal right to work in the UK have the same entitlement to employment rights as UK citizens. However, recent research documents multiple instances of migrant workers across low-paid sectors experiencing extreme employment rights’ violations. Issues identified included misleading recruitment of workers in their own country on false promises of good pay, conditions and housing; excessive deductions being made from pay for accommodation, transport, utilities and repayment of the costs of travel to the UK; summary dismissal of workers who attempt to challenge poor treatment; failure to provide written documentation related to their contract of employment or pay slip; and denial of employment rights including access to Statutory Sick Pay, maternity leave and paid holiday. Reports included restaurant workers with four years of service who had been denied holiday pay; hotel staff being paid significantly below the minimum wage rate; and contract cleaners who had worked for months without receiving any pay at all. Survey evidence suggests that such practice is widespread among migrant workers, with one survey of over 500 migrants finding that half said they had encountered problems at work in the UK in the past or currently. A quarter had no written contract and the same
proportion had experienced problems with their pay (including not being paid for hours worked, discrepancies between pay and payslips, unauthorised deductions and errors in pay calculations).111

Our research112 found that recent migrants were likely to work long hours (over 31 hours a week) with around 72 per cent of migrants in the Labour Force Survey sample reporting such non-standard hours. It also found that being paid below the minimum wage is a significant problem for migrant workers, with surveys indicating that between 19.5 per cent to 37 per cent of migrant workers may be paid at rates below the minimum wage (although the figures were not able to take account of the accommodation offset, which may impact upon the pay of some of those sampled).

Similarly, research among minority ethnic and migrant workers in the hotel and restaurant sectors found that around two-fifths of the sample of 50 workers earned below the minimum wage or were paid a flat rate per shift regardless of hours worked. A typical rate was around £200 for a 50 to 60-hour week.113 For most respondents overtime was not paid, with catering staff expected to continue working until the last customer had left for no additional pay. Our consultation and research identified similar examples of migrant workers’ employment rights being abused:

“In some cases they will say, ‘well we’re paying them £5.52 an hour’. When you actually see how much money comes into their pockets… The administration cost is taken out, £20 for administration. For a pair of boots, you know you pay for the boots, their overall – they pay for, for the transportation – taken out. So all sorts of costs have been deducted…The European Time Directive. People are actually signing documents they don’t realise what those documents say. And this is the problem. If it’s not in Polish or not in a European language, they just sign the document thinking it’s a contract to be with an agency. It’s not. What it is, is signing away your rights and what you’re getting. The turkey factory, from now to Christmas, will be working 14 hours, 7 days a week.”
(Employment rights adviser)

“Some migrants are working cash in hand, with limited English language skills, are in high-risk occupations such as scaffolding/construction, etc. We know of three migrant workers who have been killed doing this type of work, and understand that the HSE finds it more difficult to take action because these individuals were self-employed.”
(Sefton Equalities Partnership)

There is also evidence that migrant workers are more likely than other workers to be provided with substandard housing. A survey conducted by the Local Authorities Coordinators of Regulatory Services (LACORS) found that 57 per cent of councils surveyed encountered private sector housing issues linked specifically to migrant workers. The survey also identified instances of extremely overcrowded conditions endangering the safety of those living there, and recorded that officers had encountered situations where workers were scared to complain about their housing conditions as their accommodation was tied to their employment.114 Our research shows that migrant workers are more likely than the general population to find themselves in this situation, with 2.5 per cent of recent migrants (those who arrived here less than ten years ago) living in tied accommodation as opposed to 0.4 per cent of the entire sample.115

In evidence to the Work and Pensions Select Committee, the HSE’s Chief Executive also registered his concern about these issues: “There are issues that we have come across, which in a sense move away from HSE’s direct responsibilities, which I find very concerning, about exploitation of migrant workers in areas like housing. People become housed on site in conditions that are totally inappropriate and which in themselves promote a risk to workers. That is an issue I have had reported to me from several parts of HSE as people – not routinely, but people having found cases of this.”116 Our Commission has also heard many reports of workers ‘hotbedding’ – sharing beds between those on day and night shifts, and our consultation identified examples of extremely poor housing:

“We’ve had individuals where accommodation has been provided. We had cases where it was a caravan 5 miles away and they were told they would be provided with transport and it was bicycles. Other accommodation provided in a care home, a bedroom there and if you were on a day off and someone went sick the care home owner would wake you and tell you that you had to come into work.”
(Trade union officer)
In general, deductions from pay, for accommodation and other services provided by employers, appear to be relatively common among migrant workers. In a study undertaken to inform the inception of the GLA, 39 per cent of workers in the survey (306 respondents in total) had used transport supplied by their labour provider, for which 80 per cent of them were charged. 23 per cent of respondents said that they used labour provider accommodation – and only 27 per cent of these workers said that deductions for accommodation were itemised on their payslips. Such accommodation makes workers more vulnerable to poor employment practice, as leaving their job can carry the additional penalty of losing their home. Advisers told us of examples of migrants they had worked with who had experienced such problems:

“We had one Polish girl came in and brought her wage slip and she actually earned top line £200 and by the time they’d taken off accommodation costs, transport to work costs, administration costs, she took home £20.” (CAB adviser)

“The housing, overcrowding and expensive housing is caused not by the free housing market, but by the conditions imposed upon them by the employers. We had a young guy the other week, he was threatened with dismissal from his employment if he moved out of the company house, and he wanted to because he had a girlfriend who was expecting his baby and he wanted to live with her, she’d got her own flat. They said ‘no house from us, no job from us’.” (CAB manager/adviser)

In a minority of cases, employment practices used by employers of migrant workers fall under internationally agreed definitions of forced labour, defined by the ILO as “all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered voluntarily”. In a recent study, proxy indicators of forced labour were identified as violence (including physical or sexual violence and threats of violence); other forms of coercion including debt bondage and retention of identity documents; excessive dependence on the employer or on third parties and other practices, including excessive working hours and the provision of substandard living conditions. Examples of such work were identified across the UK labour market, with migrant workers reporting physical intimidation to prevent them making complaints and debt bondage providing employers with the means to keep them in exploitative working conditions.

Our Commission heard examples of such practice. Evidence from project staff employed by the Wales Union Learning Fund, and also provided to the House of Commons Welsh Affairs Committee, included reference to workers being threatened at gunpoint should they report their treatment to public authorities, and workers being threatened that they would be shot, and their family mistreated, if they continued with complaints about working conditions. Officers also reported migrants having their passports taken away from them upon arrival at their place of work. Respondents to our research also reported extreme employment rights violations experienced by their clients:

“This agency advertises and they come over and are working through this agency which would put them up in housing and provide a car from the house for them to get to work and so on. What tends to be the story is, you turn up in this country, they put you in a house, they then don’t place you into work for the next few weeks. Once you start work, at the end of that week you’ve worked a 45-hour week and you get a zero on your payslip, because they’re deducting from day one, they’re deducting rent money, car-hire money, administration fee at source from your wages. And that starts the moment you arrive. So for the first month or so you’re earning nothing, which just traps you in a cycle of debt right from the start.” (Trade union official)

“[...]” (Trade union official)

Many studies also demonstrate a high concentration of migrant workers in agency jobs, meaning that many migrant workers are disadvantaged both by their employment and their immigrant status. For example, in research into the hotel sector a majority of the sample was on agency contracts, and evaluation of the GLA shows that licensed gangmasters are more likely to employ only migrant workers than they are to employ only British workers. Evidence suggests that the trends are particularly acute in certain sectors; for example, in the food and drink industry 90 per cent of agency workers are estimated to be migrants.
Our research also shows that recent migrants are engaged in high levels of temporary work, and are more likely to work in the lowest paid sectors. The Labour Force Survey shows that 11 per cent of recent migrants (defined as those who have arrived in the UK not more than ten years ago) are employed in temporary work, compared to 6 per cent of all workers in the UK. The research also identifies the strong likelihood of the LFS underestimating the number of migrant workers in temporary jobs, highlighting, for example, that Workers Registration Scheme data from May 2004 – September 2007 records that 50 per cent of migrants were in temporary employment. Similarly, in a smaller local survey of 364 migrants, 38 per cent had obtained their job through an employment agency in the UK.

Research undertaken to inform the setting up of the GLA involved a large-scale survey of temporary workers. The questionnaire provided workers with the chance to make additional comments about what they liked and disliked about the agencies they were working for. Positive comments covered the friendly approach of agency staff, and the fact that wages were paid on time. Negative comments focused on violations of employment law, particularly around payment of wages and holiday pay. Dissatisfaction was also expressed with the organisation of the work and the uncertainty of the hours available, with workers making comments including: “agency work is badly organised, they do not know how many people should be sent to the workplace, they are sending people back home”, and “not many hours, and you have to pay for travel, we are not really sure if we are going to work tomorrow.”

Evidence also shows that some agencies employing high proportions of migrant workers engage in illegal practice. When migrants are dependent on the agency for work, fear of dismissal makes them less able to challenge poor practice, and the power inequalities between workers and employers are exacerbated. Evidence from the Wales Union Learning Fund highlighted that: “Accommodation is about £50 per week, £20–30 probably to travel to work in an unlicensed car with no MOT, sometimes additional fees of about £40 for special cleaning of the accommodation. The agency charges additional fees… and other charges as it sees fit.” Multiple qualitative studies also record examples of migrant workers being treated illegally by employment agencies; for example, a survey of over 200 migrants found that the majority of those surveyed had negative experiences of working through agencies, reporting unexplained deductions from pay, undocumented work and a lack of clarity regarding responsibility for implementing health and safety regulations. Similarly, research for homeless charity Broadway highlights cases of A8 nationals coming to the UK after paying agencies up to £300 for work and accommodation in the UK, but arriving to find that neither existed. Evidence from the north-west notes that many migrants have been misled by agencies, and were critical of their actions:

“Czech agencies play on the stupidity of people and people rely on them as their main source of information. There are many problems with them. They said they would send me to the right people, help me with my NI etc. I paid £2,500 to them before I came here and I’ve had to pay another £75 since I arrived. They said they would have everything sorted out but they haven’t. I feel violent towards the man from the agency. He stole from me. I’m not a criminal but if I see him it will be dangerous for him. It has taught me a lesson though – if I return home I want to help people who are thinking of using Czech agencies.”

(Migrant agency worker)

Consultation and research respondents reported further examples of illegal practice to us:

“Apparently, an agency charges migrant job seekers £35 per month for being a client on their books; they are provided with help with finding work/accommodation/training etc. One agency is charging £45 to help someone get an NI number and open a bank account…A client came to see one of our staff. They explained that their agency (agricultural) keeps all of their paperwork, including registration with Home Office, bank statements get sent directly to agency, pay slips etc…Some migrant workers, employed by an English agency, have told us that they are living on a farm in caravans (in the middle of nowhere), meet at 6am and are told whether or not they’ve got work that day. They are driven once a week in a coach to Asda to buy food for the whole week, they are given 30 minutes in the shop, then taken back to their caravan.”

(Sefton Equalities Partnership)
“We had an agency with branches in other places and some Polish workers, and they were being ripped off and a lot of issues involving housing and wages, but the only way through was having a group of them together. One by one it would be difficult, the agency would sack them. We didn’t go forward with that because they didn’t want to stick together and complain… They were frightened of losing their jobs and houses. They had control of the houses, charged a deposit and they don’t return the deposit. They put 10, 11 people in a house, all of them paying rent. They deduct the rent before the wages.”

(Trade union official)

“I did a radio broadcast for the minimum wage when it first came in and said it was now £3.60 an hour and I had a gangmaster phone up the bureau the next day and said – it’s people like you putting people like me out of business. I’ve got all these people who are really happy to work for £2 an hour. I said to him – think how much happier they’d be on £3.60. Oh we’ve people threatened to put a brick through our window for telling people their rights. So far, touch wood, they haven’t done it.”

(CAB adviser)

Research also demonstrates that migrant workers can be asked by agencies to pay large loans for promises of non-existent jobs, therefore finding themselves with impossible debts once they arrive in the UK. For example, cases have been documented of Chinese nurses recruited in Tyneside in 2002 at a cost of £9,000 each. Eight months later 10 of them were working as cleaners and dishwashers, and were being sent money from their families in China to make ends meet.

Several respondents to our research and consultation felt that employers were deliberately employing migrant workers as they would be unaware of, and least able to enforce, their employment rights. They told us of their experiences:

“The main problem is language. Agencies start recruiting people from the new countries because they don’t know anything about employment law and they can exploit them easily. When people have been here 1 – 2 years they start opening their eyes and fighting back. To keep the workforce running they move from one country to another. We have a lot of Polish people in this country but they are recruiting from Romania, Hungary and Russia… They fear to lose their jobs and according to legislation if you don’t work for an employer for at least one year you can be dismissed with no reason. There’s no protection.”

(Trade union officer)

“Unscrupulous employers and agencies exploit ignorance of the English language, UK employment law and workers rights, and the dependence of new migrants upon employers or agencies for accommodation renders them liable to further exploitation. Stories of inhuman working and accommodation conditions, abuses for zero-hours contracts and illegal deductions are not uncommon and are well documented, as is the difficulty of finding cases to prosecute because of the insecurity of the victims.”

(Equality and Human Rights Commission)

“It’s in the interest of the agency and the employer to actually keep them as ignorant of their rights as possible. We find when we find them that there’s pockets of them and that in a way they are being kept from the rest of the workforce.”

(Trade union officer)

“They prefer those who don’t speak the language because they are not going to be causing problems by making demands.”

(Employment rights specialist)

Low awareness of rights, sometimes low levels of English language, poor enforcement, and limited rights for atypical workers combine to increase migrant workers’ risks of being in vulnerable employment. These are also supplemented by risk factors that are specific to migrant workers. Research has identified these as their dependence upon recruiters, their physical and psychological isolation and their immigration status. A consultation respondent described the risks:

“The lack of information, lack of access to information, multiple dependency on the employer or the agent or whoever is facilitating for more than one thing… dependency not only the work but accommodation, for transport, very often for the other basic things and there is no possibility to actually get one without the other. And deliberate choice of people without language skills.”

(Employment rights professional)

The chances of low-paid migrant workers being in vulnerable employment are also increased by the terms associated with their specific immigration status. Precise employment protections vary significantly for different groups of workers. Workers from the original 15 EU states, Malta and Cyprus, and other EEA states (Iceland, Norway and Liechtenstein) face no restrictions upon their rights to work in the UK. For the first three months of their time in the UK their
‘right to reside’ is dependent, under EU law, on them not becoming “an unreasonable burden on the social assistance system” (which the UK judiciary have been interpreting as being economically inactive and seeking state benefits) after which they have a full right of residence. In contrast, workers from the eight Central and Eastern European countries (A8 nationals) and Romania and Bulgaria (A2 nationals) have specific restrictions placed on their UK labour market participation (which are discussed in full later in this chapter), although they have the same rights as other EU nationals with respect to free movement of labour. Non-EEA nationals require a work permit to work in the UK, with the type of permit determined by the labour market shortage their skills are intended to fill. Finally, asylum seekers come to the UK fleeing persecution, and not for economic reasons. Their rights to remain are contingent upon their asylum claim being upheld, and they are not allowed to work unless their claim is successful and they are accepted as a refugee.

Importantly, these statuses are not static, and may change as laws or rules governing categories are changed or when a migrant themselves takes action that alters their status, for example overstaying, naturalising or switching permits. Workers on permits are also susceptible to changes in regulations, which can limit their rights to work legally in the UK. For example, senior care workers were recently informed that if they did not earn an hourly rate of over £7.02 an hour their visa applications were no longer likely to be renewed. Based on Home Office figures, UNISON estimates that around 11,000 workers are affected by this change, and that many may therefore find themselves employed illegally, without employment rights and subject to removal, should they continue to work in the UK. Respondents to our research pointed out the complexity of the system, and the difficulties that this can cause migrant workers:

“The discrimination, they do things to migrant workers that in no way would they do to English speaking people. They charge them for payslips. About £3 – 4. Each one. It’s just an automatic admin charge put on and they charge them if they need a form filled in for the Inland Revenue.”

(CAB Adviser)

While different immigration statuses confer different entitlements to support in the UK, all migrants are limited in their access to public funds. The Right to Reside Test was introduced on 1 May 2004 in response to the expansion of the European Union. It was designed to exclude nationals from eight of the new member states (A8 states) from accessing social security benefits unless they had a right to reside. However, the Right to Reside Test applies to all claimants, not just those from the new EU member states. For those without a right to reside, access to many welfare benefits is not permitted (although under EU law EEA migrants may be able to claim Incapacity Benefit and some maternity benefits as a result of contributions made in their home countries). Under the terms of their entry, non-EEA migrants may have no such rights until they are settled in the UK. For those who are permitted a route to settlement, this means they must undertake at least five years’ employment, pass the life in the UK test and pay a fee of around £750 before they have any entitlement to public funds. Benefits are therefore available on the basis of immigration status, not need.

Employment rights advisers in our survey raised a range of problems experienced by migrant workers who sought help from them, with around 25 per cent saying that such problems among were very common. Particular issues included deductions from wages, lack of written terms and conditions of employment and problems with Jobseekers’ Allowance. General discrimination and illegal practice were also reported:

“They should often be entitled to Maternity Allowance or Incapacity Benefit on the basis of their work or contributions paid in Poland because EC law allows you to do that, but they often don’t know or if they go to a local advice centre they often don’t know that either. The logical thing is they try to claim Income Support and they are refused under the Right to Reside Test so they are then left with nothing.”

(Employment rights specialist)

During our work it also became apparent to us that for many low-paid migrant workers there was often no real choice to leave work, as the alternative was deportation or destitution. Research respondents reported examples to us of the impacts that such lack of recourse to public funds could have:
“What it means is that people who are in often low-paid work, often below the minimum wage, are often desperate not to leave their job because they are then left without access to benefits. But the major group that we find it impacts on and get calls on a weekly if not daily basis are around women who are heavily pregnant or who have just given birth, in particular A8 nationals. It is really a huge problem... because they can't get benefit at all – if they come for advice we can get them Maternity Benefit and most benefit through EC law but generally they don’t, so we hear of women going back to work two weeks after they have given birth and taking the baby with them to cleaning jobs, things like that.”

(Employment rights specialist)

“There’s still no instances for support for whistleblowers, for example giving them the possibility to stay in the country to claim compensation, to claim unpaid wages in case of those whose immigration status is problematic.”

(Employment rights specialist)

“We have some women who are coming into the country specifically to work in care homes, they are usually Filipino, and because their work is tied to their entry clearance, of course that’s an issue, because they have no recourse to public funds, if they are dismissed they have to find another job.”

(CAB adviser)

We therefore believe there is a case for reviewing access to public funds for migrant workers.
In a variety of ways, the conditions placed on A8 migrants’ entry to the UK reduce the bargaining power of these workers, and place them at greater risk of poor treatment at work. The Accession Treaty allowed that, for a limited period of time, pre-accession member states were allowed to restrict A8 nationals’ access to their labour markets. The UK chose not to prohibit access to its labour market, instead setting up the Workers Registration Scheme (WRS) to monitor A8 participation in the workforce. Under the UK’s Accession (Immigration and Worker Registration) Regulations 2004, A8 workers must register with the Home Office within 30 days of becoming employed and must register any changes in employment. In accordance with the Accession Treaty, after 12 months of continuous employment in compliance with the scheme an individual is no longer subject to the requirement. The regulations provide that a worker who is registered under the WRS has the ‘right to reside’ only while in employment. Should a worker lose their job before 12 months of work they are therefore ineligible for benefits, including Child Benefit, Child Tax Credit, Housing Benefit, Income-based Jobseekers’ Allowance, Income Support, and Pension Credit. Under the Regulations, it is an offence punishable by a fine for an employer to employ an unregistered A8 national, while it is not an offence for a worker not to be registered. This suggests that the responsibility for registration lies with employers.

The costs of registration, and various requirements of the scheme (such as its complexity, the requirement that it is completed in English, the £90 cost attached to registration, and the requirement that workers enclose their passport when posting the form – to be returned to a permanent registered address), mean that there is a discrepancy between the number of A8 nationals working in the country and the number registered: research undertaken for Slough Borough Council found that, when NI registrations were compared with WRS data, 43 per cent of those eligible to register had not done so. The data is further limited in its ability to monitor the number of A8 workers in the country as it cannot account for workers who have left the UK, only providing cumulative totals of applicants. The scheme is therefore largely ineffective at monitoring the numbers of A8 migrant workers.

The Association of Labour Providers (ALP) has recently pointed out that from 30th April 2009 workers from the A8 countries are due to receive full rights of free movement. Under European law the Government will therefore be unable to extend the WRS unless it can demonstrate that failure to do so would disrupt the labour market. Given the low probability of the abolition of a registration scheme having any labour market effects, the WRS appears highly likely to end in April of next year. The incentive for any worker to register is therefore very low: the ‘right to reside’ that a year’s registered work entitles them to will be an automatic entitlement from 2009.

Those who are not registered are at risk of being denied all their legal employment rights, as they could be found to be working illegally. The Aire Centre, a charity providing legal advice on European law, has documented cases of this taking place. The WRS’s requirements have also allowed it to become, in some cases, a tool that employers can use to exploit workers. The TUC has documented cases of employers illegally retaining workers’ passports, after asking for them to enable WRS registration, or of employers pretending to have registered workers but deliberately missing the time limit. This means that workers can be considered to be ‘working illegally’ and therefore not entitled to employment rights.
Employers can also make use of the scheme to deny workers access to state support, employing them for 11 months and then sacking them as they approach the threshold for right to reside qualification. This then allows them to violate employment laws with impunity, while workers continue to be denied access to welfare support. Examples of such employers misusing the scheme were identified in our research:

“They were sacked on spurious grounds of being illegal because they hadn’t registered on the registration scheme and the Home Office told us they’re not going to pursue them [the employer] for illegality. And we said that’s not the point, the point is if we take this to a tribunal it gets thrown out...These individuals thought they had registered. And that their employer had given them the paperwork and the money and one of the managers told us it was never sent off, it just sat there.”

(Trade union officer)

“Some agencies abuse it [the WRS] by telling workers they need a workers registration fee at a cost of £120–150 when the cost is actually less. Agencies take the passport from the workers saying that they are applying for residency, which they cannot apply for as they have not been here 12 months. The workers then receive a rejection slip from the Home Office. The workers believe they have been refused for registration, they cannot claim for benefits and housing, there is a lot of confusion.”

(Employment rights adviser)

“We had one horrendous case of a woman, I think she was from Latvia. She and her husband had been working here for more than two years but it wasn’t registered work and the employer hadn’t done anything. They didn’t realise, but the woman was pregnant and a few weeks after she had given birth her husband was killed in an accident at work and she was left without any money. She was getting Red Cross food parcels. It was just horrendous. We have many calls where people are getting Red Cross food parcels in this day and age and they are EU nationals.”

(Employment rights adviser)

“We are currently attempting to assist an Eastern European migrant worker who worked seven days per week for his employer for almost 12 months, with only five days off. He was paid substandard wages for this work in the transport industry. After he left for a holiday for which he had given notice of, he received a text message sacking him. Through a local adviser, we are attempting to help this individual make a claim to tribunal. The adviser’s biggest concern is that the individual will not be allowed to pursue his claim because he was working illegally. This is because he was not registered during this time of employment. This is not an isolated problem. We recently advised another adviser who brought a claim for wages owed to an A8 national. The employer’s solicitor argued that the claim was not viable because the A8 worker had not signed up under the WRS. The adviser assures us that the exploitation of A8 workers in that region is widespread and that the only reason we have been able to pursue this case is because the worker concerned is particularly bold.”

(Aire Centre)

It is also important to note that in practice the entire burden of registration often falls to the worker. A freedom of information request, made by the Aire Centre, shows that there have been no prosecutions, nor investigations, launched against employers for failing to adhere to the Regulations. With no incentive to facilitate registration, employers can employ unregistered A8 workers with no threat of enforcement.

We therefore believe that the WRS serves no helpful purpose. While it is failing to accurately monitor the number of A8 workers in the UK, it is being used as an instrument with which to exploit them. It should be abolished.
A2 nationals, whose countries joined the EU on 1 January 2007, have had even tighter restrictions placed upon their labour market participation. Low-skilled workers from Romania and Bulgaria are restricted to existing quota schemes to fill vacancies in the agricultural and food processing sectors, and to the right, shared with all EU residents, to come to the UK to study or to work on a self-employed basis.

Bulgarians and Romanians undertaking any form of contracted employment without a permit issued under the terms of the PBS are therefore working illegally, and have no rights to employment protection. UCATT has highlighted that they are at particular risk of bogus self-employment in the construction industry. The risks of bogus self-employment are borne out by analysis undertaken by COMPAS, which shows that the proportion of ‘self-employed’ A8 nationals fell from 21 per cent to 11 per cent when they were granted permit-free access to the UK labour market, suggesting that a large number were not previously running their own businesses.

The TUC has documented that across Europe other countries have chosen not to place such restrictions on their labour markets, specifically because of concerns regarding the exploitation of migrant workers.

The restrictions on their employment opportunities mean that many A2 migrants work in the construction industry, enabled to find jobs by the widespread acceptance of bogus self-employment. However, while HMRC implicitly accepts a very broad definition of ‘self-employment’ in construction work, the Borders and Immigration Agency (BIA) applies stricter standards, and instances have been recorded of A2 workers being fined £1,000 for not being in possession of a CIS card at the time of inspection. The Joint Council for the Welfare of Immigrants (JCWI) has reported to us that, during actions at London construction sites earlier in late 2007, BIA officials were demanding sight of the Construction Industry Card (CIC) as the only acceptable proof of self-employment.

In one reported enforcement action, up to 40 Romanians may have been fined for not possessing the card. Despite a number of individuals possessing documentation on their persons to establish that they were lawfully self-employed, all were fined £1,000. In one case the JCWI reports that the individual received the card the day after he had been issued with the penalty notice. While A2 workers are at risk from HMRC’s implicit acceptance of poor employment standards arising from widespread bogus self-employment, they are therefore also being penalised by the BIA, who are applying much more rigorous tests of self-employment to their work.

We therefore believe that unless a strong economic case can be made for differential treatment workers from Bulgaria and Romania should receive the same treatment as those from other European countries.
The existing work permit system is in the process of being reviewed, with a new points-based system (PBS) recently launched by the Home Office, applying to all non-EEA nationals wishing to migrate to the UK for work or study, replacing existing systems for issuing work permits. It places specific conditions on the labour market access of five differentiated ‘tiers’ of migrants.

As the new system is introduced, the conditions placed on the employment of low-skilled migrants are increasing. Tier Three of the PBS specifies the conditions for all low-skilled migrants coming to work in the UK. Broad policy documents note that only when there is an identified shortage, which cannot be met from within the UK or the EU, will a Tier Three quota scheme be set up. Proposals note that “all such schemes will be run by an operator” (such as an employment agency), that entry would be for a maximum of 12 months, and that there would be no right to switch to any other migration route. They also note that “English may not be necessary”, and that an appropriate level of English for the job will be set by employers. Other proposals limit Tier Three workers to certain employers or sectors of work during their time in the UK. While the new system will include provisions to prevent employers previously found to be employing undocumented migrants from acting as ‘sponsors’, no such bar is proposed for employers who have been identified as having previously violated the employment rights of their workers. As with the old work permit scheme, migrants will be on fixed-term contracts that can be terminated at the discretion of the employer, a measure further reinforcing their dependence so that “not only is their [migrants’] employment mobility limited by the state, but employers are handed additional means of control: should they have any reason to be displeased with the worker’s performance, should the worker not be cooperative or indeed should they even have a personal grudge against them, they can be removed.”

There is evidence that employers value the flexibility and reliability that migrant workforces can provide; in a study for the Home Office, employers cited the advantages of migrant workers in terms of their general attitude and work ethic. They felt that workers were more motivated and committed than domestic workers and were prepared to work longer hours and to work harder. In many cases, the lack of bargaining power these workers have gives them no other choice. The PBS proposals give no consideration to how workers will enforce rights while they are in the UK, or to how they will be informed as to what their rights are (though the BIA has recently agreed to a budget for the promotion of employment rights among migrant workers).

The proposals mean that many low-paid migrant workers in low-skill jobs, without recourse to public funds, will be unable to resign and change employer without losing their right to work in the UK. Their labour market freedom severely constrained, these workers will be at the whim of their employer, upon whom they may be completely reliant for food, accommodation and their right to remain in the country. The impacts of such power inequalities are evident in the operation of the current work permit system, where 42 per cent of advisers in our survey commonly encountered employers offering poorer terms and conditions to migrant workers than they had specified they would receive under the terms of their work permit.

What is equally apparent is that, while migrants face extreme risks while working in the UK, the risks faced by employers mistreating them are much lower. While a migrant reporting poor treatment is likely to lose their job and their right to legally remain in the UK, under current employment rights enforcement procedures, an employer caught mistreating workers is likely, as was discussed in Chapter 5, to receive a limited penalty.
Respondents to our consultation highlighted a range of ways in which employers are currently able to use their real or perceived power within the current work permit system to exploit migrant workers:

“EEA nationals arrive in the UK and have no NI number. Normally you need a letter from an employer offering you a job or an interview in order to get an NI number. The employers write the letter to the worker offering them a job at a certain number of hours in exchange for them doing extra unpaid hours...They feel they wouldn’t get the NI number without a letter from the prospective employer.”
(Migrants’ rights adviser)

“There was a Chinese worker who was being paid £5,000 a year less than everybody else in what was their central office. He complained to the company on three different occasions that he was being paid less and they basically sent him back because his visa was just about to run out. And at that point the employer could step in and say, we need this worker, therefore he’s entitled to a passport or an extension to stay.”
(Trade union officer)

“What we’ve found is that employers apply for a work permit on a rate of pay that they know will get them the work permit... When the worker arrives here, they find that what is written down on their work permit isn’t what arrives in their wage packet in terms of their wages, their hours and etc... They’re working legally, so they complain to their employer. The employer says: ‘Well, you’re here on a work permit so you’d better not rock the boat. Because if you lose your job you’re then considered not to be working’. ”
(Trade union officer)

“Basically in some instances they would be made illegal by the employer who refuses or fails to renew the permit and basically then they are not paid and the conditions are worsening because of the threat of deportation. Or even during the time basically the negotiating power is very low because the employer can say: ‘Well, if you don’t like it then leave. But if you leave you are going to be illegal and you’ll have to return back.’ Sometimes you would see situation of that bondage where the employers said: ‘Well, I have paid for the work permit for you to come, so now you will work without money because there is a debt and the interest rate is being extended and the rates are extortionate.’ ”
(Employment rights adviser)

Our research also found that 28 per cent of employment rights advisers commonly supported migrant workers who had faced the threat of deportation if they reported any problems at work. An example of this was in the health care and care-home sectors:

“The main problem seems to be in the care industry, I have had it a few times recently, where nurses and care workers have been brought over from various countries, they need to be in employment for 12 months before they have any rights and during that 12 month period are being treated appallingly, because, if they complain about the treatment then they will lose their job and therefore their right to stay, because they’re not going to work for 12 months. So they tend to put up with a lot more than they should do. They are trapped, if they complain they are out and then they haven’t got the 12 months and they are out of the country, it seems to happen a lot in the care home industry.”
(CAB adviser)

The new proposals have also floated changes to the treatment of migrant domestic workers from outside the UK. If implemented, the changes would mean that these workers would be able to stay for only six months, after which time their employer would be required to replace them with a UK or European national. These proposals reverse previous government decisions, implemented in 1998, to provide migrant domestic workers with the right to change employers and to qualify for settlement if they work in the UK for five years or more. This is of great concern to Kalayaan, an advocacy organisation with whom our Commission has met, which has documented the serious abuse and mistreatment that migrant domestic workers already often face at the hands of their employers. They have serious concerns around the proposals, noting that their introduction would make it virtually impossible for workers to challenge any mistreatment or abuse they suffer.

The risk of such treatment is already high. Our research shows that of 687 migrant domestic workers registered with Kalayaan between 2006 and Spring 2008 22.5 per cent stated they had experienced physical assault. A commonly reported physical abuse was that of employers burning workers’ hands on stoves as punishments for cooking ‘mistakes’. 66 per cent stated psychological abuse including racist abuse and threats to harm themselves or their families. 60 per cent reported they were not allowed to leave their employers’ house and 66 per cent were not allowed...
any time off. 51 per cent of workers did not have their own room to live in, but were expected to live in a corridor, kitchen with children or other communal space, and over a third (36 per cent) did not even have their own bed to themselves. 84 per cent earned less than £500 per month, and nine workers said they did not receive any wages at all.

Kalayaan also notes that, should the proposed changes be introduced, migrant domestic workers leaving an exploitative employer will find themselves destitute, with no legal right to work to support themselves. They are also clear that limiting the provisions for visa renewal makes it more likely that employers will retain workers illegally, where their undocumented status will place them at greater risk of exploitative treatment.

Last year, 97 members of the UK Parliament signed Early Day Motion 860, Proposed Changes To Domestic Worker Visa, which states: “That this House recognises that Home Office proposals to change the domestic worker visa to a business visitor visa, removing the right to change employer and restricting the maximum stay to six months, are a complete reversal of previous government policy, which was intended to protect this category of often exploited and abused workers; notes with concern that the proposals will dramatically increase the power of abusive employers, and will make it impossible in practice for migrant domestic workers to access UK employment law, effectively legalising trafficking and domestic slavery of vulnerable workers; and therefore calls on the Government to retain the domestic worker visa giving the right to change employer, to renew a visa and to apply for settlement after five years.”

At an international level there is also growing awareness of the risks faced by low-paid domestic workers. In March 2008 the ILO Governing Body decided to include the item “Decent Work for Domestic Workers” on the agenda of the 99th session (2010) of the International Labour Conference. This means that the 2010 and 2011 sessions may be expected to develop a new Convention and Recommendation covering domestic workers, setting out internationally agreed minimum standards as to the protections they should be afforded.

We therefore recommended that the introduction of the PBS is reviewed to ensure that it takes account of the capacity of all migrant workers to enforce their employment rights.
Grace’s story

Grace is 40 years old and originally from Kenya. Her native language is Swahili but she also has good English. Grace worked in Kenya as a nanny and when her employers moved to the UK eight years ago they brought her with them. Grace was now a migrant domestic worker and has since suffered many of the problems common among those like her working in the UK.

Grace’s original employer paid her £50 per week cash-in-hand for working 7am to midnight, seven days a week. Grace was eventually able to leave the job after around three years, but her next turned out to be little better. In neither position was there a written contract or any holiday or sick pay provision.

For her original employer her work would involve getting the three children of the house up, washed and breakfasted, then taking them to school before returning to the five-bedroomed house to do her housework duties. Grace would then go and collect the children from school, feed and bath them and put them to bed before going back to her cooking, cleaning and other housework duties. She reports that the second job was much the same, only sometimes even longer hours.

Grace says that she struggled with the very little money and long hours. She found that there were so many things to do in looking after the children and house that she had very little time for herself and became very tired. There were some occasions when Grace became ill with a cold or the flu and asked her employer if she could have time off to recover. She was refused on the basis that there was no one else to do the work if she did not do it. Grace found her low pay limiting and could afford to shop only in charity shops. She asked her employer for more money but was told that since they were providing accommodation and food, they should not have to pay any more in wages.

Grace did not know anyone in the UK when she arrived and was initially very isolated. She had little to no awareness of her employment rights. After a while she began to meet people and to fully realise that “they [the employer] were using me”. Grace was able to leave because she had made a friend who offered to put her up while she looked for work.

With the help of Kalayaan, Grace was eventually able to live independently and work part-time one or two days a week in different private households. As well as the work being a little less arduous, this arrangement allows Grace the flexibility to try and gain new skills. She now has an NVQ in social care and is studying for further qualifications. Grace hopes that this will eventually allow her to move away from domestic work, but her real ambition is both simpler and more ambitious: “I want to become a better person. I want to do things to help others.”

(We met Grace through Kalayaan)
A key aspect of immigration regulations is that they deem some migrants legal and others not. Undocumented migrants, without the right to work in the UK (though they may be legally entitled to live here), are not entitled to protection under employment law apart from health and safety legislation (which is not actively enforced). The JCWI submitted evidence to our Commission highlighting that immigration irregularity generally results from three broad categories of immigration status: failed asylum seekers; non-EEA persons who entered lawfully but remain unlawfully; and those from outside the EEA who have entered illegally either by bypassing immigration control altogether or using deception. All of the groups are regarded as being unlawfully present by the immigration authorities and wherever working, working illegally. In addition, others who are lawfully present may be construed to be working illegally if work contravenes the conditions of their leave, for example students who work for more than 20 hours a week during term time. The population of undocumented working migrants is therefore diverse in its nature.

In 2001 the Home Office estimated that there were around 430,000 undocumented migrants working in the UK. The government is committed to their deportation. This is accompanied by an attempt to “block access to the benefits of Britain” through ‘Enforcing the Rules’, a strategy that sets out how they aim to “progressively deny work, benefits and services to those here illegally by working in partnership with tax authorities, benefits agencies, Government Departments, local authorities, police and the private sector”. 

Undocumented migrants are at extreme risk of poor treatment and exploitation at work, and numerous studies considering the treatment of migrant workers note that undocumented workers are those facing the worst conditions. These workers have been found to be most likely to experience stress at work, to work long hours and to face extreme insecurity. They are also least likely to have information on health and safety and their employment rights. Research in the hotel and restaurant sector recorded some of the experiences of these workers:

“If, for example, you’re sick on Friday and Saturday, it doesn’t matter because you still have to go to work because it’s the busiest day of the week, it doesn’t matter what is your problem. On Friday I was sick but I went to work and I told my employer maybe if I don’t feel like it tomorrow maybe I won’t come. He said if you don’t die you have to come to my premises and you have to stay there.”

(Undocumented migrant worker)

“The other week one waiter forgot to put poppadoms on to a customer’s table. Of course, these small mistakes happen when you are busy making £10,000 to £15,000 per week for the owner and working long hours without breaks, but he was sacked on the spot because the customer complained.”

(Undocumented migrant worker)

Research and consultation respondents also told us of the realities of working lives for undocumented migrant workers. They noted evidence that some of the worst employers are making use of undocumented workers as cheap and disposable sources of labour:

“If you have somebody who’s been exploited because they’re a paperless worker, as soon as they go into a tribunal it turns out they have no rights, or practically no rights. So the only possible sanction the employer faces is if the government take action against them. And that increases the benefit for both employers in ignoring migration laws and employing people not just who are paperless but also at below the minimum wage and in unsafe working conditions because nothing that they do is going to impact on them because if the employee complains to an employment tribunal and says, well I resigned because of the working conditions, all that will happen is the tribunal
will say that you don’t have a proper contract of employment. It’s crazy. It’s rewarding bad behaviour by employers and that’s the way the law stands at the moment.”

(Trade union officer)

“We had a Bulgarian lady in recently, she was basically saying that they are only entitled to work in certain sectors but they can access certain employment through certain employment agencies and those employment agencies also unlawfully charged them, placed them into work and then they might be able to work for around £2.00 per hour... It’s cheaper to employ people on a lower wage. It pushes up profits for a restaurant. The same in cleaning. People might work for large companies and it pushes up their profit margin by employing people unlawfully. In the building sector again around profit. And you don’t need to give people annual leave, pay NI or pension or employer’s contributions. It’s a cheap and lucrative source of labour for employers.”

(Migrants’ rights adviser)

“Students who are offered work by companies or shops, they may offer them more work than the student is legally entitled to during term time but they would pay them at £2.00 per hour, offering them 48 hours per week. They would expect them to work long hours and wouldn’t pay them their annual leave or give them any sick pay or give them any contract of employment... That also occurs with others who are not basically legally entitled to work and may work one or two weeks in the cleaning, catering or building industries and after the two weeks their documents are checked and they are told that they cannot be employed because they are not lawfully entitled to be working and therefore their employers are not prepared to pay them since they don’t have the appropriate documents.”

(Migrants’ rights adviser)

The JCWI submission to our Commission noted that they “do not believe it is realistic to expect the undocumented migrant population will be encouraged to leave the UK of their own volition by this [The Home Office Enforcing the Rules strategy], or that the Government will succeed in removing such large numbers imminently based on its current rate of enforcement and removals. We do think it likely that increasing numbers will be employed by less than scrupulous employers to the potential detriment of decent employers and the rest of the UK workforce. The Enforcing the Rules strategy to drive these individuals away from public service provision such as free NHS care will mean that fewer will be able to access mainstream advocacy and be supported to find routes out of irregularity and exploitation; and could become even more dependent on employers.”

The Institute for Public Policy Research (IPPP) has estimated that the regularisation of certain groups of migrant workers could raise £1 billion in taxes. By regularising the most eligible, IPPR has argued, the enforcement effort on the remainder could be reduced by at least half, or perhaps by as much as three-quarters or more. Current Home Office policy with respect to regularisation does not therefore seem to be workable. Nick Pearce, former IPPR Director, has said: “Nobody likes illegal immigration. And the subject is a deeply difficult one for politicians to tackle. But the bare truth is that we are not going to deport hundreds of thousands of people from the UK. Our economy would shrink and we would notice it straight away in uncleaned offices, dirty streets and unstaffed pubs and clubs. So we have a choice: make people live in the shadows, exploited and fearful for the future; or bring them into the mainstream, to pay taxes and live an honest life.”

The penalties for workers found to be working irregularly are disproportionate. While they may find themselves subject to removal from the UK, employers mistreating undocumented workers cannot be prosecuted under employment law – their workers are not considered to have any employment rights. While they may face penalties for employing workers without legal rights to work, exploitative treatment of these workers is not considered as a crime.

A small number of European states have already undertaken initiatives to regularise undocumented migrant workers. These include Belgium, France, Luxembourg, Spain, Greece and Italy. While some encountered administrative problems, there is much that can be learnt from their implementation. All also included eligibility requirements, such as having been present in the country for a specified number of years and proof of stable employment and/or social security contributions. The types of permit offered also varied, from six-month residences, to longer permits and in some cases permanent residence. While these initiatives improved rights for regularised workers, there is no evidence that they increased immigration flows.

We therefore believe there to be a strong case for government to consider an earned regularisation for undocumented migrants currently working in the UK.
Home Office research indicates that asylum seekers initially focus on the “imperative of departure” rather than the destination they are moving to. For those with resource to travel to Western Europe, the study found that they are guided by agents, the presence or absence of friends or family, language and perceptions of cultural affinity rather than making a rational scrutiny of asylum policies or welfare benefits on offer. Most research respondents knew very little about UK asylum policy before their arrival, and detailed knowledge of asylum procedures or perceived weaknesses in the procedures were less important reasons for coming to the UK than their perceptions that the UK was a tolerant democracy. The research also identified a near-universal belief that in the longer term asylum seekers would be able to find work in the UK, and in many cases expectations of state support were low. The large majority actively wanted to work, and did not want to live on welfare benefits.

Asylum seekers waiting for a decision on their claims are entitled to reside in the UK and have access to limited public funds, but since 2002 (prior to which they were entitled to work after being in the UK for six months) do not have the right to seek employment. Under the New Asylum Model, introduced in 2007, decision-making is speeding up, and asylum seekers who have been in the UK awaiting a decision for more than six months are now mainly legacy cases relating to people who applied for asylum prior to the introduction of the new system. Many have been waiting many years for a decision, and the Home Office is unable to say how long they will have to wait. In the meantime they are required to live on ‘Section 95’ support (this is support that asylum seekers are eligible to receive while their claims are considered), around £38–40 a week, in National Asylum Support Service (NASS) accommodation. Overall there is no agreement regarding how big the backlog of asylum claims is; the government estimate is that there is a backlog of around 400,000 to 450,000 electronic and paper records. Barnardo’s has estimated that, even if the Home Office estimate is accurate, there could be 111,000 child dependents with them (64,000 arriving with their families and 47,000 being born here).

Barnardo’s has recently called for asylum seekers who have been waiting for a decision on their claim for more than six months to be provided with the right to work – a position also supported by the Refugee Council. Both point to the poverty experienced by families living on government assistance payments while their claims are processed, and the fact that some families have been waiting for several years for their claims to be resolved.

In other countries asylum seekers have rights to work. In the Netherlands, all asylum seekers are allowed access to the labour market for 13 weeks per year. In Canada, asylum seekers can apply to work following the filing of their asylum claims and a medical exam, and the USA provides asylum seekers with permits to work from 6 months after their application for asylum has been submitted. In Australia, asylum seekers who are not detained (as they arrive in the country with a valid visa) and have spent fewer than 45 days in the previous 12 months in Australia before applying for asylum are also allowed to work while their claim is processed (assuming their original visa allows them to work). Those whose visas do not allow them to work can still apply for permission to undertake paid employment.

We therefore believe that there is a strong case for providing asylum seekers who have been awaiting a decision for more than six months to be provided with the right to work.
There is also a lack of clarity regarding how many refused asylum seekers remain in the UK. The National Audit Office estimates that there are 283,500 unsuccessful asylum applicants who are still here, but recognise that there is no way to calculate an exact figure. These people are entitled to Section 4 support (this is support for failed asylum seekers who are destitute – there are strict conditions upon claiming it and in the main only those who can prove that they have applied to return home will be entitled to it), £35 in vouchers and shared accommodation. There are a number of countries that the High Court forbids the Home Office from forcibly deporting people to, including Zimbabwe. However, while the government is not forcibly returning people, it does not provide these applicants with an automatic right to receive support. With many forced to choose between return and destitution, undocumented work becomes highly likely.

Being prevented from working has personal costs for asylum seekers. Risk of poverty, worsening health, social isolation and low self-esteem are high. Forcing workers to undergo such long periods of absence from the labour market also harms their long-term job prospects. Respondents to our research reported on the types of work that this can leave legacy and failed claimants to undertake:

“Asylum seekers, one was offered work in a restaurant at £1.00 per hour.”
(Migrants’ rights adviser)

“We have become aware that some asylum seekers who may have been refused by the Home Office, and have exhausted appeals, are engaging in prostitution in exchange for accommodation and food which is offered by men who put them up.”
(Migrants’ rights adviser)

The Joseph Rowntree Charitable Trust (JRCT) inquiry into destitution among refused asylum seekers also concluded that in Britain today “there are people who have no recourse to public funds or services, but do not have the right to work either”. It notes that this acts to sustain the informal economy, which undercuts legitimate work. Its final report recommended that asylum seekers should be allowed to contribute to British society through being provided with a licence to work.

The JRCT enquiry also highlighted that no one knows how many asylum seekers whose claims have been rejected remain in the UK, and that there is an urgent need for the government to regularise these people. The report shows that returning these people could take between 10 to 18 years, and would cost around £4.7 billion. They therefore call for “a mechanism by which people who have been trapped here for years and have lived as members of their communities can be granted leave to remain”.158
Charubala’s story

Charubala is from Goa in India and is 39 years old. She has worked as a live-in domestic worker for a family that has lived in the UK for six months and is applying for a six-month domestic workers visa. Charubala previously worked in Hong Kong for 14 years. In May last year a ‘sponsor’ paid for her flight to the UK as part of a deal to have her work for a family in England. Once she started working for them, the family deducted the flight money from her wages, leaving Charubala with £300 per month. Like most migrant domestic workers she has no sick pay, holiday pay or pension benefits and has limited freedom of movement or job options. Charubala’s employer has retained her passport.

Charubala was told to sign a contract when she began work for the family but was not allowed to see what she was signing. She works from Monday to Friday; she does not have set hours but is expected to be available in the house for work 24 hours a day. Charubala’s main duties are cleaning and childcare. The woman of the household does the cooking but keeps Charubala in the kitchen to pass her utensils – something Charubala feels is unnecessary and intended to demonstrate power and superiority. Charubala reports that the woman is also extremely impatient and reprimands her severely if she does not fulfil demands instantaneously. She has also threatened to tell the police that Charubala has stolen something from her in order to have her deported.

Charubala feels her treatment and situation are “like slavery”. She reports that her employers’ sister also has a domestic worker whom she does not allow to leave the house and whom she pays only £100 a month. Charubala wants to get another job but she is afraid that her new employers would treat her the same. She says that she constantly feels nervous and anxious due to her employer’s temperament and threats and has become very unhappy. She cannot leave her job because her two daughters rely on the remittance she sends to India every month, and the only way she can work in the UK is on a domestic worker visa.

(We met Charubala through Kalayaan)
Recommendations

Employment protection in Britain is weak. We have one of the least regulated labour markets in the world, significantly increasing the risks of vulnerable employment experienced by our workers. While we believe that there are many non-legislative measures that could be taken to reduce workers’ risk of vulnerable work, it has also become apparent to us that there are legislative inequalities that are themselves creating vulnerable work.

We are aware that intense discussions regarding the rights of agency workers are ongoing. At a European level the EU Directive on Temporary Agency Workers remains under discussion, and nationally both the Temporary and Agency Workers (Equal Treatment) bill (which will return to the House of Commons on 7 May) and the Government’s proposed Agency Workers Commission provide potential avenues for legislating for equal treatment for agency workers. We believe that the case for action is clear and compelling, and that the Government should therefore take action to ensure equal treatment between agency workers and permanent employees undertaking the same work.

There are further injustices that are currently permissible in law. To provide workers with a fair entitlement to employment rights, and to reduce to the incidence of the worst treatment, we believe that the following measures are also needed:

- **Reform employment status to improve the rights and protections available to workers and to prevent bogus self-employment.** A simplified, clearer system could be fairer and easier for workers and employers alike, ensuring that there are no legal routes for employers to avoid providing employment protections.

- **Reform the Construction Industry Scheme (CIS)** to ensure that the CIS system is not used to deny workers their employment rights, and that where appropriate CIS workers are considered as employees, entitled to the same employment rights as the majority of other British workers.

- **Review ‘temp to perm’ arrangements, to ensure that existing rules do not create disincentives or barriers for agency workers seeking to move between temporary and permanent employment** (we believe that this review should include employers, employment agencies, trade unions and other stakeholders).

Our investigations have also documented extreme exploitation of low-paid migrant workers in the UK, who are often in jobs that already afford them the least employment protections. It was of concern to us when we also heard how employment can be made more vulnerable for these workers by the operation of the immigration regulations. We therefore believe that there are a number of areas in which change is required to ensure that migrant workers have a better chance of avoiding vulnerable employment, and of receiving the fair treatment to which they are entitled in return for their contribution to the British economy.

We do not believe that the WRS serves a useful purpose. It is acknowledged to be an imperfect way of counting the number of A8 migrant workers in the country, recording only those who register and not making any record of those who return to their country of origin or move on elsewhere. In addition, we have heard reports of it contributing to workers’ vulnerability, providing a means for employers to confiscate workers’ passports, overcharge them for the cost of registration, and abuse workers who have not registered. **We therefore believe that the WRS, and the requirement it places upon A8 workers to undertake 12 months’ continuous employment to attain a right to reside, should be abolished.**
We believe that the restrictions facing A2 nationals are contributing to their chances of being in vulnerable employment. Unless a strong economic case can be made for differential treatment we therefore recommend that restrictions on A2 workers should be lifted.

When workers do not have a ‘right to reside’ entitlement, they can find themselves with no choice but to continue in exploitative work for fear of destitution. We therefore believe that migrant workers who are challenging workplace exploitation should have access to temporary support to enable them to challenge workplace malpractice. Such legislation already exists to support victims of trafficking for sexual exploitation. We believe that it could therefore be extended to migrant workers who have experienced exploitative treatment at work. We also urge the Government to consider the separation of residency status from the question of employment rights, ensuring that all workers in the UK are legally entitled to receive minimum legal standards of treatment at work regardless of their immigration status. In practice this would mean that questions of employment rights would be considered separately from immigration status, and that employers could be prosecuted for employment rights violations involving undocumented workers. We believe that this could also act to curb employer demand for undocumented migrants, as employers could no longer continue with worker mistreatment without risk of legal challenge. This is currently the case in Germany and in Ireland.

The introduction of the new PBS system provides an opportunity to reform immigration regulations to ensure that they do not further contribute to the vulnerability of migrant workers to exploitative treatment. We believe that the objectives of a managed migration system should not be focused exclusively on the economic benefits to the UK, and that any managed migration system should take account of the social and welfare needs of economic migrants, and the rights that those individuals should expect, given their contribution to the economy. We therefore recommend that the implementation of the PBS should be reviewed to ensure that it takes account of the risks of exploitation that migrant workers face, and that worker mistreatment is not encouraged by its provisions. We believe that this would require measures including: monitoring of employers sponsoring migrants on work permits for abuse of workers’ rights; providing all migrant workers with the right to change employer during their period of residence in the UK (either by allowing people in areas of skill shortage to join the labour market, or by retaining the requirement to have a job offer on entry but allowing such workers rights to remain even if that job is lost through no fault of their own or if they move jobs); the close monitoring of ‘accredited operators’, ideally through the GLA (which currently has responsibility of licensing temporary labour providers in employment sectors (such as food processing and agriculture) that that permits will be issued in); and the introduction of provisions to prevent Directors whose GLA licenses are revoked or refused obtaining future immigration permits.

As part of the new PBS, proposals have been floated that would mean that migrant domestic workers lose their existing protections, requiring them to enter the UK on a business visitor visa. We believe that there is evidence that the impact of such a change would be to place these vulnerable workers at heightened risk of extreme exploitation. We therefore recommend that existing protections for migrant domestic workers are retained or improved – but not reversed.

We have heard evidence of abuse of migrant workers in tied accommodation. New guidance on the minimum wage accommodation offset (which specifies the maximum amount that can be deducted from minimum wage pay for accommodation) is welcome but is not enough. Other low-paid workers in receipt of wages above the minimum still routinely receive large deductions from their pay for accommodation, and much of the housing they are provided with is substandard and placing them at health and safety risk. None of the statutory employment rights enforcement agencies (discussed in Chapter 5) are able to take enforce housing standards, or challenge the provision of sub-standard accommodation, and it is not often apparent to representatives or workers where to report housing problems.
Local authorities have new powers to enforce minimum standards in private rented housing. Under the Housing Act 2004, landlords of houses of multiple occupation comprising three or more storeys and occupied by five or more people must obtain a licence from the council. Those who operate properties without a licence, or who exceed the occupancy limit, can be fined up to £20,000. Councils also have powers to challenge extreme overcrowding and poor conditions for private rented properties that are not covered by licensing. We welcome closer working between the GLA and local authorities in combating abuse of migrant workers through the provision of unfit housing. We would also encourage other enforcement agencies to build these links and believe that enforcement officers who suspect or have evidence of poor housing should have a duty to report this to the appropriate local authority officer.

We are concerned about the situation of undocumented migrants working in the UK. These workers are making an economic contribution, and often undertaking work at pay below the legal minimum, dragging down pay and working conditions for other workers. We believe that these workers are at unacceptable risk of exploitative treatment, and that present government policy serves only to ignore their plight. The Liberal Democrats have challenged the “cosy consensus” of the Labour and Conservative parties on undocumented migration, noting that both parties are committed to the impossible task of deporting half a million undocumented migrants, a cost the Liberal Democrats calculate to be around £5.5 billion. The party has instead proposed the introduction of a programme of earned regularisation for those who have “been here the longest and contributed the most”. The specific proposal is that the regularisation process is available to those with clean criminal records who have lived in the country for 10 years or more. Applicants would have to pass a civics test, demonstrate either proficiency in English or a willingness to learn, and would be expected to undertake a period of community service or to pay a fee. The Liberal Democrats have cited both humanitarian and economic advantages to this proposal. They maintain that providing migrants with legal status would make it easier to protect them from people trafficking, low-pay and other forms of exploitation. The economic advantages include the savings from forced deportations, and taxes that would be generated by taking undocumented migrants out of the informal economy. The Liberal Democrats also note that local authorities are already obliged to provide education for children aged 5–16 regardless of their immigration status, and that while undocumented migrants are required to pay for NHS treatment this is very difficult to enforce in practice. They do not therefore estimate that regularisation would lead to high costs to public services. London Citizens and the Strangers into Citizens campaign call for regularisation opportunities to be available to migrants after seven years of work in the UK. They propose a two-year pathway to regularisation, during which workers would be expected to work legally and demonstrate a contribution to society.

While critics say that an amnesty would encourage others to enter Britain, we feel that this would be unlikely to be the case were there stringent requirements on the conditions on which regularisation is granted. Our research shows that several other European countries have introduced successful regularisation programmes for undocumented migrants. We therefore believe that there should in principle be an earned regularisation for undocumented migrants working in the UK.

Evidence suggests that asylum seekers on subsistence payments awaiting the outcomes of their claims form a significant part of the undocumented workforce. Many asylum seekers whose applications are considered legacy cases have been here for many years, and there is no timescale attached to the dates when their claims will be resolved. These people are also entitled to access to ESOL classes after six months, providing government recognition that after this period facilitating their integration into British society is an important means to support social cohesion. Prohibiting these people from paid employment costs the taxpayer, who contributes to support them as they await the outcome of their applications, and increases the probability of them seeking work in the informal economy. We therefore believe that asylum seekers awaiting the outcomes of their claims should be entitled to work after six months in the UK.
DTI research (Burchell B, Deakin S and Honey S (1999) The Employment Status of Individuals in Non-standard employment. London: DTI) has highlighted that there are particular problems with recording employment status in the UK. Firstly, the Labour Force Survey (LFS) is a telephone household survey, and makes no effort to trace workers living at their place of work – not uncommon among temporary workers places in agriculture, hospitality and care sectors. The LFS is also recognised to undercount among migrant workers and underestimates non-English speakers, long-hours workers, and multiple occupation households. The best distinction that the LFS can make is between permanent and different types of temporary jobs. Even here there are limitations as the complexity of employment status means that for those with ambiguous employment status their own assessment may differ from that that could be defined by a court of law. People reporting to it may be confused about whether they have a contract with an employment agency or the employer they have been placed with, or whether they have a fixed-term or casual contract.


Ibid.

Individuals on fixed-term contracts are often, though not exclusively, employees. Workers in the other categories are commonly legally categorised as workers and therefore usually have more limited employment rights.


Ibid. p151.

Limited working-time flexibility was defined as not being able to take a break when wanted, and not being free to decide when to take holidays or days off.

Antisocial hours were defined as working at least once a month either at night or on Sundays, or working shifts, or working irregular hours.


32 Ibid.


34 Labour Force Survey Autumn Quarters 2007. Analysis includes all seasonal, casual, agency and other temporary workers paid £6.50 an hour or below.


37 Ibid. p88.

38 The employment status of casual workers is also often unclear, and clarification generally requires recourse to tribunal, where trends show they are more likely to be found to be ‘workers’ rather than ‘employees’.

39 Anti-discrimination laws apply to anyone in ‘employment’. This covers not only employees and workers as defined in other legislation but also to workers who carry out personal services for clients or customers.

40 The dismissal of non-employee workers is treated as a detriment. Individuals can seek compensation, but not a statement that they have been unfairly dismissal or reinstatement.

41 Dispute resolution rules are likely to be revised by the Employment Bill 2008. The statutory grievance and disciplinary procedures will be repealed. New arrangements designed to encourage employers to use internal procedures to resolve disputes will still apply only to employees and not all workers.

42 As above.

43 In workplaces employing only agency or casual staff, including some building sites, there will be no safety reps.

44 It is inconsistent that equal treatment rights for part-time workers apply to the wider category of workers, while rights for those on fixed-term contracts apply to employees only.


46 Ibid p318.


50 Ibid p45.


61 It has not been possible to identify information relating to other EU states.


The employment status of agency workers is a vexed question – which has been repeatedly considered by tribunal. The vast majority of agency workers are ‘workers’, although occasionally, where an agency worker has been on a long-term assignment with one employer, tribunals have been willing to find that they are employees of the hiring employer. However, recently tribunals have backed off from this approach. The tripartite nature of the employment relationship for agency workers also gives rise to increased confusion; for example, if an agency worker thinks that their employment rights have been breached it is not always clear who is liable.

worker thinks that their employment rights have been breached it is not always clear who is liable.


75 Ibid.


80 Ibid.


116 House of Commons Select Committee on Work and Pensions, Uncorrected Oral Evidence, One-off Evidence Session with Ms Judith Hackitt, the Chair of HSC, and Mr Geoffrey Podger, the Chief Executive of HSE 28th November 2007.


119 House of Commons Welsh Affairs Committee, Uncorrected Oral Evidence: Globalisation and its impact on Wales Ms Charlie Jones and Ms Barbara Hale, Monday 14th May 2007.


125 Ibid.

126 House of Commons Welsh Affairs Committee, Uncorrected Oral Evidence: Globalisation and its impact on Wales Ms Charlie Jones and Ms Barbara Hale, Monday 14th May 2007.


131 Ibid. p.43.


133 UNISON (2007) Senior Care Workers – Key Messages. London: UNISON.


139 It does not appear that any of these cases has yet been taken to appeal.


142 Ibid. p30.


150 Ibid p23.

151 Ibid.


155 Asylum seekers who have waited for an initial decision from the Home Office for more than a year can, under the EU Reception Directive, apply to the Home Office for permission to work, although this is not automatically granted.


157 Home Office cited in Ibid.


In this chapter we summarise our recommendations for how trade unions, employers, civil society organisations and government can work together to tackle vulnerable employment.

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During our investigations, we have learnt that vulnerable employment cannot be considered without reviewing policy targeted at wider social and economic disadvantage. Many vulnerable workers are women, and wider policy agendas promoting flexible working, improving access to childcare and reducing the gender pay gap will all therefore contribute to ending vulnerable work. These areas have, however, been outside the scope of our investigations. Similarly, the rate of the national minimum wage, minimum wage entitlements, and protection from discrimination all have a significant contribution to make to reducing vulnerable employment. Again, we have not commented on these areas, recognising them as the responsibility of existing Commissions. Our 60 recommendations therefore focus specifically upon terms and conditions in the workplace.

Given relatively low levels of labour market regulation in the UK, high awareness of employment protection is essential if rights are to be a reality. Without knowledge of their entitlements, workers can be left powerless to challenge poor treatment, and bad practice can become normalised so that employment rights violations may not even be recognised as problems. We therefore make recommendations for how employment rights advice can be made more accessible to all workers.

Trade unions need to do more to organise vulnerable workers. Too often vulnerable workers are not union members, even when a union is present in their place of work. As more jobs become sub-contracted to external firms, unions have to increase their efforts to organise whole workplaces, not just the directly employed staff. There is much good practice that can be built on and we make recommendations for how unions can organise those in vulnerable employment.

Access to education and skills can improve vulnerable workers’ employment prospects. The benefits system is also an important means of enabling progression from vulnerable work, and alleviating its worst impacts. However, current procedures and entitlements do not match the flexibility of today’s labour market. We therefore make recommendations for how vulnerable workers can be better enabled to access education and skills, and for simplification and reform of the benefits system.

While in theory many workers in the UK already have a fair range of employment rights, in reality they do not always exist. A weak enforcement framework, combined with wider labour market change (including a growth in the number of small businesses, extended supply chains and low levels of trade union membership in low-paid sectors), has led to a situation where some workers are unable to realise the rights to which they are entitled. We therefore make recommendations for how statutory rights can be made a reality.

Vulnerable employment cannot be discussed without reference to legally permissible inequalities in the treatment received by many atypical ‘workers’ in the UK. The complex law on employment status, and inconsistent application of employment rights, also makes the system easy to exploit. Many workers therefore find themselves falsely classified as a means to reduce their entitlements to employment protection. Immigration regulations also affect many migrant workers who have conditions placed upon their employment which force them to endure disproportionate labour market risk. We therefore make recommendations for how legal loopholes restricting access to employment rights can be closed.

If vulnerable employment is to be tackled, we all have a responsibility to act. Our recommendations therefore outline how trade unions, civil society organisations, employers and government can work together to improve conditions in the UK’s workplaces.
### Increasing awareness and advice: recommendations from Chapter 2

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Responsibility for implementation</th>
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<tbody>
<tr>
<td>1</td>
<td>A continuous national campaign should be developed, using social marketing techniques aiming to increase awareness of employment rights across the workforce, but particularly among vulnerable workers.</td>
</tr>
<tr>
<td>2</td>
<td>Trade unions should undertake to increase access to targeted training for workplace representatives, aiming to build their knowledge and awareness of vulnerable workers’ employment rights.</td>
</tr>
<tr>
<td>3</td>
<td>Employers should undertake to display employment rights’ information in workplaces and disseminate information through their supply chains.</td>
</tr>
<tr>
<td>4</td>
<td>Greater emphasis should be given to raising employment rights awareness among young people in secondary schools.</td>
</tr>
<tr>
<td>5</td>
<td>Employment rights training should be made available to public sector staff, and to staff working for organisations with whom the public sector contracts, who may come into contact with vulnerable workers.</td>
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<tr>
<td>6</td>
<td>The Government should undertake an urgent review of the impact of legal aid funding changes on the availability of employment rights advice for vulnerable workers.</td>
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<tr>
<td>Recommendation</td>
<td>Responsibility for implementation</td>
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<tr>
<td>7  A statutory duty should be placed on local authorities to provide sustainable funding for independent employment rights advice, accompanied by increased, ring-fenced central government funding for these services.</td>
<td>CLG</td>
</tr>
<tr>
<td>8  In addition to providing guaranteed funding, local authorities should support increased local coordination of employment rights provision, identifying funding gaps and promoting partnership working and information sharing between different providers and community groups.</td>
<td>Local authorities</td>
</tr>
<tr>
<td>9  The Government, trade unions and employers should undertake to work together to identify sustainable funding for community, voluntary sector and faith groups engaging with vulnerable workers, recognising the importance of their role in funding allocation procedures.</td>
<td>TUC and affiliated trade unions, small and large private sector employers, local government, CLG and MoJ</td>
</tr>
<tr>
<td>10 Local authorities should be required to ensure that those in receipt of direct payments have adequate support to understand their obligations under employment law.</td>
<td>DH and local authorities</td>
</tr>
<tr>
<td>11 Increased support should be made available for small businesses, to better enable all employers to implement employment law.</td>
<td>BERR, large employers from the private and public sectors and the Advisory, Conciliation and Arbitration Service (Acas)</td>
</tr>
<tr>
<td>12 Larger businesses should consider development of an initiative to promote the sharing of human resources expertise with small employers.</td>
<td>Large employers from the private and public sectors and employers’ organisations</td>
</tr>
</tbody>
</table>
## The challenge for trade unions: recommendations from Chapter 3

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Responsibility for implementation</th>
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<tbody>
<tr>
<td>13 Unions should pledge to undertake well-resourced national organising campaigns, coordinated by the TUC, to increase membership among vulnerable workers, in particular in workplaces where there are already recognition agreements and in sectors where vulnerable employment is common.</td>
<td>TUC and affiliated trade unions</td>
</tr>
<tr>
<td>14 The TUC should provide focused organising training and support for union officers and organisers seeking to organise vulnerable workers.</td>
<td>TUC</td>
</tr>
<tr>
<td>15 The regional TUC should coordinate support for local trade unions challenging vulnerable employment.</td>
<td>Regional TUC</td>
</tr>
<tr>
<td>16 Unions should build on efforts to work with partner trade unions overseas, developing proposals on cross-border trade union membership and other forms of support.</td>
<td>TUC and affiliated trade unions</td>
</tr>
</tbody>
</table>
### Escaping vulnerable employment: recommendations from Chapter 4

<table>
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<tr>
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| 17  
Government should reinforce its commitment to the statutory implementation of the Skills Pledge (supported by government funding) should major change not have been achieved by 2010. | DIUS and the UK Commission for Employment and Skills |
| 18  
Government should undertake to develop further policy around the use of Collective Learning Funds (promoting employee and employer contributions to wider employee learning). | DIUS |
| 19  
The recently established UK Commission for Employment and Skills should review access to training for vulnerable workers. | UK Commission for Employment and Skills |
| 20  
Changes to the targeting of English for Speakers of Other Languages (ESOL) provision should be reviewed. | DIUS |
| 21  
Government should consider the development of a network of advancement agencies, providing those in insecure and low-paid work with local access to support to improve their skills, secure their employment rights and leave vulnerable work. | DIUS and DWP |
| 22  
Trade unions should continue to make use of the Union Learning Fund and the regional learning funds to support projects aimed at helping vulnerable workers into learning. | Unionlearn and TUC affiliated unions |
| 23  
The remunerative work rule affecting benefit entitlements for seasonal workers should be amended. | DWP |
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<tr>
<th>Recommendation</th>
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<tr>
<td>24  Immediate consideration should be given to how the benefits system can be simplified to respond more flexibly to those in precarious and temporary work, including in particular a review of earnings disregards.</td>
<td>DWP</td>
</tr>
<tr>
<td>25  A warning policy should be developed with respect to benefit sanctions.</td>
<td>DWP</td>
</tr>
<tr>
<td>26  A monitoring system and a transparent set of standards should be developed for unpaid work experience.</td>
<td>DWP</td>
</tr>
<tr>
<td>27  Jobs created through Local Employment Partnerships (new partnerships between employers and Jobcentre Plus guaranteeing interviews for people moving into work) should be required to provide meaningful opportunities for progression and advancement.</td>
<td>DWP</td>
</tr>
</tbody>
</table>
Strengthening enforcement: recommendations from Chapter 5

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<tbody>
<tr>
<td>28 A new Commission on Fair Employment, with social partner and civil society representation, should be established, with permanent responsibility for continuing analysis of the scale, scope of and solutions to vulnerable employment in the UK.</td>
<td>BERR</td>
</tr>
<tr>
<td>29 The Fair Employment Commission should have strategic responsibility for the enforcement of employment rights in the UK. In addition, a new operational board should be established, with representatives from all employment rights enforcement bodies, with responsibility for overseeing the day to day work of employment rights enforcement bodies, and ensuring improved co-ordination.</td>
<td>BERR</td>
</tr>
<tr>
<td>30 A clear, nationally agreed set of standards should be established for employment businesses/agencies providing temporary labour, which needs to be closely monitored. The Government should be prepared to extend the GLA licensing regime – a proposal which responsible agencies back – to cover sectors characterised by vulnerable employment. The aim would be to ensure that an employer seriously exploiting workers and undercutting reputable companies would lose their licence to trade.</td>
<td>BERR</td>
</tr>
<tr>
<td>31 There should be an increased role for the state in enforcing statutory rights relating to all employment rights’ problems that rest on a statement of fact and involve the payment of monetary awards.</td>
<td>BERR</td>
</tr>
<tr>
<td>32 Resources for employment rights enforcement agencies should be significantly increased.</td>
<td>BERR, DWP and DEFRA</td>
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<td>Recommendation</td>
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<tr>
<td>33  Government should consult on what the ratios of enforcement officers to at-risk sector sizes should be, and should also commit to regular review of these ratios (this could be one of the responsibilities of the Fair Employment Commission).</td>
<td>BERR</td>
</tr>
<tr>
<td>34  The operation of enforcement agencies should be reconfigured to ensure much closer working at a strategic and frontline level. This should include lifting legal barriers to information sharing and placing duties upon inspectors to share information about breaches of employment law.</td>
<td>BERR, DWP, DEFRA and HMRC</td>
</tr>
<tr>
<td>35  A single point of contact should be available for workers or members of the public reporting an employment rights’ violation, with out-of-hours contact and translation facilities.</td>
<td>BERR, DWP, DEFRA and HMRC</td>
</tr>
<tr>
<td>36  All workers experiencing a violation of their employment rights should have the same entitlements as other victims of crime (for example, monthly updates on progress and notification of criminal prosecutions).</td>
<td>BERR, DWP, DEFRA and HMRC</td>
</tr>
<tr>
<td>37  Enforcement agencies should develop national and local links with relevant stakeholders, enabling them to learn about areas of likely employment rights problems, and to act proactively.</td>
<td>BERR, DWP, DEFRA and HMRC</td>
</tr>
<tr>
<td>38  Local authorities and sector-specific bodies, such as the Commission on Social Care Inspection and the UK Gambling Commission, should play a greater part in employment rights enforcement.</td>
<td>DH and Department for Culture, Media and Sport (DCMS), BERR and local authorities</td>
</tr>
<tr>
<td>39  Employment tribunals should have the power to enforce their own awards and, where there is suspicion of widespread abuse of employment rights, to make wider workplace recommendations.</td>
<td>BERR</td>
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To see our short report go to [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.uk)
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<thead>
<tr>
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<tr>
<td>40 Enforcement agents should have increased powers. Where there are grounds to suspect criminal activity, all inspectors and compliance officers should have the power to require individuals to attend an interview under caution. A new fixed penalty should be introduced for failure to keep and produce accurate records when requested by a compliance officer, and that directors who are responsible for serious and repeated breaches of safety and employment standards should be debarred.</td>
<td>BERR, DWP, DEFRA and HMRC</td>
</tr>
<tr>
<td>41 The Government should develop a new strategy to reduce informal work, containing policy initiatives aimed at enabling informal workers to regularise their businesses.</td>
<td>BERR, HMT, and DWP</td>
</tr>
<tr>
<td>42 A national registration scheme should be developed for employers who employ children. This should replace the current local authority-run permit system, and place the duty of registration upon employers rather than children.</td>
<td>DCSF</td>
</tr>
<tr>
<td>43 Employers and trade unions should launch an ‘ethical employment initiative’ to develop good practice principles and implementation standards for employers, aiming to minimise the risks of vulnerable employment, and promote good employment practice.</td>
<td>TUC and affiliated unions, employers’ organisations and civil society groups</td>
</tr>
<tr>
<td>44 Corporate reporting requirements should be reformed to require companies to report on progress on employment rights standards, building on existing good practice in corporate social responsibility.</td>
<td>BERR</td>
</tr>
<tr>
<td>45 Following the Government’s announcement of a new policy framework for procurement there should be new guidance to recognise the range of positive impacts that social clauses can have for vulnerable workers.</td>
<td>Her Majesty’s Treasury (HMT) and the Office of Government Commerce (OGC)</td>
</tr>
<tr>
<td>46 A good practice dissemination project relating to public procurement, and its potential for improving labour standards in UK supply chains, should be developed.</td>
<td>TUC and affiliated unions, employers’ organisations, civil society groups, HMT and OGC</td>
</tr>
<tr>
<td>47 Employment rights’ standards should be used by institutional investors seeking to affect corporate behaviour.</td>
<td>Institutional investors</td>
</tr>
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## Closing legal loopholes: recommendations from Chapter 6

<table>
<thead>
<tr>
<th>Recommendation</th>
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<tr>
<td>48 There should be equal treatment between agency workers and permanent employees undertaking the same work.</td>
<td>BERR</td>
</tr>
<tr>
<td>49 Employment status should be reformed to improve the rights and protections available to ‘workers’ and reduce the exploitative practice of bogus self-employment.</td>
<td>BERR</td>
</tr>
<tr>
<td>50 Government should undertake to review ‘temp to perm’ arrangements, to ensure that existing rules do not create disincentives or barriers for agency workers seeking to move between temporary and permanent employment.</td>
<td>BERR with employers’ organisations, TUC and affiliated unions, and civil society groups</td>
</tr>
<tr>
<td>51 The Construction Industry Scheme (CIS) should be reformed to ensure that CIS workers are considered as employees.</td>
<td>HMRC</td>
</tr>
<tr>
<td>52 The Worker Registration Scheme (WRS) should be abolished.</td>
<td>HO</td>
</tr>
<tr>
<td>53 Unless a strong economic case can be made for their retention, restrictions on the labour market participation of workers from Bulgaria and Romania should be lifted.</td>
<td>HO</td>
</tr>
<tr>
<td>54 Government should consider the separation of residency status from the question of employment rights, ensuring that all workers in the UK are legally entitled to receive minimum legal standards of treatment at work regardless of their immigration status.</td>
<td>HO</td>
</tr>
<tr>
<td>55 Access to temporary welfare support should be made available for migrant workers seeking to challenge exploitative work.</td>
<td>HO</td>
</tr>
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<td>Recommendation</td>
<td>Responsibility for implementation</td>
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<tr>
<td>56    The implementation of the points-based system (PBS) for low-skilled workers should be reviewed to ensure that it takes account of the risks of exploitation that migrant workers face, and that worker mistreatment is not encouraged by its provisions.</td>
<td>HO</td>
</tr>
<tr>
<td>57    Existing protections for migrant domestic workers should be retained or improved.</td>
<td>HO</td>
</tr>
<tr>
<td>58    A duty should be placed on employment rights enforcement officers to report suspicions of poor housing to appropriate local authority officers.</td>
<td>BERR, DWP and HMRC</td>
</tr>
<tr>
<td>59    Earned regularisation opportunities should be introduced for undocumented migrant workers.</td>
<td>HO</td>
</tr>
<tr>
<td>60    Asylum seekers who have been awaiting the outcome of their claims for six months or more should be entitled to work.</td>
<td>HO</td>
</tr>
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Appendices

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232 Appendix 1:  
Our Commission’s  
work programme

233 Appendix 2:  
Organisations who have  
contributed evidence  
to our Commission
The work of our Commission has been informed by a programme of regional visits, research, and expert testimony, which is documented below:

**Commission meetings**
We held six formal meetings, during which we heard evidence from academics, civil society groups, politicians and government agencies, and deliberated on our findings and recommendations.

**Regional visits**
We undertook regional visits to the north west, south west and south east of England and to Wales. During these visits we met with employers, trade unions, government agencies, civil society groups and vulnerable workers.

**Research**
We commissioned the following research studies, which will be published during summer 2008:


We also undertook in-house research to inform our work. This included analysis of the Labour Force Survey and qualitative interviews with key respondents from trade unions, employer groups and civil society organisations.

In addition, Laurie Bell from the Centre for Economic and Social Inclusion undertook secondary literature analysis for us, and assisted with the write up of our final report. With Nilufer Rahim, also from the Centre for Economic and Social Inclusion, he documented the case studies of the workers with whom we met.

Dr Jason Heyes, from the University of Birmingham, wrote several of the trade union case studies in the report, drawing upon his forthcoming research:

Heyes J (forthcoming) *Organising Migrant Workers through Education and Training*. Mimeo, Birmingham Business School, University of Birmingham.

**Public consultation**
We held a public consultation to which 50 trade unions, civil society groups and employers organisations formally responded. We will publish the responses we received during summer 2008.
Appendix 2:
Organisations who have provided evidence to our Commission

All of the organisations who provided us with evidence are listed below. We thank them for their contributions.

A4E
Advisory, Conciliation and Arbitration Service (Acas)
Association for College Management (ACM)
Advance Personnel
Advice for Life
Aire Centre
Amber Initiatives
Anti Slavery International
Avon and Bristol Law Centre
Battersea and Wandsworth Trades Council
Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU)
Bakers, Food and Allied Workers’ Union (BFAWU)
Bolton Unemployed Workers’ Centre (UWC)
Bristol Polish Church
Business in the Community (BITC)
Cardiff Law Centre
Centre on Migration, Policy and Society
Chartered Institute of Personnel and Development (CIPD)
Child Poverty Action Group
Citizens Advice and Citizens Advice Scotland
City Parochial
Cleveland UWC
Commission for Racial Equality Wales
Communication Workers’ Union (CWU)

Community
Community Links
Confederation of British Industry (CBI)
Derbyshire UWC
Disability Rights Commission (DRC) Wales
Disability Wales
East Manchester New Deal for Communities
East Staffordshire Racial Equality Council
Employers’ Forum on Disability
Employment Agency Standards Inspectorate (EASI)
Engineers Employers Federation (EEF)
Equal Opportunities Commission (EOC) Wales
Equality and Human Rights Commission (EHRC)
Equity
Ethical Trading Initiative (ETI)
Fleet Air and Army Museum
Gangmasters’ Licensing Authority (GLA)
GMB
Groundswell UK
Health and Safety Executive (HSE)
Her Majesty’s Revenue and Customs (HMRC)
National Minimum Wage Compliance Unit
Homeless Link
Incomes Data Services (IDS)
Immigration Lawyers Practitioners Association (ILPA)
Institute for Public Policy Research (IPPR)
Islington Council Environment & Regeneration Department
Joint Council for the Welfare of Immigrants (JCWI)
Kalayaan
Law Centres Federation
Learning and Skills Council (LSC)
Leeds City Council
Legal Services Commission (LSC)
Liverpool People’s Centre
Llanelli Polish Workers Association
Lloyd Maunder Ltd
London Borough of Newham
London Citizens
London Councils
Luton Rights
Manchester Advice
Manchester Pay and Employment Rights Service
Methodist Church
Metropolitan Police
Migrant Helpline
Migrant Workers North West
Migrants Resource Centre
Migrants’ Rights Network
MIND
Minority Ethnic Women’s Network (MEWN) Cymru
Muslim Council of Great Britain
National Association of Schoolmasters Union of Women Teachers (NASUWT)
National Assembly for Wales
National Council for Voluntary Organisations (NCVO)
National Group on Homeworking
National Institute of Adult Continuing Education (NIACE)
National Union of Journalists (NUJ)
National Union of Rail, Maritime and Transport Workers (RMT)
National Union of Students (NUS)
National Union of Teachers (NUT)
New Policy Institute
Newcastle and Gateshead TUC Centre
Against Unemployment
Nissan, Sunderland
North Manchester Law Centre
North Wales Fire and Rescue Service
One North East
Oxfam’s UK Poverty Programme
People’s Centre
Portuguese Workers Association
Prime Cymru
Primus Personnel
Progress GB
Prospect
Public and Commercial Services Union (PCS)
Race Equality First
Refugee Council
Refugee Voice Wales
Rochdale Homworking Service
Royal National Institute of Blind People (RNIB)
Rugby Borough Council
Sandwell Race Equality Partnership
Scottish Low Pay Unit
Sefton Equalities Partnership
Smart Group Recruitment Solutions
Social Security Advisory Committe (SSAC)
Somerset Polish Community Organisation
Somerset Portuguese Association
Somerset Race Equality Council
South East Wales Race Equality Council
South Riverside Community Development Centre
South West Tourism
St Giles Trust
St Mungos
Stoke-on-Trent City Council
Stonewall
Stop the Traffik
The Scottish Parliament
The Upper Room
Thompsons Solicitors
Tinsley Green Children’s Centre
Tiverton Hotel
Torbay Council
Tourism Skills Network South West
Transport for London
Transport Salaried Staffs’ Association (TSSA)
UCU and UCU Associate Lecturers’ Branch
Union of Construction Allied Trades and Technicians (UCATT)
Union of Shop, Distributive and Allied Workers (USDAW)
UNISON
Unite
University and College Union (UCU)
University of Hull
University of Oxford
University of Warwick
University of the West of England
Valleys Race Equality Council
Value Wales
Volunteer Centre North Lanarkshire
Welsh Assembly Government
Work Foundation
Working Families
YWCA England & Wales

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