



# Hard Work, Hidden Lives

The Short Report of the Commission  
on Vulnerable Employment

TUC Commission on  
Vulnerable Employment



## 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.

This short report highlights our key findings and recommendations. All sources of statistical and survey evidence are cited in our full report, which is available to download from [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.uk)

## Photography

The photographs used with the case studies are library pictures of workers, not the individuals themselves.

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# Contents

ii	About our Commission
1	Chair's foreword
3	Executive summary
7	Commissioners' introduction
11	<i>Chapter 1</i> What is vulnerable work?
17	<i>Chapter 2</i> Awareness and advice
23	<i>Chapter 3</i> The challenge for unions
31	<i>Chapter 4</i> Escaping vulnerable employment
37	<i>Chapter 5</i> Enforcing the law
47	<i>Chapter 6</i> Closing the loopholes

## *About our Commission*

This is the short 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.

This short report sets out our key findings and recommendations. Our full report is available to download at [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.uk). It provides details of our work programme and documents the evidence base we have used to inform our deliberations.

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# Chair's foreword

*Brendan Barber, TUC General Secretary*

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 use 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*

# Executive summary

**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 full report (available online at [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.uk)) sets out our analysis and proposals for how we believe trade unions, employers, civil society and government should act to challenge vulnerable employment. In this short report we highlight our key findings and recommendations.

# 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. The full scope of our work is documented online in our full report at [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.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.

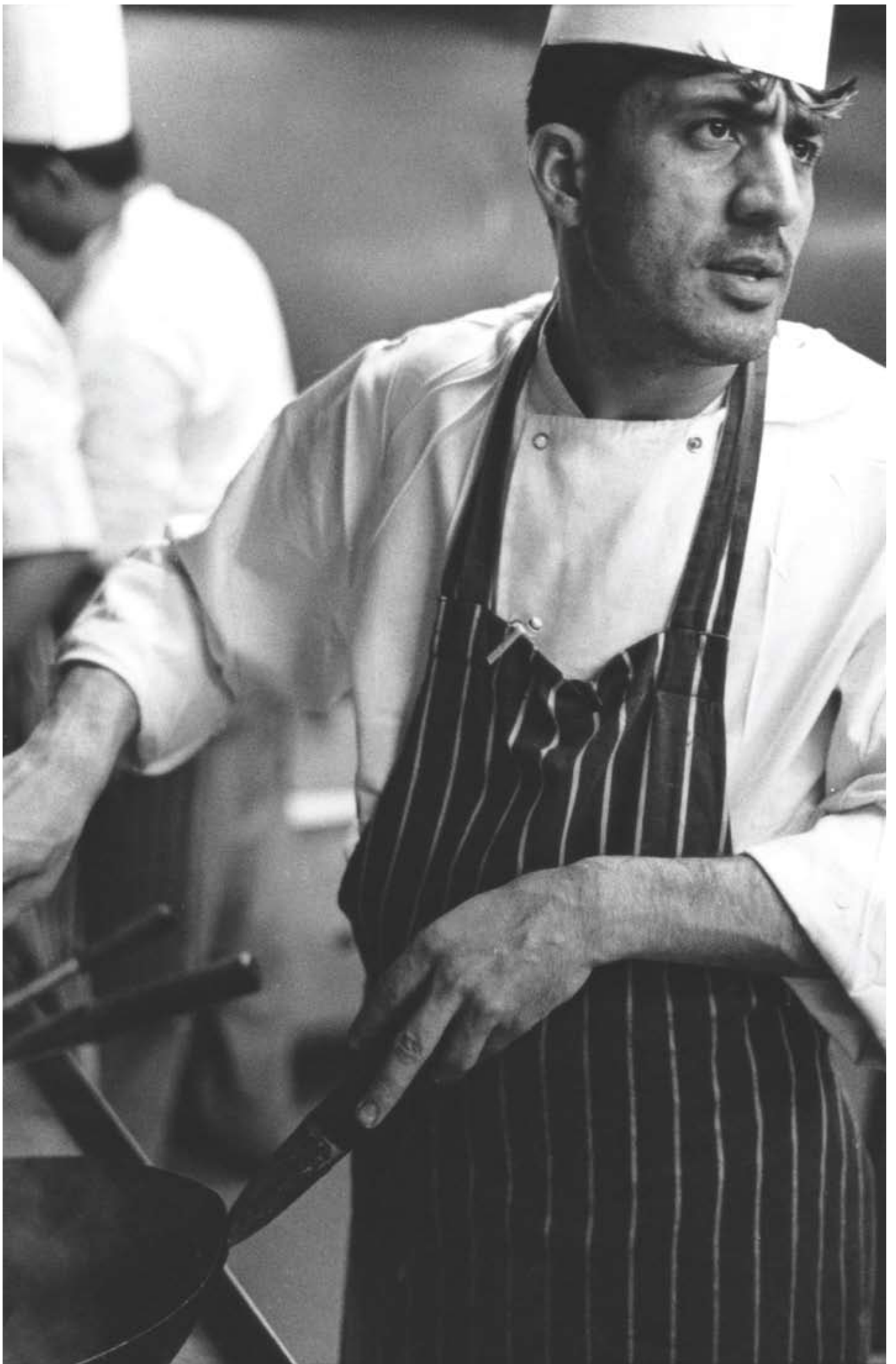
If vulnerable employment is to end, loopholes in the laws that are meant to protect workers must be closed. The lack of legal protection sends the message that treating workers unfairly and unequally is acceptable. But resolving these deficiencies in the law is only part of the answer. There needs to 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.





## *Julie's story*

Julie Davies has done a variety of jobs in her 54 years. After leaving school with no qualifications she worked in a shop and then in factories. Julie had to stop working to care for her second child who has learning difficulties. For the last 20 years homeworking has provided a way for her to contribute to the household income and look after her daughter.

Julie's main job has been making crackers. This involves lots of paper, card and glue and storing boxes before collection. There was no health and safety information and pay was a 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 – which continued following the introduction of the national minimum wage. A system of 'quality controls' also meant that a kit could be rejected with no pay. There was no sick pay, holiday pay, maternity pay or pension contribution. There were no pay slips nor a written contract. The work was also insecure and irregular: "You never knew if you would have work.

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 was entirely unaware of her employment rights until she saw a piece in a newspaper on the national minimum wage. She contacted the helpline and, through them, the National Group on Homeworking (NGH). With the Group's support Julie reported her case and, under pressure, the employer brought in a 'fair estimate agreement'. However, the 12 hours per kit stated by the employer was so far off a fair estimate of how much work Julie could do that she refused to sign. With the support of NGH she also put forward a tribunal claim and, after a year, was finally given a date for a hearing. The firm settled out of court. No further action was taken against them.

*(We met Julie through the National Group on Homeworking)*

# What is vulnerable work?

### **We define vulnerable employment 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 work is insecure and low paid with little chance of escape. Those who already face the greatest disadvantage, especially women, those from black and minority ethnic groups and disabled people are both more likely to be in such jobs and less likely to be able to leave them. Fear and insecurity make this situation hard to challenge.

Our research shows that problems at work are experienced across all sectors of employment. However, they are particularly common in care homes, cleaning, hotels and restaurants, hairdressing and beauty, construction and security.

But it is not inevitable. All advanced economies have low-skilled and low-paid jobs, but the experiences of those who do them varies greatly.

The vulnerability of such work depends on choices made by political and economic decision-makers.

For some the unfair and indecent treatment they receive remains lawful. In the UK there are three main categories of employment status: ‘employees’, ‘workers’ and the ‘self-employed’. Each has different levels of employment protection. Employment status can be determined only by referring to a complex mix of statute, contract and various test cases, and in some cases can only be determined definitively by an ET.

Those defined as workers have far fewer rights than employees. Temporary agency workers can legally be paid less than directly employed workers doing the same job and seldom have the same rights to workplace sick pay, paid holidays or pension contributions. Casual and seasonal staff often find themselves living with daily insecurity, in addition to fewer rights. Those falsely defined as self-employed (in ‘bogus self-employment’) do not work with the autonomy of the genuinely self-employed, but are denied the most basic protections enjoyed by other workers.

Workers from the eight EU accession states have reduced welfare rights until they can show they have worked for a year. Bulgarians and Romanians cannot take up permanent or temporary work without a permit, only bogus self-employment. All low-paid migrants who depend on a work-permit fear not just the sack but deportation if they complain and have to leave their jobs.

The informal 'cash-in-hand' economy in the UK is thriving – and as the Treasury's analysis shows, probably worth billions of pounds. Workers trapped in informal jobs in sectors such as domestic service, house building and taxi and mini-cab driving lose access to employment rights.

Many workers are also denied their legal rights. Evidence is clear that some employers in low paid sectors routinely break the law, with workers left without the pay, annual leave or working conditions to which they are entitled.

Vulnerable work makes people ill. People who have less autonomy, receive low pay and face job insecurity are two and a half times more likely than those in better jobs to develop an illness limiting their capacity to work.

It is hard for workers to challenge exploitation, even when the law is broken. The Legal Services Commission found that people are too frightened to take action on employment rights and that they often believe nothing can be done. Fear of the sack is too great.

If vulnerable work led to better and more secure jobs, then it might have a function. But while some escape, vulnerable workers are often trapped in a 'low pay, no pay' cycle where they move between temporary jobs and unemployment.

In 1999 the Treasury reported on the growing body of evidence that demonstrated the existence of these trends. Their research said 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". More recently, analysis undertaken for the Low Pay Commission has also 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.

## *The context*

Over recent decades our economy has grown substantially, and unemployment has fallen. Three in four of the working age population are in paid employment, even if some groups have not fully shared in success. But available jobs are changing. Global competition means that a highly-skilled, functionally flexible workforce is needed for economic prosperity. At the other end of the labour market demand is shifting from manufacturing to service sector work such as hospitality and personal services.

More workers are employed by small businesses than ever before. Just over 40 per cent of the workforce now works for a business that employs 99 workers or fewer.

Outsourcing means that corporate supply chains have grown. Once the canteen staff and cleaners would have been directly employed. Now they are contracted out, and increasingly likely to come from an agency.

We make more use of agency workers than other countries – 4.3 per cent of the workforce on any day will work through an agency in the UK, 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. Our research shows that low-paid workers using Jobcentre Plus are increasingly likely to be offered employment agency vacancies.

We also have the most fragmented employment agency market in the EU. The number of employment agencies in the UK appears to be rising, and while the top five agencies control between 75 and 80 per cent of the market in France, Belgium and the Netherlands, they have only 16 per cent of the market in the UK.

There are many more migrants working in the UK today than in 1997. We believe that the overall economic impact of immigration is positive, though not without problems. 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. But it has not been without local pressure on services and on some jobs and wages.

Low income in work is all too common. 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).

Both employment law and effective trade unions can protect against vulnerable employment. For much of the last century a combination of legal protection, such as the Wages Councils, and national collective agreements between employers and unions gave the UK employment standards comparable to other Western European nations.

But some fell outside these safety nets, and during the 1960s and 1970s new rights to protect vulnerable individuals came into law. But the 1980s Conservative government broke the all-party consensus that social protection and economic success could develop together. Instead deregulation was said to promote economic prosperity, and forms of protection including the Wages Councils were abolished.

Labour's election victory in 1997 brought a change. Employment rights have improved. But the then Prime Minister said that employment law reform would still leave Britain with "the most lightly regulated labour market of any leading economy in the world". He was almost right. The OECD says that the UK's workers have the second lowest level of protection of all developed nations, behind the USA.

Nevertheless there are important new employment rights including the national minimum wage, and new family-friendly entitlements. Europe's new working time regulations have placed limits upon working hours. Statutory trade union recognition procedures have been introduced for workplaces with more than 20 staff.

However, 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. In addition, vulnerable workers are unlikely to have union protection. Membership is lowest in the private sector, and in the lowest-paid sectors of employment union membership seldom exceeds 10 per cent.

There are also still significant gaps in employment protection. The most common way for vulnerable workers to lose rights is by being denied the legal status of an 'employee'. Instead of a contract of employment, they simply have a contract for services, and in employment law are considered to be 'workers'.

While this is a highly technical area of employment law, which requires a court to rule definitively on someone's employment status, its impact is brutal. If you are simply a 'worker' you have few 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 recent years those with secure jobs with responsible employers have made real gains, but vulnerable workers unable to assert their rights have been left behind.

### *How many vulnerable workers?*

For many, job security has improved. More workers now say they feel secure in their jobs than 10 years ago. Recently, temporary employment has been decreasing and around 6 per cent of workers are on temporary contracts, a similar proportion to 1992 (although it is important to note that the most vulnerable workers are under-counted in official statistics). At the same time the proportion of temps supplied by employment agencies has increased, and agency workers now make up more than one in six temporary workers.

We cannot use existing statistical resources to easily measure the number of vulnerable workers. Agency work and temporary employment are counted, but not all agency workers are in vulnerable employment. Many vulnerable workers – such as those in the informal economy and migrant workers – are not properly captured by official statistics. There is no clear dividing line between those who are in vulnerable work and those who are not.

Making a conservative estimate based on the number of workers with low skills in low-paid work, the number of low-paid temporary workers and an estimate of the number of low-paid migrant workers and workers in the informal economy, we believe there are around two million people in vulnerable employment in the UK. There are more details of our calculation online in our full report.

## John's story



After two years in the British Army, John found a job as a street cleaner for a local council in north-west England.

The council used both permanent and agency workers to clean the streets. John got his job through one of the two agencies that had offices on the council premises. John had a far worse deal than his permanent workmates.

He was paid only the minimum wage, was denied employer sick pay and had no fixed number of working hours. This zero hours arrangement meant that, for the first three or four months, John would sometimes end up with only two days work for what he had been led to believe was a full time job. He received no training and the cost of safety equipment, including £20 for his boots, was taken from his pay.

An average day for John would start at 5am. He would wait for about an hour to see if he would be selected for “rounds” to go out with permanent staff. If not chosen he would hang around until 8am in case he was needed. If he had no work by then he would be sent home without pay.

This was the regular pattern for the first two months. The only way to get work was to turn up every day. Taking a day off would mean workers were at the end of the queue for work the next day, making holidays or sickness impossible. In any case John never received any holiday pay.

John found standing in a line and hoping to be picked for work humiliating: “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 that 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.”

Most permanent staff were drivers, while most agency staff were cleaners. Directly employed managers would not speak to agency workers and some permanent staff expected agency workers to do more work than them.

Poor pay and irregular hours meant John had to take a second job as a part-time cleaner. This left no time for a social life, and the uncertainty, low pay and irregular hours put John under real pressure, forcing him to ask his parents for money.

John got involved in a union. The day after a strike John was called into the agency office and told that he was no longer required. But the union fought back. John got his job back and the council has taken on many of the agency workers as permanent staff, now only using agencies as cover for short-term absence. John has now moved on.

*(We met John through his union)*

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### *Can we afford to end vulnerable employment?*

Globalisation needs flexible and adaptable workplaces and workforces. But does this require us to limit employment protection for workers? OECD figures show no clear link between employment or growth and levels of worker protection. The OECD used to say that employment protection was an important cause of unemployment, but now says 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”.

Employment protection can have business benefits. Quality labour standards require innovation, flexibility and responsiveness by firms. DTI research shows that while small business owners complained that new rights would impose administrative costs, there was little evidence that they actually did. Another study found that the national minimum wage stimulated small employers to increase training, and that many of the firms affected by the minimum wage made improvements in quality.

### *What is the Government doing?*

The Government cannot meet its targets on social inclusion, health, employment, skills and child poverty without tackling vulnerable employment. But there has been little government acknowledgement of its extent.

Welfare to work policy has concentrated on helping claimants overcome their individual ‘barriers’, though there are now some welcome signs of official recognition that the quality of jobs on offer matters too. The National Audit Office says that there should be more emphasis on “helping participants to gain the right job for them, rather than the first job that comes along”.

But the reality is that vulnerable exploitative jobs will not be the right job for anyone. Public policy should attempt to reduce them.

After the launch of our Commission, the Department for Business, Enterprise and Regulatory Reform (BERR) set up a Vulnerable Workers’ Forum. However, it is focused primarily upon the enforcement of employment rights, and is not considering legal loopholes. It is too early to say whether it will provide a real vehicle for advancement.



## Anne's story

Anne is a lone parent and a qualified nurse who balances work with care of her young daughter. Anne's last job was as a part-time support assistant for a large service provider. When her shift pattern changed to include more sleep-overs (staying through the night with those with support needs), Anne's childcare arrangements fell through and she went 'sessional' – switching to a zero-hours contract with only a verbal agreement that she would be able to work certain fixed hours five days a week.

After speaking out about neglect, Anne was bullied and 'murmurings' began that she would no longer be given hours that suited her. Anne began a period of debilitating depression and was signed off sick. She was told she could not claim sick pay as she was sessional.

Anne eventually claimed statutory sick pay and kept her employer updated on her condition. Once she was sufficiently recovered, she asked for a back to work meeting. Anne was told this was no longer possible as no hours were available, but when she rang up

two weeks later two new members of staff had joined since she had 'left'. The two managers she spoke to both emphasised that because she was sessional there was no obligation to offer work.

Anne has only recently sought advice from Acas, which she heard about only after asking our secretariat for advice. She has also rejoined a trade union in order to have protection if something similar happens to her again. She had previously been discouraged from joining by one of her managers.

Anne is currently making a grievance complaint, which she hopes will result in some kind of resolution; but she is jobless and on benefit. She wants to return to work (and refuses to go back on to Incapacity Benefit) but she fears that similar problems may occur again. She feels angry and upset, and says: "It shouldn't matter if you are permanent, temporary, sessional, full-time or part-time – you should be treated equally with respect and dignity".

*(We met Anne after she contacted us via our website [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.uk))*

# Awareness and advice

**There is widespread ignorance of employment rights. Only 17 per cent of workers told a national Department for Trade and Industry (DTI) survey that they knew 'a lot' about their rights at work. The lowest paid knew the least. While 90 per cent of workers knew they had some protection from unfair dismissal, only 6 per of workers knew that they were protected only after one year – and most thought that protection was more generous than it really is.**

The people who most need to know about their employment rights are those who know least. We agree with the Government's research, which says: "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."

Small employers also often know little about their obligations and their workers' rights. One survey found that only a fifth were confident or very confident about their knowledge. Our survey of employment rights advisers found that nearly

two thirds thought that employer ignorance was responsible for most of the legal breaches with which they dealt (although a third thought that most of the employers they dealt with knew the law but were clever at evading it).

Within its limited resources Acas does a good job of informing people about their rights. In our survey 70 per cent of advisers had received extensive information about Acas's powers and responsibilities.

### *Keeping rights secret*

Advertising budgets for employment rights awareness campaigns are low. The current budget for national minimum wage awareness is less than a fifth of the advertising budget for the Government's campaign against benefit fraud. Most areas of employment law of particular relevance to vulnerable workers – such as working time, holiday rights and employment agency rules – do not have a publicity budget. In addition, much information is available only on the internet, which can make it inaccessible for those in the most vulnerable forms of work.

We therefore believe that more should be done to promote awareness among vulnerable workers of their rights.

Trade unions and civil society organisations can increase employment rights' awareness. There are some excellent examples of good practice in this area but better coordination is needed. Although more information is being produced for migrant workers, there is a risk of union, civil society and government organisations duplicating one another's work. Often voluntary and community groups are best placed to support vulnerable workers, but they can be severely underfunded.

Good employers can, and often do, promote employment rights' awareness among their workers. For example, we have met employers using liaison officers to help migrant workers understand their rights. However, many provide no information, and others deliberately mislead.

Employers – particularly the smallest businesses – also need help to improve their own knowledge of employment rights. Acas already plays an important role in supporting employers to improve their employment practice, and with more resources we believe it could do much more.

Overall, there also needs to be a more strategic approach, with government, its agencies, trade unions, civil society organisations and employers all working together to promote employment rights' awareness.

### *Advice deserts*

Vulnerable workers prefer face-to-face advice, and are less confident about telephone advice and information, finding it harder and more time-consuming to resolve problems in this way.

But those who could provide this advice – particularly solicitors, voluntary advice providers and union groups – are often without the resources to meet demand. Citizens Advice estimates that around two 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.

A large survey of unorganised 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 had reached a satisfactory outcome.

We believe that this failure to access information and advice, and to reach satisfactory resolutions to workplace problems, is clearly linked to the existence of employment rights advice deserts across the UK.

CABx are volunteer-led services. The normal CAB service provides employment advice and information about rights, but not necessarily specialist casework and ongoing support. In 2006/07 less than a third of Citizens Advice Bureaux had an employment specialist – and our research shows that, of these bureaux, around two thirds rely entirely upon part-time volunteers to provide specialist employment services. Law centres provide another source of legal advice, but there are only around 55 nationally offering support with employment problems. Our survey shows that 70 per cent of CAB advisers, and 80 per cent of advisers in law centres, felt that they did not have enough staff working on employment issues, and less than a third of CAB and 19 per cent of law centre advisers felt that they had enough.

For many employment rights providers funding has become tighter. In our survey most 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. It also shows that last year over 80 per cent of CABx and law centres had to increase the amount of time they spent seeking funds.

Advisers told us how such low capacity affected clients:

*“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 ... 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. A big culture in this area of warehouse workers, part time workers, agency workers and very little support for them...”*

(CAB manager)

## Radek's and Vera's story



Radek and Vera are a young couple from Slovakia and the Czech Republic. Vera and her parents have lived in England for around a year, but Radek has been here only a few months. Before that he worked in Spain. Neither Radek nor Vera speak much English and neither understands much about employment rights in the UK. They have both struggled to find regular work and have been exploited by agencies.

Radek and Vera are unfamiliar with the English labour market. Radek told us: "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. Vera told us: "Anybody who comes here from Slovakia, the 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 would receive a cut of the agency fees. There are therefore 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.

Although they now deal directly with the agency, there has not been any 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. Radek told us: "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)*

*“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)

The Legal Services Commission finds that many workers also face real difficulties accessing advice services, as many operate only during working hours and/or only by telephone.

Legal aid reform has made it harder for some employment advisers to access funding, and has led to a reduction in the number of solicitors taking on employment advice work. Between 2001 and 2006 there was a 46 per cent drop in the number of employment law providers undertaking legal aid work, and since 1997 there has been a real terms drop in civil legal aid spend of around 24 per cent. The House of Commons Select Committee on Constitutional Affairs has concluded that as a result of the changes “some areas of England and Wales, including rural and some urban areas, do not have an adequate supply of publicly funded legal services”.

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 overloaded.”*

(Law centre adviser)

The result is that vulnerable workers have great difficulty in getting the specialist support they need – even if they are persistent, they will in many areas only get advice about their basic rights but not the ongoing support they need to enforce them. Many areas of the country are employment rights advice deserts.

A new approach is needed to ensure that vulnerable workers get access to the advice they need to challenge employers who break the law.

*CoVE’s recommendations include:*

- a continuous national social marketing campaign to increase awareness of employment rights across the workforce, but particularly among vulnerable workers
- training in employment rights for public sector staff who come into contact with vulnerable workers
- a statutory duty on local authorities to provide sustainable funding for employment rights advice services accompanied by an increase in central Government funding for employment rights provision
- commitments from unions and employers to fund employment advice, and community groups working with vulnerable workers
- an urgent review of the impact that legal aid reform has had on the availability of employment advice for vulnerable workers
- increased support for small businesses, to enable these employers to better understand and implement employment law.





## *UNISON's Overseas Nurses Network*

The Overseas Nurses Network (ONN) in Scotland is a network of nurses and other care workers from overseas that:

- provides information on employment rights, contracts and unions
- provides training
- provides professional networking for overseas members working mainly in the private healthcare sector
- provides social opportunities
- recruits stewards who act as 'buddies' for those newly arrived in Scotland
- provides access to UNISON welfare support and encourages members to become active in the union.

The ONN's founder emphasises that it both provides a support network and helps self-empowerment. She told us that: "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."

She firmly believes that if unions want to engage overseas/migrant workers they need networks like the ONN, rather than rigid traditional structures – a new "trade union as family".

# The challenge for unions

**Vulnerable workers need trade union support. Even the best system of awareness and enforcement would not reach every worker. And in every workplace unions can ensure that proper policies and procedures are used to sort out problems without recourse to the courts. That is why union workplaces have fewer tribunal cases.**

But most vulnerable workers are not union members, and unions need to do much more to offer them support. While there are examples of unions helping vulnerable workers to tackle bad employers, there are many more where unions have not intervened. Unions need to do more.

Although union membership has stabilised over the last decade, there has been a 5 per cent fall in union density since 1995 and fewer than one in five private-sector employees is a union member. Public sector workers are more likely to be union members than those in the private sector, those in permanent jobs more likely than those in temporary jobs, the middle-aged more than the young, those in their job for more than two years more likely than a new

worker, those with degrees more likely than those with no educational qualifications, and white workers more than black. This means that the profile of union members is very different from that of vulnerable workers.

Some workplaces that employ vulnerable workers do not have any union presence – our research shows that around 64 per cent of vulnerable workers who are not union members are employed in workplaces where there are no trade unions.

However, our analysis also highlights that in the formal economy over 25 per cent of vulnerable workers have a union in their workplace, but are not union members themselves. Of this group of workers, nearly 60 per cent are women, and around 5 per cent are from an ethnic minority group. Across the public and private sectors there are around 400,000 vulnerable workers in this position.

We believe this trend is a consequence of trade unions neglecting to organise among increasingly extended supply chains. 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. Airports are a good example. While airport staff have high levels of trade union membership, increasingly workers in retail, security, catering and cleaning roles have been missed off the union organising agenda.

Our analysis shows both the scale of the challenge that unions face and the potential for immediate action in workplaces where unions are already recognised.

Surveys suggest that vulnerable workers are not hostile to trade unions. Rather, they either know little about unions or have never had an opportunity to come into contact with a union. But those without first-hand experience of trade unionism can doubt whether unions are relevant and can reflect media and other prejudices against unions.

We have seen and welcomed some excellent union initiatives, particularly promoting skills. But the union record is patchy. We recognise that it can be difficult to work with an insecure and often transient workforce. But despite these problems unions can and should do more, building on existing good practice.

PCS, for example, has an agency workers activists' guide and a recruitment leaflet targeted specifically at agency workers, for whom it has won statutory recognition. CWU have worked with many employment agencies, and USDAW also seek to prevent the creation of a divisive two-tier workforce by linking bargaining with organising, seeking to secure representative agreements with agencies and putting across the case for equal treatment to client firms.

Unions may have to change established procedures to recruit vulnerable workers, to ensure they better reflect the ethnicity, culture, languages and needs of their current or prospective members. There are often substantial differences in structure, approach, objectives and culture to overcome if unions and community groups are to work together.

Some unions are setting up new structures to better involve migrant workers, such as specific migrant worker networks and branches. While unions traditionally have expertise in a workplace agenda, migrant workers may be more in need of help with housing or tax issues. Unions are also linking with community and faith organisations that involve migrant workers.

*“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.”*

(Trade union officer)

Training for officers and stewards is key. In our research, many voluntary sector advisers told us that they felt unions did not employ enough full-time officers to support vulnerable workers, and that lay shop stewards were not always experienced and trained to handle the complexity of employment issues. They felt that unions did not always have the expertise to support vulnerable workers:

*“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 only one person in the locality who deals with employment matters.”*

(CAB adviser)

*“I’m afraid there is a significant proportion of cases where the unions just aren’t doing what they should be doing, for whatever reason. We see it week in, week out.”*

(Law centre adviser)

# Working together to support migrant domestic workers



There is a long-running and productive partnership between Unite and Kalayaan (an advice, advocacy and support service for migrant domestic workers) initially prompted by the lack of visas for migrant domestic workers in 1987. At the core of the relationship is the decision by hundreds of migrant domestic workers to join the union, supported by both Unite and Kalayaan.

As a direct result of the joint campaign by Kalayaan and Unite (then TGWU) the then opposition Labour party adopted a campaign pledge, subsequently implemented, to change the law and allow legal movement of migrant domestic workers between employers.

Kalayaan says that the union link was valuable because it recognised migrant domestic staff as workers. Even a union card was greatly valued by migrant domestic workers as it provided a sense of identity and legitimacy. Unite has also helped Kalayaan to develop its campaigning capability.

Unite needed to adapt to attract migrant domestic workers – who are very low paid, unlikely to have British bank accounts and have very little time off, making engagement in union services and activities problematic. They therefore introduced measures including making migrant domestic workers eligible for reduced membership fees (although some have chosen to pay the full rate in order to qualify for the union's sickness benefit). Special training support was provided for workers to become 'union collectors', following new procedures for collecting union dues, and union branches have been involved in providing practical and welfare support. Kalayaan's address has also been used for members in some circumstances.

Kalayaan presents the union message and role in a way that its clients can understand, while Unite has demonstrated the function and benefit of the trade union by:

- allowing the use of union premises and facilities for meetings – promoting a connection between workers and the union
- early promotion of English as a Second Language (ESOL) provision
- latterly, provision of computer classes at union premises.

The computer classes have been planned as a specific means to enable union membership to grow.

## Integrating migrant workers



The GMB London region has two organisers from migrant communities and three full-time project workers. Addressing workers' workplace and homelife issues supports union recruitment and learning needs. Contact with workers often takes place outside the workplace (in community centres, pubs or workers' cafés) because of initial fear of employers or agencies. A Union Learning Fund (ULF) learning project works closely with organisers to reach migrant workers and has trained a number of migrant worker union learning reps (ULRs).

The 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 to 4-hour session and is particularly targeted at agency workers, explaining what rights they have and how the union can help. The course is delivered in English but with an ESOL element. Migrant learning reps attend to reinforce points through interpretation. In the first session the workers are asked about their main workplace problems. The majority identify racism and exploitation as their first problem and the need for English language classes as the second. Many workers speak of loneliness and the inability to communicate with their colleagues.

The GMB has been able to establish several ESOL workplace learning courses around the region. Members attend these free of charge. Some companies release their learners, some allow one hour in company time and one in the learners' time and some insist that it is done in learners' 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. These have proved very popular. ULRs have also been able to deliver informal English classes to people from their own communities.

Recent successes include a food wholesaler. After poor treatment was exposed in the media, the GMB achieved 60 per cent membership, successfully campaigned for a reduction in the use of agency workers (leading to the company reducing its agency staff from 300 to only 50), and organised the first ESOL course.

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Some organising staff told us of their efforts to show existing members the benefits of organising 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 marry those conditions up for the migrant workers. Things are not going to change. More are going to come in. We can 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)

Organising vulnerable workers requires unions to commit sufficient money and staff time – and there is a strong moral case for them making these commitments. Unions can do more to maximise the way that resources are deployed, for example through closer working with community groups as a means to recruit members and develop relationships with them.

And there are success stories:

*“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)

Learning is often the central ingredient in successful union strategies to organise vulnerable workers. The biggest change in trade unionism over the last decade is the major role that unions now take in promoting workplace learning, with more than 118,000 learners supported each year. This is coordinated by a new arm of the TUC called unionlearn. Since 2002, ULRs – of whom there were 12,000 in 2005 – have had the right to paid time off. In the 12 months to July 2007, around 4,000 learners accessed ESOL training through a trade union.

The case studies here and in our full report (available online at [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.uk)) show that there is much good practice in the trade union movement, but our Commission also met many vulnerable workers who have no contact with a union. 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. While there are new initiatives among migrant workers, less has been done for many other low-paid temporary workers or homeworkers. It is starkly clear that much more needs to be done by trade unions.

*CoVE’s recommendations include:*

- pledges by unions to undertake well-resourced national organising campaigns to increase membership among vulnerable workers, in particular in workplaces where there are already recognition agreements and in areas of the economy where levels of exploitation are high
- support from the TUC for unions to work together nationally and regionally and to develop focused organising training and support for union officers and organisers
- joint work between unions in this country and in the countries migrant workers come from.

## Linking with community groups and good employers



Community's South West region has led a project that has helped migrants take up ESOL classes. Some members are employed in jobs that have low visibility and variable shift patterns, and many migrant workers are supplied by employment agencies. Community has therefore developed 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 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.

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. They are then able to move on to a 30-hour ESOL course. Those who pass the course get a certificate of achievement. Learners can also 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 they confront 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 on problems outside of work, including pensions, housing and benefits. The union has also facilitated access to information about possible progression routes and further education and training opportunities.

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. Steering group members say that government changes to ESOL funding threaten these and similar initiatives.

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## Justice for cleaners



Since 2004, Justice for Cleaners – an international union campaign led in the UK by Unite – has won better pay and conditions for cleaners.

The UK 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 campaign aims to secure the following rights for cleaning workers:

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

The campaign identifies cleaning employers and approaches them for talks. This has yielded direct results from some progressive companies, but those who will not talk are targeted for demonstrations outside their offices – gaining media attention around the contrast between cleaners' pay and boardroom salaries. Unite works with civil society organisations, notably London Citizens.

Beyond the 'quick-win' one-off pay victories, Justice for Cleaners recruits cleaners into unions and works towards gaining union recognition. Collective bargaining provides the base that can ensure that improved pay and conditions are upheld and improved in the long term.





## *Jozef's story*

Jozef is a Pole in his thirties. He has a degree in Enterprise Management and an MA in Political Science and has nearly 15 years of management experience in manufacturing. Jozef came to the UK to gain language skills. He found a job in a food processing factory through a friend.

Nearly all the factory-floor workers are migrants, directly employed and on the minimum wage. Jozef receives holiday pay but no company sick pay. He works 43 hours a week, spread over four 10-hour shifts and one half-day. Workers can be sent home on any day if there is not enough work: "If they don't like somebody, it's very subjective: 'I don't like you, you go. I like you, you stay.'"

Factory managers sometimes treat staff badly. His manager is worried about workers speaking about her in Polish. She has used foul language towards him and other Poles and even thrown things at him, which he found humiliating.

Jozef also reports unequal treatment between the Polish and non-Polish workers (who are mainly of Pakistani and Afghan origin). The latter groups of workers are given a share of their supervisor's bonus, 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.

Jozef is constantly exposed to the cold from open fridges. This has led to frequent illness. He is on antibiotics but has to go into work because he cannot afford to lose any pay. Jozef 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 still keen to improve his English, Jozef is worried about the end of free ESOL for people in work as he will not be able to afford classes after September 2008. His poor job, lack of money and not being able to learn English mean that "life here is a shock".

*(We were introduced to Jozef through Oxfam's UK Poverty Programme)*

# Escaping vulnerable employment

### *Access to education and skills*

Many vulnerable workers are trapped in low-paid and precarious work. But, if they have clear routes to better work, they will gain more confidence to challenge bad treatment and may find opportunities to progress out of their current jobs.

The case for increasing skills right across the workforce was recently given weight by the Leitch Review of Skills (the Government-commissioned long-term strategy on skills, published in December 2006). It calls for increased investment in adult skills at all levels, and the launch of a new 'Pledge' for employers to try to undertake to train all eligible workers up to Level 2 in the workplace. The report says:

*“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.”*

We agree. To ensure that improved access to skills is a reality for vulnerable workers, the government must closely monitor the effectiveness of the Skills Pledge. If by 2010 it has not had the necessary impact, the Government must take statutory action to remedy the situation, including the introduction of a statutory right to time off to study to NVQ Level 2, supported by government funding.

The proportion of the working-age population without any qualifications fell from 13.6 per cent in 1997 to 8.6 per cent in 2007. But low-skilled workers are the least likely to be trained by their employers, particularly as those with low or no skills are more likely to be moving in and out of short-term employment. Around two-thirds of annual Jobseekers Allowance (JSA) claims are repeat claims, and around half of these are from people with no or low skills.

Agency workers are even less likely to receive training. Our research shows that nearly two in three temporary agency workers have never been offered training by their employer.

The Commission on Employment and Skills has now been established. With its membership drawn from business, trade unions and civil society organisations, the Commission's functions will include advising ministers on strategy and policies relating to employment and skills. As vulnerable workers are less able to access workplace learning, we believe that the new Commission should undertake a review of training for vulnerable workers as one of its first priorities.

Further support for vulnerable workers could be provided by improved access for all workers to national advice and guidance on education and skills, as John Denham MP recommended before joining the Government. He called for a national network of 'advancement agencies', to help "the transition from an insecure, poorly-paid job to a higher-skilled, better rewarded job". He says making this transition can be as hard as moving from benefits into employment. We agree with such support, and believe that ULRs, who already perform parts of this role, would be well placed to contribute.

### *English as a Second Language (ESOL)*

The Government has made substantial investment in ESOL, but recent changes will deprive many vulnerable workers of opportunities to gain better language skills. Universal entitlement to free ESOL training up to Level 2 was removed in August 2007. Instead, fee remission will be available only to priority groups – primarily people who are unemployed or receiving income-based benefits. Employers who have recruited workers from outside the UK will be expected to bear the full cost of any necessary English language training for those who do not qualify.

The Department for Innovation, Universities and Skills (DIUS) says that it wants to concentrate limited funding on the most disadvantaged groups, often those with longest UK residency. It says: "Those who benefit economically from migration should also bear some of the costs: it is essential then that employers train their workers to the required standard of English for safe and inclusive working." However, it is not proposing any enforcement of this proposal, which will not be mandatory but voluntary.

Both the restriction of free ESOL to those on benefits, and the expectation that employers will provide or facilitate ESOL for their workers, will cause real difficulties. Immigration regulations

mean that few people with ESOL needs are eligible for means-tested or income-related benefits, and among those who are entitled, levels of take up are very low. Vulnerable workers, by definition, are unlikely to work for responsible employers willing to pay for ESOL, not least because they work through agencies or on casual contracts.

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.

### *Welfare benefits*

While we have focused upon the employment rights of vulnerable workers, we have also given some consideration to how the benefit and tax credit systems affects those in vulnerable employment.

Many vulnerable workers depend on benefits and/or tax credits, 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. Others – such as informal workers without the right to claim benefits, or some low-paid migrant workers – can face destitution if they are sacked or walk out because they have no access to even short-term emergency benefits. But well-designed benefits can help people to escape vulnerable work, for example by supporting them through education or training.

One obvious injustice is the way in which seasonal workers can be treated by Jobseeker's Allowance (JSA) 'remunerative work' rules. These can be used to hold that seasonal workers have a 'recognisable cycle of work' that includes periods out of work. This stops JSA payments when such workers are unemployed. And, because tax credits have different rules, unemployed seasonal workers can end up being assumed to be in work by the Department of Work and Pensions (DWP), but unemployed by Her Majesty's Revenue and Customs (HMRC) (which administers tax credits), meaning that they cannot claim either in-work or out-of-work benefits. This must change.

Another problem is caused by earnings disregards. If someone is on certain benefits and earns more than the disregard, they must inform the authorities, and will have their benefit reduced accordingly. On our regional visits, we met people

## 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 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 ship.

Paula was initially paid £4.10 per hour. This was raised to £5.10 per hour when the minimum wage was introduced. There was no holiday pay, sick pay, maternity leave or pension provision. Paula worked alongside permanent staff in the same job, whose pay and conditions, as well as job security, were much better.

Paula worked 14 days on and 14 days off. When she was on, Paula worked a 12-hour split shift, mostly cleaning cabins. When she was off, she was unpaid and unemployed, surviving off the wages earned in the previous two weeks, while hoping to be taken on again for another two weeks. Although she may have been entitled to claim benefits during her 14-day unemployed spells, Paula did not claim anything because of the problems associated with 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.

Spurred by the poor and unfair treatment she and her agency co-workers received, Paula began protesting about the issue of agency workers rights. On one occasion she was suspended by her agency for six weeks for petitioning against working conditions.

During the time she worked on the ferries, the poor pay and conditions and the insecurity had a major impact on Paula's life. Paula says her wages left her with very little after paying rent and bills. She was refused bank loans and a mortgage because she was an agency worker. Of the time during this period when she was a single parent, Paula says that things got so hard that she was "barely living". She continues to be worried about how she will manage financially in old age because she was not able to build up a pension while in the job.

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 union's women's advisory committee. Things have not improved, however, for the workers in Paula's old job: Paula reports that the company has switched to using migrant workers, often Portuguese, who are paid as little as £2.20 an hour.

*(We met Paula through her union)*

who, because they could get only short-term, temporary work, had an income that changed from week to week. This could leave them without support while new entitlements were calculated, or unintentionally in violation of benefit rules – enough to create real barriers to taking such jobs or to working formally.

One way forward would be to allow a higher level of income to be disregarded prior to out-of-work benefits being withdrawn. 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, insecure work.

Delays in paying benefits also cause big problems. This is particularly acute when people move between unemployment and work. Many vulnerable workers are among those most likely to be affected by this as they can be trapped in a cycle of short-term work and joblessness.

Both disregards and delays make cash-in-hand jobs in the informal economy attractive – not because people want to be benefit cheats, but because for this group security of income has to be a priority and the risks of a catastrophic fall in income when they change benefit status are too great.

Some problems stem from the complexity of the present system, which also leads to low awareness and take-up. Such problems can be even worse for migrant workers.

In our view, benefit simplification should therefore give top priority to making the benefits system offer better support to those who may be in atypical work, and who move frequently between work and benefits.

Benefit sanctions can hit vulnerable workers hard. Any worker leaving a job voluntarily or because of misconduct can be denied JSA for up to 26 weeks. But research reveals that few know about the sanctions regime. While sanctions are needed for those setting out to defraud the system, we believe that they should be reserved for the worst cases, with a system of warnings for first and small-scale violations of benefit rules.

We are also concerned that the Government is moving towards compulsory unpaid work experience. We are not against all work experience; it can help some individuals back into the labour market. But 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.

To reduce the risks of work experience placements, workers should be provided with a clear statement of the standards they can expect. Such placements should always be part of a wider individual programme and monitored to guard against abuse.

Action is needed to ensure that there are real progression routes out of vulnerable employment, and that attempts to escape from exploitation are not limited by the inflexibility of the benefits system.

#### *CoVE's recommendations include:*

- **statutory action by Government if by 2010 the Skills Pledge has not had the necessary impact, including the introduction of a statutory right to time off to study to NVQ Level 2, supported by government funding**
- **a review of access to training for vulnerable workers by the recently established Employment and Skills Commission**
- **a review of changes in the funding of ESOL**
- **amendment of the 'remunerative work' rules which affect the benefit/tax credit rights of seasonal workers**
- **more flexibility in the response of the benefits system to claimants' earnings; in particular earnings disregards should be reviewed**
- **a warning policy to be developed with respect to benefit sanctions**
- **the development of a monitoring system and a transparent set of standards for unpaid work experience undertaken by benefit claimants.**





## *Imran's story*

Imran is 29, British Bangladeshi and educated to NVQ Level 2. During a period when he was claiming Jobseeker's Allowance, Imran was referred by Jobcentre Plus to a recruitment agency specialising in placing unemployed clients in work. The agency found a job for Imran as a housekeeper and porter for a large public service provider. Soon after starting the job, Imran began encountering problems with his pay. Although he did the job well, Imran was dismissed after four weeks without notice or explanation.

Imran mostly worked nights from 10:30pm to 5am. Imran's agency did not provide him with a uniform and health and safety wear as they were supposed to, so he ended up paying for them himself.

The problems began when Imran was not paid for two weeks' work, and he did not receive the premium rate promised for working on public holidays. When he queried this, he was told the agency did not have a record of his hours, but that they would check his bank statements (which he provided) and get back to him.

For a few weeks he was told that he would shortly receive a payment. But, despite repeated phone calls, the payments never came. Eventually he was told that he had never been on the pay roll system, and that his employment had been terminated. Imran says that his agency co-workers were also underpaid but did not complain because they were afraid of being sacked.

Imran's wife and daughter have had to go and live with his in-laws in another city because he is unable to provide for them. He is upset that he cannot afford to visit them. The stress has affected Imran's health. He suffers from migraines and loss of appetite and has lost two stones in weight since he was dismissed. Imran also feels humiliated for burdening his family.

Recently, Imran has found a new job in security and is looking forward to starting so that he can improve his financial situation.

*(We met Imran through the TUC/BERR Vulnerable Workers' Project)*

# Enforcing the law

### *Extensive non-compliance*

Throughout the work of our Commission we were shocked by the open defiance of employment law by some employers and employment agencies. It quickly became clear to us that many knew they could get away with flouting the law and that, even if caught, they were unlikely to face more than minimal punishment.

Our survey of employment rights' advisers suggests widespread non-compliance. High proportions of advisers told us that problems with dismissal or termination and pay were reported to them weekly or more regularly (dismissal to 79 per cent of advisers and pay to 67 per cent) and 60 per cent reported that they encountered clients who had experienced problems with working time on a weekly basis.

A wealth of surveys back up our findings. In one national DTI survey, the most common problem reported by respondents was not being paid. Official statistics report underpayment of the national minimum wage greater than can be explained by legal exemptions.

There is widespread abuse of working time regulations. In a DTI survey, 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. The right to paid holidays is also widely abused.

Health and safety law is frequently breached. Most legally reportable workplace accidents, including major injuries, are not reported. Health and safety issues related to pregnancy appear to be associated with particularly high rates of law breaking.

Employment law is ignored in the informal sector. Research undertaken for the LPC has found significant non-compliance with the national minimum wage in some areas of clothing and restaurants. In the main, this resulted from rates not being directly linked to hours of work – many sewing machinists were paid according to the number of garments they produced, and in the restaurant sector working hours were also imprecise, with shifts regularly extended without payment of overtime.

Some of the most extreme employment rights abuses brought to our attention involved employment agencies and temporary labour providers. In our survey, 62 per cent of CABx and 81 per cent of law centres saw agency workers frequently or very frequently. During our work we found extreme confusion as to what rights agency workers have, particularly about which pay deductions were legal. Workers were totally dependent upon these labour providers for work and, in some cases, accommodation. The Health and Safety Executive (HSE) told our Commission about the difficulties that employment agencies can create for health and safety enforcement.

The GLA is relatively new and has impressed us. It regularly takes enforcement action, with several recent cases being brought against gangmasters. Licensed labour providers now have an incentive to report informal or illegal gangmaster activities that undercut them. But, while the GLA can stop gangmasters operating in the sectors it covers, it cannot stop offences in unregulated areas of the labour market.

Our research with employment agencies and employers operating in low-paid sectors found that many favoured greater resources for the GLA. They gave examples of being undercut by smaller agencies that were reducing costs through illegal practices. One agency (not currently operating within the GLA's regulatory regime) told us that:

*“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)

Another employer told us that there was a need for tighter controls of employment agencies:

*“How can this improve? More inspectors who can inspect without notice. Immediate spot checks. Better relationships should be established between the GLA and migrant workers.”*  
(Employer respondent)

In many other European countries, licensing of such businesses is a precondition of their operation. With more resources, we are confident that the GLA could regulate more sectors, and we believe that there should be an extension of its current licensing regime.

### *The limitations of employment tribunals*

Many breaches of employment law can only be resolved through the tribunal system. This can work well, but the ET system can also present real obstacles to vulnerable workers.

DTI survey evidence shows only half of those who experience problems at work seek advice, and only two in five of these take action. When asked why, people said that it was not worth the hassle and that they did not think they could solve the problem. Some did not think they would be treated fairly. Temporary workers, part-time workers and non-union members were less confident of achieving justice. One survey of unorganised workers found that fewer than one in forty of those who had a problem at work took an ET claim.

Many people we met were afraid that if they took their employer to a tribunal they would lose their job and become destitute as other employers would not take on ‘troublemakers’.

The individual nature of tribunal cases means that every worker who has faced mistreatment needs to take their own case, even when there is clear evidence of systemic problems. To increase the impact they have on the wider workplace, we believe that ETs should have the power to issue recommendations to employers involved in cases where they suspect widespread abuse of employment rights.

Even when workers win a tribunal case it does not mean that they will receive any award made. In England and Wales tribunals do not have the power to enforce their awards. The only option a worker has in this situation is to take their employer to the County Court, incurring further upfront fees even if they eventually win their costs.

In our research, over 25 per cent of employment rights advisers said that it was frequently or very frequently the case that claims upheld at a tribunal were not subsequently paid. An adviser told us about how this could affect workers:

*“We took an employment case to the tribunal...the guy was awarded £14,000. That was last August by the time we got the award. It's taken him months 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... and now he's so deeply in debt, his £14,000 will barely cover the costs..”*

(CAB adviser)

### *Resources for enforcement*

Some rights are enforced by government agencies. We are impressed with the commitment of their civil servants, but the agencies are seriously under-resourced.

The HSE is the biggest agency, but has suffered cuts in recent years, with 200 fewer front-line inspectors than in 2003. Other agencies have had cash increases, but still have insufficient resources.

The average employer receives a visit from a health and safety inspector once every 12–20 years. Many small employers will never receive a visit.

Few proactive attempts are made to enforce some rights. The HSE has a major duty to enforce the widely abused working time rules, but has few staff round the country with this responsibility.

HMRC has just over 100 national minimum wage inspectors. Even including the 24 agricultural wage inspectors, this is just 5 per cent of the number of inspectors in the DWP benefit fraud unit and far fewer than those who policed the Wages Councils before their abolition.

The Employment Agency Standards Inspectorate (EASI) has 30 field inspectors covering the whole of Great Britain – a grossly inadequate level for the task.

We recognise the need for inspections to be risk-based. However, current resources mean that even where there is high risk, chances of inspection are unacceptably low. Almost everyone we met complained of lack of enforcement. With some exceptions, enforcement agencies do little other than respond to individual complaints, in a situation in which many vulnerable workers will not complain because they fear the consequences.

There are differences in the levels of resources available to the different agencies. While the GLA has around one inspector for every 92 businesses it covers, EASI has one for around every 700 agencies (and many agencies have multiple offices). HMRC has approximately one national minimum wage inspector for every 4,000 businesses in the sectors most likely to have minimum wage jobs.

At present, many bad employers know that they can build breaking the law into their business plans. The various agencies cannot fulfil the duties that Parliament has placed on them without more resources. If agencies had the resources they could mount many more proactive inspections, so employers breaking the law would know there was a real risk of punishment. We believe that government agencies and local authorities should also have a statutory duty to report suspicions of breaches of employment standards, and the law should be changed where necessary to allow and require this.

### *Working together*

Enforcement agencies do not routinely share information. Once a formal investigation has commenced most agencies are legally prohibited from sharing information, even if it relates to further breaches of employment law. Legal restrictions on information sharing need to be lifted. Trade unions and civil society advocates often have good local knowledge about rogue employers. Better links are needed to make sure state agencies can act on this information.

Different enforcement bodies have different powers. All enforcement agencies deal with activity that is criminal; but they do not have the powers of the police to require employers to attend interviews. No agency has provision to disbar rogue employers from starting a similar new business, and criminal offences such as failing to keep appropriate minimum wage records are rarely prosecuted.

All inspectors and compliance officers should have powers to require suspects to attend an interview under caution. We call for a new fixed penalty for failure to keep and produce accurate records when requested by a compliance officer, and for powers to disbar directors guilty of serious and repeated breaches of safety and employment standards.

The current system is too confusing for vulnerable workers trying to report problems. Individual workers may have to deal with multiple agencies for what they would see as a single issue, and different agencies have different opening hours and have to be contacted in different ways. Closer working is required to make it easier for vulnerable workers to report multiple abuses, which at present they would have to report to more than one agency.

Although employment enforcement agencies do not work well together, this is not inevitable. Much effort has been put into getting all the agencies concerned with child protection to work together. The emergency services also provide another strong example of effective partnership working between different organisations.

To ensure that this happens we believe that a new governance structure is needed for employment rights enforcement. Led by a Fair Employment Commission, including representatives from unions, employers and civil society organisations, and managed by an operational board including representatives from all areas of employment rights enforcement, we believe that the new structure for enforcement should meet the following requirements:

- no legal barriers to sharing information between agencies
- a single point of contact for people to report employment rights violations, with an out-of-hours service and interpreting facilities
- training for all enforcement officers to enable them to identify signs of employment rights' abuse outside their normal responsibilities
- providing workers with the same rights to information as other victims of crimes (for example, monthly updates on progress and notification of criminal prosecutions).

### *Extending enforcement*

Only workers employed through an employment agency; working on a temporary basis in agriculture, horticulture, forestry or shellfish gathering; or complaining about breaches of minimum wage or health and safety rules can go to an official agency to report their problem.

Anyone else has to take action through a tribunal. Vulnerable workers are likely to have more than one problem, even if one or more can be dealt with by an enforcement agency. Our research shows that 90 per cent of advisers say that their clients always have multiple problems.

There is often no single clear course of action for vulnerable workers seeking to resolve problems at work.

More information and awareness are part of the solution, but they are not enough. In many other European countries, the state is responsible for the enforcement of a wide range of employment rights. In Ireland, for example, the Government has recently undertaken to triple the number of labour inspectors who will be available to work in the new Employment Rights Compliance Office that will bring officers from the Irish Department of Enterprise Trade and Employment, the Department of Social and Family Affairs and the Revenue Commissioners to work together in Joint Investigation Units (JIUs).

We want to see a similar commitment to the enforcement of statutory employment rights that involve issues of fact (as opposed to law) and relate to monetary based claims. This would include written statements of employment particulars, paid statutory annual leave, Statutory Maternity and Paternity Pay, and Statutory Sick Pay. We propose that at present HMRC would be well placed to take on this responsibility. We recognise that more complex legal cases should continue to go to Employment Tribunals.

### *What employers and consumers should do*

There has been a major shift in the UK towards outsourcing goods, works and services in both the public and private sectors. Supply chains have become longer. Our research shows that over 80 per cent of all employers now contract out part of their work.

Outsourcing particularly affects low-skill occupations, such as cleaners, security guards and catering workers. These workers are now likely to be employed by employment agencies or external firms on lower pay and worse conditions.

The resulting web of contractors, subcontractors and 'sub-subcontractors' makes regulation increasingly challenging. Contracting bodies blame the contractors for poor staff conditions, while the contractors say that this is the only way they can win business.

Businesses at the top of a supply chain have scope to ensure fair employment practices from their suppliers, and some already do. Unions and community groups are mounting effective campaigns to spread this practice.

## Sam's story



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 going 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 that 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. 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's agreed minimum (£80), and much less than most male apprentices receive (their average pay is around 21 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'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 or so in a chip shop a week. I could have gone and done that and done night college and then learnt 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)<sup>1</sup>*

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<sup>1</sup> Further information about the YWCA can be found on their website: [www.ywca.org.uk](http://www.ywca.org.uk).

## *Public procurement*

Public procurement is regulated by the EU Public Sector and Utilities Procurement Directives, and allows some scope for social objectives. But, while Government has recognised the potential of using procurement to improve standards, to date it has done little. The Government is now set to introduce a new policy framework for procurement, but it is not yet clear how far this will go.

In contrast, the Scottish Parliament and the Greater London Authority, with other London-wide authorities, use procurement to improve working conditions. London Underground is 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 Olympic Delivery Authority has social objectives built into its procurement policies.

We believe that central government should build on existing good practice and take further action to promote the use of public procurement to improve working conditions for vulnerable workers. We believe that there is also a strong case for incorporating adherence to basic employment standards into the eligibility criteria for government economic grants.

## *Private procurement*

Large and small companies in the private sector can also use their power as contractors to improve standards. While employer organisations tend to describe any increase in workers' rights as red tape, we see no reason why responsible businesses should support a weak rights and enforcement regime that allows them to be undercut by rogue employers. The involvement of employers in the ETI and the campaign to regulate gangmasters shows that employers can see sound business reasons for spreading good practice.

The most effective role that companies can play is ensuring that good practice goes all the way down supply chains. We think the best way of securing this is through building on the work of the ETI and its code of minimum labour standards for suppliers and subcontractors.

There is not currently enough guidance available for employers who want to reduce the extent to which their workplaces and supply chains contribute to vulnerable employment in the UK. In sectors where employers wish to show their commitment to good practice, we would like to see them work with unions and civil society groups to draw up sector standards, which could include good practice in areas including:

- supply chain audits that ensure that vulnerable workers are identified
- the use of agency workers, homeworkers and other non-standard staff
- routes to permanent employment for temporary staff
- ensuring staff awareness of trade unions
- assessing the training and development needs of workers
- provision of information about key employment rights
- training for contracting staff in using procurement as a mechanism to ensure employment rights' enforcement.

For quoted companies, we would like to see new corporate reporting standards that can report progress on meeting good employment standards. These could build on existing employer good practice in corporate social responsibility. Smaller companies could be encouraged by regulatory bodies, trade unions and employers' organisations to refer to the new guidance in their corporate reporting procedures.

This would also be a major tool for pension funds and other investors to inform their investment decision-making and activities.

Employment rights are meaningless if they are not properly enforced – and government, trade unions, civil society groups and employers all have important roles to play in making sure that this happens.

## 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. She spoke to us 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 contract. 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. Mrs Begum does not want to challenge this practice, as she feels she will no longer be provided with any work if she does.

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 family relationships: "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 ... 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 has built up a decent relationship with her employers, Mrs Begum reports that they can be unreasonable: "Sometimes if the [sewing] machine breaks down they keep on ringing and ringing and pressuring to do the work even though I can't until it's fixed." She also reports that they come round to collect work at different and often unsociable times of the day and night. She has not complained about this because she knows that it would lead to her losing work, having seen this happen to other people whom she knows.

Mrs Begum's husband has not had regular work since the factory he used to work for closed down. Mrs Begum finds it difficult to manage on her income and feels especially "helpless" when this affects her children. Mrs Begum has sometimes borrowed money, and the repayments have caused extra financial strain.

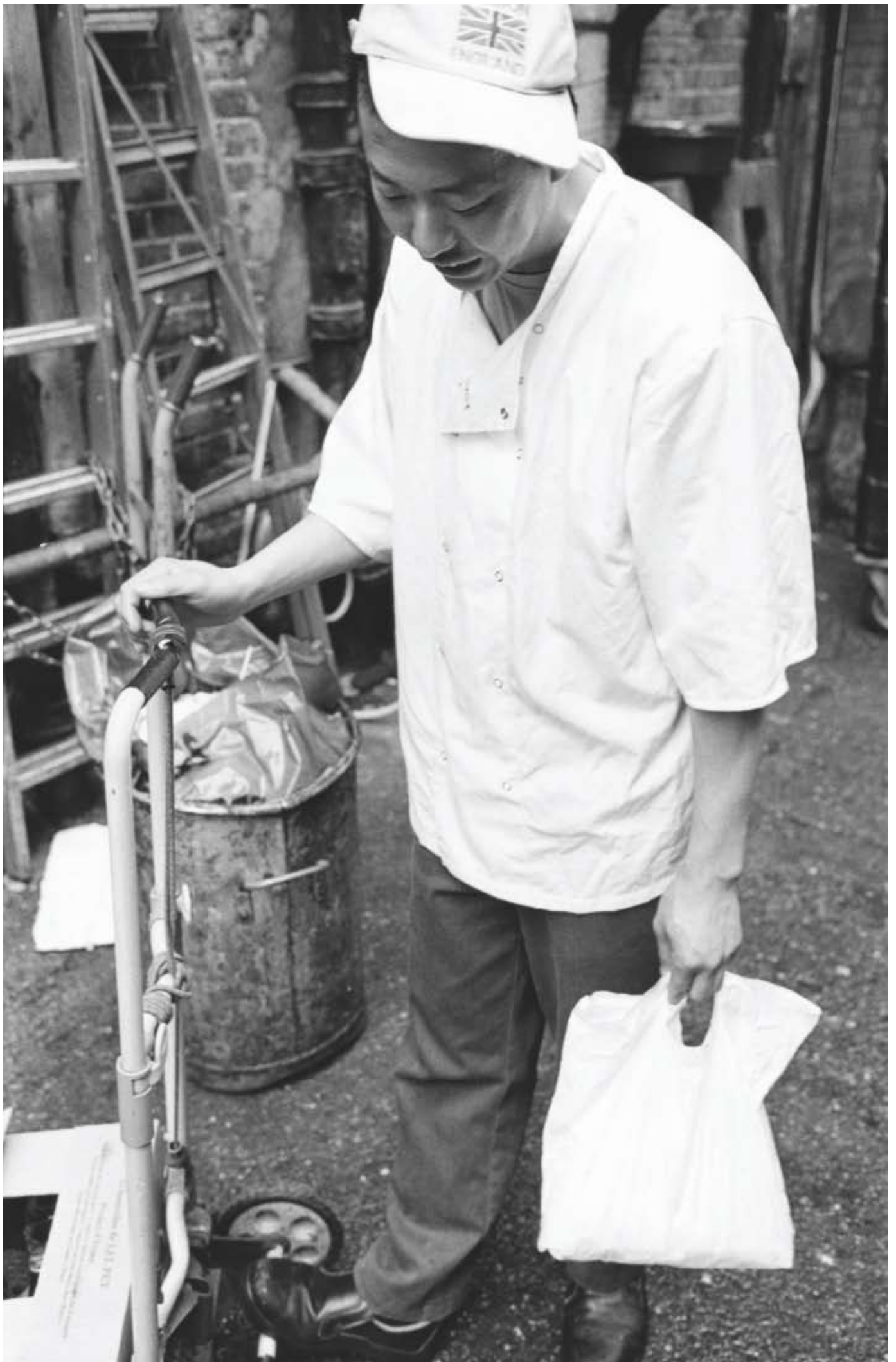
Although Mrs Begum asserts that workers like her "should be given proper pay and sick pay and holiday pay", she has little hope of seeing this herself. Instead she hopes that she will be able to leave if she and her husband are able to set up their own takeaway business, as they have planned. She emphasised 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 were introduced to Mrs Begum through a local homeworking group)*

Employment rights are meaningless if they are not properly enforced – and government, trade unions, civil society groups and employers all have important roles to play in making sure that this happens.

*CoVE's recommendations include:*

- action by the Government, in sectors characterised by vulnerable employment, to extend the GLA licensing regime
  - increased resources and powers for enforcement agencies so that they can proactively enforce the law, not just respond to complaints
  - powers for employment tribunals to enforce their own awards and to issue recommendations
  - enforcement by the state of statutory rights that rest on a statement of fact and involve the payment of monetary awards
  - development of an ethical employment initiative, including joint work between employers and trade unions to develop employment rights standards to prevent vulnerable working, and to develop a good practice project relating to public procurement and its potential for improving labour standards in UK supply chains
  - reform of corporate reporting requirements to require companies to report on progress on employment rights standards, building upon existing employer good practice
- use of employment rights standards by institutional investors such as pension funds
  - a requirement on enforcement agencies to share information (even after formal investigations have commenced) working together against rogue employers, and to do more to involve their stakeholders
  - the development of a new model of joint working between employment rights enforcement agencies, headed up by a new permanent Fair Employment Commission, established on a social partnership basis along similar lines to the Health and Safety Executive, the Low Pay Commission and the Acas Council. It should be responsible for:
    - overseeing employment rights enforcement
    - considering the impact of all government policy for vulnerable workers (across areas including employment law, immigration, skills and welfare)
    - leading debate on proposed policy change
    - identifying future trends requiring government consideration
    - undertaking evidence-based investigations into vulnerable employment
    - advising on standards for fair treatment across the labour market.





## *Robert's story*

Robert was a coal miner for 18 years before the mine closed as he turned 40. He has now worked as a car valet for 15 years. Despite this length of service, Robert is self-employed. He is paid per car cleaned and has to cover the cost of his own cleaning materials and insurance. His rate has been cut five times.

Robert works an average of 50 - 60 hours a week from Monday to Saturday. The company does not set exact hours but 'strongly recommends' a 6am start. If a worker comes in at 9am or later, they are sent home. Valet workers are also 'advised' on when they should take their breaks. Robert leaves whenever the work has been completed – usually between 8pm and midnight. As he is paid per car cleaned, the time he spends at work waiting for a car to come in goes unpaid.

Each car cleaned should pay between £4 and £9. But company records are often inaccurate. Robert's pay varies considerably, but on average he gets around £250 a month. When he queried underpayments Robert was told that the payments were correct

and that he was mistaken. However, he was subsequently told that his manager regularly skimmed the money for himself and, when Robert confronted him, the underpayments stopped.

Valets are required to pay £9 per month for insurance against any damage done to a vehicle. But when his co-worker accidentally drove a car into a wall due to faulty brakes, he was suspended and was told that he must pay £400 to get his job back. Valets have to pay for their cleaning products, and the cost has risen in recent years from £15 per month to £20 per week.

Robert joined a union in July 2007. The union now plans to take his employer to tribunal. Robert says that he has been offered money by his employers to leave the union and drop the tribunal case but that he has refused. He hopes that the tribunal will result in full employment rights and the national minimum wage.

*(We met Robert through his union)*

# Closing the loopholes

The Government says the law should establish decent minimum standards at work. Measures such as the national minimum wage and Europe's new working time and paid holiday rights are important steps along this road. Yet our work has revealed many examples of lawful exploitation. These legal loopholes should be closed.

Much lawful exploitation flows from the legal distinction between 'employee' and 'worker'. Employees have a contract of employment with their employer, which is a passport to many statutory rights: a 'worker' merely has a contract for providing services to an employer, in other words simply selling his or her services in the same way that a company would do. Workers have:

- no protection from unfair dismissal or redundancy pay
- no right to a written statement of terms and conditions
- no right to a notice period

- no entitlement to maternity or paternity leave
- no right to time off in emergencies to care for their children.

Their work is insecure and their bargaining power is limited. Not only do they have fewer rights, but they are also at greater risk of being denied the few rights they do have, and are in a much weaker position to challenge illegal or unfair treatment. Full details of the differences in the rights available to 'workers' and 'employees' are provided online in our full report (available to download from [www.vulnerableworkers.org.uk](http://www.vulnerableworkers.org.uk)).

Many temporary workers do not want to be temporary. Labour Force Survey (LFS) analysis shows that only 29 per cent of temporary workers did not want a permanent job, and that among agency workers this fell to only 20 per cent.

The Government reviewed employment status in 2002, but concluded that reform would not prevent abuse and would result in fewer jobs as it would damage labour market flexibility. But we do not accept that improved treatment for the most vulnerable workers will have negative economic costs. Only a small proportion of the labour force would gain from change, and few of the jobs that vulnerable workers do are at risk from international competition.

Improved employment protection can lead to economic benefits, even for the smallest of employers. One study of small firms that had been non-compliant with the minimum wage found that the problems they predicted when they moved towards its implementation did not occur in practice. Instead the new rights became a “catalyst for the modernisation of other aspects of the business” and helped attract more skilled and committed workers.

Equal treatment rights for part-time workers did not lead to fewer part-time jobs, and there have been no adverse economic effects from new rights for working parents. Despite dire predictions, the national minimum wage has not caused unemployment.

We believe that it is wrong that those in low-paid atypical work are denied the rights that most working people take for granted. We believe that removing this vulnerability could improve job quality for the lowest paid, increase job security and encourage training. There are strong moral and economic arguments for improving the protections available to the small minority of UK workers in atypical, low-paid work.

### ***Bogus self-employment***

Whilst self-employment can suit some workers, others are falsely classified as self-employed; they have none of the autonomy of genuine self-employment and none of the rights at work that go with employment. To further complicate the situation, the HMRC has a much stricter definition of self-employment so the bogus self-employed can find themselves paying taxes as an employee with none of the rights attached to that status or any of the advantages of genuine self-employment. The bogus self-employed can commonly be found working on construction sites, or as homeworkers undertaking piecework.

These workers can work for the same employer for years without entitlement to the most basic of employment rights and can be sacked at a moment's notice.

An adviser told us about the experience of one of their clients:

*“Something I’ve not come across before I came here is a distribution centre who employs 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... It’s very good for the company, because not only do they not have the upkeep of the vehicle, so they save on the expense of that, but they can lay down all these rules.”*

A review of employment status must tackle the problem of bogus self-employment. In particular there needs to be reform in the construction sector of the Construction Industry Scheme (CIS), which we discuss in more detail in our full report.

### ***Agency workers***

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. But this important role, and reputable agencies, are in danger of being undermined by bad practice and outright law breaking at the disreputable end of the sector.

The precise legal status of agency staff is often unclear, but they do not have a fair deal. It is perfectly lawful for employers to provide them with worse treatment than permanent staff undertaking the same work. While some workers with valuable skills in short supply undoubtedly choose agency employment, and can be in a sellers' market, such conditions are seldom a free choice for those doing low-skilled and low-paid jobs.

While the LFS says there are 260,000 agency workers in the UK, 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, and the agency workers who do not show up in the LFS are likely to be more vulnerable than those who do.

The popular image of agency workers as office workers moving around short-term assignments is only one aspect of agency life. One in four agency workers has been in post for a year or more, and over half for more than six months. Some employers use agency staff as a means to avoid providing employment protections available to directly employed workers.

A law centre adviser told us:

*“Agency workers are a major problem, it is currently the easiest way for employers 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)

## Jamal’s story



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 cash in hand.

Jamal is paid £4.10 an hour as a casual construction worker. He does not receive any holiday pay, sick pay or other benefits. He gets this rate because he has carpentry skills. Other casuals are paid only £3.10 per hour.

Jamal works an eight-hour day with a half-hour break, though managers sometimes do not allow workers to take their breaks 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 says that he and his co-workers are treated badly. Managers “...shout at you, so sometimes it is crazy. If 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 knows that large construction companies treat workers better than smaller ones, and permanent staff better than casuals. Undocumented workers fare the worst of all: “A lot of people who 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 and thinks there is little chance of obtaining a more secure job. Jamal’s ambition is to have his own construction company.

*(We met Jamal through the Migrants’ Resource Centre)*

Some low-paid agency workers can be placed daily in different sites. Their placements are never even semi-permanent and their work fluctuates around the needs of employers and can mean, for example, workers being laid off on a weekly basis, or being provided with only two days work.

The TUC's YouGov survey found high levels of workplace dissatisfaction among agency workers; 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.

Some employers are setting up 'in-house' employment agencies, deliberately to undercut the terms and conditions of existing staff and avoid the expense of payment to an external labour provider.

Some say that while low-paid agency work may be far from ideal, it does provide a route to better jobs for people excluded from the labour market. But this is not borne out by the evidence. For example, only 12 per cent of people moving from benefit to a permanent job become unemployed within three months, compared to over one-third (38 per cent) of benefit-leavers who obtain a temporary job.

Progress from agency to permanent work is made difficult by the unlimited fees that agencies can charge employers who wish to give an agency worker a permanent job.

By the time employers have paid agency fees and met the costs associated with staff turnover, we do not believe that in a well-managed business employers can claim that agency workers reduce costs. Our research shows that employers can use agencies to:

- easily drop 'disobedient' staff
- recruit with anonymity (for example when they find it hard to recruit because of their reputation)
- reduce responsibility for immigration and employment paperwork
- hire flexible workers who will be available on demand for very short shifts.

OECD research on agency work and temporary work confirms that in general there are not financial savings to employers from using agency workers.

We reject the argument that better treatment would reduce labour market flexibility, either for workers who want to undertake agency work or for employers whose businesses truly depend on the need for labour to be flexibly available. In countries with a similar percentage of temporary agency workers as the UK (namely Belgium, France and the Netherlands), agencies and employers cope with equal treatment provisions. Providing agency workers with better rights would make agency work a more attractive option, and could therefore offer employers more experienced and skilled staff.

We therefore believe that agency workers should receive equal treatment at work, employed on terms no less favourable than permanent employees undertaking the same jobs.

### *Differential rights for migrant workers*

Migrant workers come to the UK hoping to better themselves and their families. Since 2000, the UK population has grown faster because of a net increase in migration. New migrants are diverse: some are highly-skilled; some are foreign students; some are moving to join their families in the UK; and some are from other EU countries.

Low-paid migrant workers with the legal right to work in the UK have the same entitlement to employment rights as UK citizens, but they are commonly denied them. Citizens Advice report extreme mistreatment of migrant workers across low-paid sectors such as care homes, cleaning, hospitality, agriculture and food processing. Issues include:

- misleading recruitment of workers in their own country on false promises of good pay
- 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 a contract of employment or pay slip
- denial of employment rights including access to statutory sick pay, maternity leave and paid holiday.

## Rebecca's story



Rebecca is 34 years old, white British and a mother of two. She has A-Levels and vocational qualifications in catering. For three years, until she left in January 2008, Rebecca worked 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 directly employed staff doing the same job, even though some were on agency contracts for up to nine years. Rebecca reports that yearly earnings for agency workers could be less than half those paid to directly employed workers doing the same job. Temps also had to negotiate a complicated agency holiday booking and payment system, which meant that they were not paid for their full leave entitlement. There was no entitlement to company pension, sick leave or maternity leave.

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. Rebecca found that 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 disciplinaries if they refused.

These conditions created an uncomfortable and stressful working environment. Although agency workers were 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. She was also warned off joining the trade union because it would cause her to be seen as a “troublemaker” and lessen her chances of getting a permanent post. She noted 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 reports that she generally felt “trapped” and “stuck”. She also found her health deteriorating. Managing with two children on low pay and poor benefits proved difficult. Although she did try to get a loan to get through a sticky patch, she was unable to get one because she was classed as a temporary worker.

All this took a psychological toll and Rebecca says it was often difficult to come home from work and find the energy for looking after her two children.

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 hopes to find a job with enough security 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)*

## 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 who live in the UK and is applying for a Domestic Worker 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 a 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, and 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 cooking 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 is "like slavery". She reports that her employers' sister also has a domestic worker whom she does not allow to leave the house and pays only £100 a month. Charubala wants to get another job but she is afraid that her treatment will be no different. She says that she constantly feels nervous and anxious due to her employer's temperament and threats and has become very unhappy. However, she cannot leave her job because she needs her visa to stay in the UK and because her two daughters rely on the remittance she sends to India every month.

Charubala says she is grateful for the friendship and support she has gained through a migrant domestic worker support group. She hopes to be able to move to a better domestic job soon.

*(We met Charubala through Kalayaan, a migrant domestic workers' support group)*

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Statistical analysis undertaken for us also shows that around 20 per cent of migrant workers may be paid less than the appropriate rate of the national minimum wage, and our survey of employment rights advisers' found that 39 per cent of advisers were commonly or very commonly approached by migrant workers whose employers had threatened to deport them if they reported problems at work. One adviser also reported that a local gangmaster had threatened to throw a brick through his window because he had told local migrant workers what their rights were.

Migrant workers can be provided with substandard housing, and are more likely than other workers to face illegally high deductions from pay (for accommodation and other services provided by the employers). In some cases, conditions are so bad that they meet internationally agreed definitions of forced labour. We heard of workers threatened at gunpoint and warned that they would be shot if they continued with complaints about working conditions. Cases were also reported to us of workers having their passports taken from them upon arrival. A trade union official reported their experiences to us:

*“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)

Migrant workers are particularly vulnerable to abuse because of their dependence on recruiting agencies and their immigration status. Some employers deliberately employ migrant workers because they do not know their rights.

Rules change and migrants can alter their status by overstaying, naturalising or switching permits. Workers on permits are particularly vulnerable to changes in regulations that can limit their rights to work legally in the UK. Senior care workers were recently informed that if they did not earn an hourly rate of over £7.02, it was unlikely that their visa applications would be renewed. Around 11,000 workers were affected by this change. A recent court challenge has led to successful judicial review of this issue.

All migrants are limited in their access to public funds, with some variation between different types of immigration status. EU citizens have some limited rights, others little or no access to benefits. This means that many low-paid migrant workers cannot leave an exploitative job as the alternative is destitution.

We therefore call for the scheme already used to help victims of sex trafficking who report law breaking to be extended to migrant workers reporting illegal employment practices.

Workers from the A8 EU countries can freely seek work in the UK, but must register within 30 days of getting or changing a job in order to gain the 'right to reside' after a year. While working they have access to some benefits including tax credits and housing benefits, but lose this if they leave employment. Registration costs £90, requires applicants to send in their passport to the Home Office, and must be completed in English. This deters many, and one survey in Slough suggests almost half of A8 nationals have not registered.

While their rights may be greater than those of some other migrant workers, in practice they are vulnerable. If not registered, they have no effective employment rights. Even if registered many cannot risk losing a job if destitution is the only alternative.

A2 nationals from Romania and Bulgaria, which joined the EU on 1 January 2007, have even tighter constraints. Low-skilled workers are restricted to existing quota schemes to fill vacancies in the agricultural and food processing sectors, or can study or work as self-employed. These restrictions mean that many A2 migrants work in the construction industry, finding jobs through the widespread acceptance of bogus self-employment.

We do not think that the registration system for A8 migrants serves any useful purpose. It does not provide an accurate measure of how many migrants are working in the UK, but does contribute to their vulnerability. The requirement that A8 migrants should work continuously for 12 months before gaining a right to reside is used to exploit migrant workers. We believe that it should be abolished. The restricted right to work of A2 migrants makes exploitation even more likely. Unless a strong case can be made for differential treatment, we believe that workers from Bulgaria and Romania should receive the same treatment as those from other European countries.

An adviser told us of how these restrictions had affected workers they had met:

*“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 gave 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)

### ***Low-paid migrants and the points-based system***

The work permit system is changing. A new points-based system (PBS) is to apply to all non-EEA nationals wishing to migrate to the UK for work or study.

Low-skilled migrants will be granted access only in sectors where there are clear labour shortages. Such schemes will be run by an operator (such as an employment agency), entry will be for a maximum of 12 months, and there will be no right to switch to any other migration route.

While the new system includes provisions to prevent employers previously found to be employing irregular migrants from acting as ‘sponsors’, no such bar is proposed for employers who violate the employment rights of their workers. As with the previous work permit scheme, migrants will be on fixed-term contracts that can be terminated at the discretion of the employer, giving them huge power over their workers. A migrant who reports poor treatment is likely to lose their job and their right to remain in the UK, while employers caught denying workers their employment rights will receive a limited penalty at worst.

We call for a review of the PBS to take account of the risks of exploitation of vulnerable workers. This would include:

- monitoring employer sponsors for abuse of workers’ rights
- giving workers the right to change employer during their period of residence in the UK
- the close monitoring of ‘accredited operators’ through the GLA (which already covers the relevant sectors)
- stopping directors who lose a GLA license from acting as sponsors.

The new work permit proposals have floated changes to the treatment of migrant domestic workers from outside the UK. If taken forward, the changes would mean these workers would be able to stay for only six months, after which 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.

Such a change in their visa status would make it virtually impossible for these workers to challenge any mistreatment or abuse they suffered at the hands of their employer. The risk of such treatment is already high. Our research shows that between 2006 and 2008 66 per cent of workers registered with the migrant domestic worker organisation Kalayaan had been psychologically abused (including threats to harm themselves and their families) 22.5 per cent had been physically assaulted (a commonly reported example was employers burning workers’ hands on stoves as punishment for cooking ‘mistakes’), 60 per cent were not allowed to leave their employers’ house and 36 per cent did not even have their own bed. Workers’ mean monthly salary was £297.

Migrant domestic workers leaving an exploitative employer would find themselves destitute, with no legal right to work to support themselves. Limiting the provisions for visa renewal would make it more likely that employers would retain workers illegally, where their irregular status would place them at even greater risk of exploitative treatment.

## *Undocumented migrants*

Migrants who do not have the right to work in the UK (although they may be legally entitled to live here) have no employment rights, other than rarely enforced health and safety protection. There are four main kinds of undocumented migrants: failed asylum seekers; non-EEA migrants who entered lawfully but remain unlawfully; A2 migrants who entered lawfully but are working without work permits or being genuinely self-employed and those from outside the EEA who have entered illegally.

Research shows that undocumented workers are at high risk of mistreatment at work. As they have few formal employment rights they cannot challenge mistreatment, and employers can deny them the basic standards to which most others are entitled. One worker told a researcher about his working day:

*“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)

In 2001 the Home Office estimated that there were around 430,000 undocumented migrants working in the UK, and are committed to their deportation. The Institute for Public Policy Research says that regularising appropriate migrant workers could raise £1 billion in taxes and that it is practically impossible to deport every undocumented migrant. Undocumented migrants are at extreme risk of exploitation at work.

We call on the Government to separate the consideration of residency status from employment rights issues so that employers found to be exploiting undocumented workers could be charged with employment rights’ offences – at present they can deny minimum legal standards to undocumented workers without being considered to be breaking employment law. This would deter the employment and trafficking of undocumented workers, and bring us into line with both Ireland and Germany.

The Government should recognise that it cannot deport every undocumented worker and we support the campaign for an earned regularisation for undocumented migrants working in the UK, requiring them to work legally and show a contribution to society. Across Europe other countries have implemented such programmes.

## *Asylum seekers*

Asylum seekers waiting for a decision on their claims are entitled to reside in the UK but do not have the right to seek employment. Recent changes in the asylum rules mean that most new asylum seekers have their cases heard more quickly. However, there are significant numbers outside of the new system, some of whom have now been in the UK for some time with no right to work and very limited support.

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. Barnardo’s point to the poverty experienced by families living on government assistance payments while their claims are processed, and to the fact that some families have been waiting for several years for their claims to be resolved. Many of those in this situation feel that they have no choice other than informal work, which places them at increased risk of poor treatment and undercuts responsible businesses. An adviser told us about the experiences of asylum seekers they had met with:

*“Asylum seekers, one was offered work in a restaurant at £1 per hour.”*

(Migrants’ rights adviser)

In countries including Canada, Australia and the USA there are provisions for asylum seekers to undertake paid employment while awaiting the outcomes of their claims.

We support the call for asylum seekers to gain the right to work after six months.

This chapter shows how loopholes in the law allow employers to exploit vulnerable workers. It also demonstrates that they can act together to effectively remove almost all legal protection from some workers. These gaps cannot be tackled on a piecemeal basis, as rogue employers will simply move on to use a different legal weakness. We therefore call for new legislation to close the gaps in the law that allow bad employment practices to go unchecked, and to assure responsible employers that they will no longer be undercut by the bad.

*CoVE's recommendations include:*

- equal treatment between agency workers and directly employed staff undertaking the same work
- reform of employment status to improve the rights and protections available to 'workers' – a simplified, clearer system would be fairer and easier for workers and employers alike, ensuring that there are no legal routes for employers to avoid providing workers with employment protection
- a review by government, with employers, employment agencies, trade unions and other stakeholders, of 'temp to perm' arrangements, to ensure that existing rules do not create disincentives or barriers for agency workers seeking to move from temporary to permanent work
- reform of the CIS to ensure that CIS workers are considered as 'employees'
- abolition of the registration scheme for A8 workers, and unless a strong case can be made for differential treatment, workers from Bulgaria and Romania should receive the same treatment as those from other European countries
- access to temporary welfare support for migrant workers seeking to challenge exploitative work
- a review of the implementation of the PBS for low-skilled workers
- retention of existing protections for migrant domestic workers
- introduction of earned regularisation opportunities for undocumented migrant workers
- introduction of entitlement to work for asylum seekers who have been awaiting the outcome of their claims for six months or more.





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