

Turning the Tide

How to best protect workers employed by gangmasters, five years after Morecambe Bay



Ondred, from the Czech Republic, at an Oxfam workshop on migrants' rights. The event was one activity in Oxfam's programme of work with migrant and other vulnerable workers.
Credit: Crispin Hughes/Oxfam

Workers employed through gangmasters¹ are some of the most vulnerable and exploited in the UK. This paper evaluates the current protection afforded to workers in the industries regulated by the Gangmasters Licensing Authority (GLA) and examines levels of exploitation and abuse in sectors outside the GLA's licensing regime. The paper concludes that, in order to protect all vulnerable workers employed through gangmasters, the GLA's remit must immediately be extended to the sectors of construction, hospitality, and social care, which are currently not regulated by the GLA. In the longer term, one single enforcement agency should be created to be responsible for regulating all agency labour across every industry in the UK.

1.

Summary

In 2008, Oxfam commissioned the Wilberforce Institute for the Study of Slavery and Emancipation, based at Hull University, to conduct an independent evaluation of the Gangmasters Licensing Authority (GLA). The research team found that the GLA and its licensing regime were considered effective by many labour providers, unions, retailers and representatives of vulnerable workers, for its significant work in improving labour rights standards for workers and creating a more level playing field for employers. However, a significant number of unlicensed gangmasters continue to operate, and exploitation, though reduced, is still reported. Workers' fear of the consequences of blowing the whistle – loss of job, loss of accommodation, violence, and deportation – fundamentally thwarts intelligence-led enforcement. There are clear indications that some gangmasters have switched their operations to sectors beyond the remit of the GLA in which enforcement is scarce. Exploitation is endemic in the sectors of construction, hospitality, and care.

This report concludes that, in order to protect all vulnerable workers employed through gangmasters, the GLA's remit must immediately be extended to the sectors of construction, hospitality, and social care, which are currently not regulated by the GLA. In the longer term, one single enforcement agency should be created to be responsible for regulating all agency labour across every industry in the UK.

Exploitation in agriculture

"We were encouraged to come to the UK with the kids by the gangmaster. They said there was plenty of work for us. They encouraged us to borrow money from them at the start, for airfares etc. Then they were taking deductions from our wages to cover the debt; but we never knew how much they lent us, and how much we still owed, as there was no paperwork.

"We were left with very little each week after deductions. One week we only had a pound to live on and it was very hard to keep going. The children felt it as well. They used to go to school without any lunch, as we had no money to buy them anything.

"The agency promised that we would have a house to ourselves when we came here; but they put in another ten adults and one child as well. All together there were 13 adults and three children in five bedrooms. The house was in a very poor condition, with mould and damp everywhere. And for one room where the four of us were living, we were paying a hundred pounds a week.

"It's not an isolated story. I know people who are in a very similar situation – but they are afraid to speak out for fear of losing their homes or their jobs."

Teresa, from Poland, living in Cornwall

2.

Introduction: Labour rights for all

"I work for an agency – but I'm 'self-employed'. They pay me £2.29 per room. I can't clean enough rooms to make minimum wage. There is no sick pay or holiday pay. And I have to pay for my own cleaning materials and uniform out of my wages."

Monica, from Romania, cleans hotels in London

Oxfam was established in 1942, and started work to tackle poverty in the UK in 1996. Our aim, all over the world, is to work with others to overcome poverty and suffering.

Oxfam has a strong international profile on labour rights issues. Our work in 70 countries allows us to draw on international best practice, in a world where people increasingly look to waged work as a route out of poverty. For example, in Chile, Oxfam facilitated the creation of an alliance of labour unions and highlighted how crucial a consideration of gender was to the male-dominated unions' survival, as so many rural workers were women. In Colombia, Oxfam played a key role in bringing together local NGOs and trade unions in the flower industry; and in Thailand, Oxfam helped a local NGO to improve access for Burmese migrant workers to the new registration system for migrants. In the USA, Oxfam supported the Farm Labour Organisation Committee to successfully negotiate a contract for 8,000 migrant workers.

In the UK, our experience shows us that the denial of rights at work – including the right to the minimum wage, holiday and sick pay, and decent and safe working conditions – is a significant cause of poverty. We therefore work with vulnerable and exploited workers to help them claim their rights, and we campaign for increased protection at work. We help service providers get to grips with the needs of migrant workers, and help migrant worker leaders to speak out for their communities.

Oxfam believes that everyone should be able to access their labour rights and that this is especially important in a country in which paid work is viewed as the primary route out of poverty. Oxfam further believes that the best system of employment rights enforcement is one in which a single, proactive enforcement body upholds all labour rights and ensures appropriate redress for the victim. Self-regulation by employers should be encouraged, but the existence of effective enforcement is crucial to the promotion of self-regulation.

Oxfam also has extensive contacts with organisations working on labour rights, both at grassroots and advocacy levels. For example, we have a long-standing partnership with the National Group on Homeworking (whose work has been taken on by Homeworkers Worldwide since its closure in 2008), supporting them to advocate for the rights of homeworkers. Working alongside our partners Kalayaan and T&G-Unite, we were an integral part of the campaign that defeated a threat to the employment rights of migrant domestic workers in the UK in 2008.² We also contributed to the TUC Commission on Vulnerable Employment, which explored the extent of vulnerable work in the UK and the ways in which workers' rights can be guaranteed.

In addition, two major Oxfam projects have contributed to our decision to investigate the extent of gangmaster exploitation of vulnerable workers.

In 2006, we received funding from the Big Lottery Fund for a three-year development project with migrant workers.³ This project supported migrant workers to increase their knowledge of their rights; supported service providers to better target their services; worked with the private sector to improve employment practices; enabled migrant workers to share their stories with the media; and sought to change relevant policies. Through this project, we helped to set up a self-organised migrants' rights group and developed links with migrant communities, which repeatedly reported exploitation by gangmasters.

In 2007-08, we also developed a programme of work with the Roma community in Glasgow. A research report with the Glasgow South East Community Health and Care Partnership highlighted the vulnerability of the newly-arrived Slovakian Roma community, centred on Govanhill.⁴ We found that nearly all of those working were employed through just three gangmasters. These jobs frequently involved working in appalling conditions, in extreme temperatures, with excessively long shifts at night or during other unsociable hours. Members of the Roma community were the only takers of these jobs.

"A combination of low wages, the irregularity of work, and the variation in hours available (depending on seasonal demand, for example) means that Roma families are forced to pool their meagre resources and share sub-standard accommodation in order to maintain a roof over their heads."

Oxfam, *Briefing on the Situation of the Roma Community in Govanhill, Glasgow*⁵

Both the migrant workers' project in England, and the work with the Roma community in Scotland showed Oxfam that gangmaster exploitation in a range of sectors – not just agriculture and food processing – was rising.

Oxfam therefore decided to pursue an independent evaluation of the work of the Gangmasters' Licensing Authority to establish how well vulnerable workers in gangmaster-dominated industries, both in and outside the remit of the GLA, were being protected. In June 2008, we commissioned a research team from the Contemporary Slavery Research Unit at the Wilberforce Institute, Hull University, with a remit to:

- Review the operation of the Gangmasters Licensing Authority and Act.
- Assess the strengths and shortcomings of both in protecting the employment rights and wider rights (e.g. to safe housing) of migrant and other vulnerable workers.
- Make recommendations on how legislation could be strengthened and extended, and the GLA improved, to protect migrant and vulnerable workers more effectively.

This report highlights the research team's main findings, on which Oxfam recommendations for changes to the regulation of labour providers are based. The fieldwork to this study took place between August 2008 and January 2009.

3.

Background: the nature of work in the UK

There has been a significant shift in the nature of work in the UK over the last 30 years. Globalisation, by making the markets for goods and services more competitive, has heightened the need for economic and social policies that foster competitiveness. It has also put a higher premium on workplace practices that support flexibility and adaptability, often at the cost of workers' rights and security.⁶ At the same time, how work becomes available to employees has changed markedly, with a rise in the number of agency and temporary jobs available.

Three particular aspects of the UK labour market increase the vulnerability of workers:

- Minimal workplace protection.
- The vast increase in agency labour.
- The increase in numbers of migrants working in the UK.

In addition, the recession and economic climate in the UK may also have a role in increasing vulnerable work.

The UK's lack of workplace protection, and the unresponsiveness of the workplace rights regime to the changes in the nature of work, have allowed for the creation of a category of workers who have little security and little reward, and who are mostly invisible to mainstream society. In 2008, the TUC estimated that more than two million people in the UK are in this category of vulnerable employment:⁷ that is to say, they work in an environment where the risk of being denied employment rights is high, but do not have the capacity or means to protect themselves.⁸ Vulnerable work perpetuates poverty because people working in these jobs are often unable to get better-paid, more secure jobs, and may be prevented through a lack of knowledge or the threat of retribution, from reporting abuses or demanding better treatment. There are more than two million low-paid, insecure jobs in the UK labour market.⁹

Minimal workplace protection

Since the reforms of the 1980s, the UK labour market has been more flexible and offered less employment protection than all other EU states.¹⁰ There have been some advances in employment protection in the last 15 years, including new laws on trade union recognition, a national minimum wage, enhanced employment protection legislation, and strengthened anti-discrimination legislation; but there has been little action to protect the most vulnerable workers, or to ensure that existing rights are comprehensively enforced.

In addition, the UK labour rights enforcement regime is fragmented and under-resourced, with five different departments taking responsibility for enforcing differing employment rights alongside the Employment Tribunals, and the Advisory Conciliation and Arbitration Service (ACAS):

- Employment Agency Standards Inspectorate (EAS): regulates and inspects agencies.
- HM Revenue and Customs (HMRC): ensures compliance with national minimum wage.
- Health and Safety Executive (HSE): ensures compliance with health and safety at work legislation.
- Gangmasters Licensing Authority (GLA): licenses gangmasters in agricultural, food-processing and associated industries.
- Department for Environment Food and Rural Affairs (DEFRA): enforcement of agricultural wages by the Agricultural Wages team.

The limited resources available to the enforcement agencies mean that employers can break the law with impunity, knowing they are unlikely to get caught, and, even if caught, will rarely face more than minimal punishment.¹¹ The UK system, for the most part, relies on employers fulfilling their responsibilities, workers knowing their rights, and, crucially, workers being able to raise concerns and report bad and illegal practice. But vulnerable workers are, by their very nature, unlikely to blow the whistle on their employers. Aspects of their vulnerability – lack of language skills, anxiety over immigration status, poor financial situation – make it highly unlikely that the most exploited workers will report abuse, for fear of losing their jobs.

In addition, enforcing rights as an individual often involves taking an employer to an employment tribunal, which is a slow and complicated process. Those who are most exploited will not have the knowledge, information, resources, or time to invest, on the slim chance of recovering arrears through the tribunal process, and the effort would be disproportionate to the end result. Seeking a different employer would often be seen as the easier option.

Following discussions about the increased numbers of vulnerable workers, the Department for Business Enterprise & Regulatory Reform (BERR, now known as BIS, the Department for Business Innovation & Skills) created the Fair Employment Enforcement Board in November 2008. This brought together the enforcement agencies to share information and best practice. In recognition of the fragmentation of enforcement, it also set up a single telephone helpline for workers.

Agency labour

Until 1994, the Employment Agencies Act provided for a system of licensing for employment agencies, whereby each agency was required to have a licence costing £400, which could be denied or revoked if standards were breached.¹² Following a deregulation drive by the

Major administration, the licensing system was abolished and the Employment Agency Standards Inspectorate (EAS) undertook responsibility for ensuring that agencies complied with the relevant legislation.

The agency sector has proliferated since deregulation, increasing four-fold since 1994. There are an estimated 17,000 employment agencies in the UK, and the 20 largest agencies account for just one-in-five of the four million vacancies each year. Indeed, the UK agency sector is the largest and one of the most fragmented agency sectors in the EU.¹³ It is now worth nearly £25 billion.¹⁴

Alongside the expansion in the number of agencies, there has also been an expansion in the number of workers employed by those agencies. In the decade 1996–2006, those employed by agencies doubled in the UK, with nearly 1.265 million workers employed by agencies by 2006, making up around 4.5 per cent of the workforce.¹⁵ This is second only to the USA, double the rate of France and Japan, and almost three times the level of Germany.

Furthermore, the government's protracted implementation of the Temporary and Agency Workers Directive is illustrative of a reluctance to accept the disparities between the conditions for temporary and agency workers and normal employees. There are further concerns that the agreement to equal treatment after 12 weeks will not improve the conditions of many of the most vulnerable. Indeed, the GLA's most recent evaluation found that 64 per cent of agency workers in GLA-regulated sectors were on assignments for under 12 weeks.¹⁶

Increased numbers of migrants in the UK labour market

The expansion of the European Union to take in new, predominantly Eastern European, member states in May 2004 and January 2006, gave the UK access to a new workforce – one which is young, healthy, highly mobile, with few dependents, often skilled, and, crucially, willing to work for relatively low wages. More than 700,000 EU migrants have entered the UK since May 2004, as the UK was one of the few existing member states to offer complete access to its labour market from the date of accession. Alongside this, there are estimated to be nearly the same number of irregular ('undocumented') migrants.¹⁷

Migrant workers are more likely to be in vulnerable work because they are unfamiliar with the UK labour market, and because employers take advantage of their lack of knowledge of their legal entitlements, or exploit uncertainty or irregularity in their immigration status.

Recession

The UK is currently in its most severe recession for nearly 60 years. Unemployment stands at 2.26 million, a 12-year high.¹⁸ Many vulnerable workers will be under pressure to accept lower wages and worse terms and conditions as competition gets fiercer: despite supermarkets posting record profits, at the other end of the supply chain gangmasters are likely to see increasing pressure from their suppliers to cut costs. In addition, fear of losing their job, no matter how exploitative and badly paid, means that workers will tend to put up with worse conditions in situations of higher unemployment and recession. This is compounded by the impact of the rules prohibiting migrant workers from accessing public funds and the extension of the Workers Registration Scheme in May 2009: together these mean that many migrants, especially those employed by unscrupulous gangmasters, will often be unable to access social security should they lose their job.

It is also possible that hostility to migrants could rise during the recession, as competition for jobs between migrant workers and less-skilled British nationals increases.¹⁹ As the recession bites, there are reports from Cambridge, Nottingham, and Kent that British workers are applying for temporary roles in agriculture, roles normally taken by migrants in sectors covered by the GLA.²⁰

4. The Morecambe Bay tragedy and the setting up of the GLA

On 5 February 2004, 23 Chinese cockle pickers drowned in rising tides in Morecambe Bay because of the negligence of their gangmaster, who failed to ensure their safety.²¹

Traditionally, gangmasters had provided temporary labour at short notice to meet the seasonal needs of farm and food production. However, with the arrival of large numbers of workers from EU accession countries, labour provision through gangmasters in the agricultural and food-processing industries began to take on a more exploitative nature, and reports of abuses began to surface on a scale and of a type not previously encountered.

Change came about following concerted pressure by the Temporary Labour Working Group, convened by the Ethical Trading Initiative in 2002. This was a broad coalition, which included trade unions, major retailers, growers, suppliers and labour providers. It held a consultation process across industry about the state of the temporary labour industry, and generated a rapid consensus around the need for licensing and registration.

In the face of ministerial reluctance and apathy from the Department of Trade and Industry (the predecessor of BERR and BIS), the proactive support of the major retailers was vital in keeping licensing on the agenda. At the time, both the Association of Labour Providers, who represented reputable gangmasters, and the big supermarkets were keen for greater regulation. The labour providers did not want to be tarred with the same brush as the exploitative gangmasters, and the big supermarkets did not want to damage their brand name by having these people in their supply chain.

Following the tragedy at Morecambe Bay, the pressure for change was irresistible, and culminated in the creation of the Gangmasters Licensing Authority (GLA) in 2006. The GLA is a non-departmental public body, sponsored by DEFRA, which licenses gangmasters who meet acceptable operating standards in the agriculture, forestry, horticulture, shellfish-gathering and food processing and packaging sectors only. Gangmasters operating in sectors beyond this fall under the remit of EAS.

As of June 2009, there were 1,230 gangmasters licensed by the GLA, which operates on a budget of approximately £3.4 million²² and has 180,000 workers on its database. The GLA operates through a system of licensing labour providers once they have met acceptable standards of practice, and then ensuring that existing providers continue to comply with their licences, alongside ensuring new entrants to the market

become licensed. In addition to raising standards, the GLA has assisted in raising over £2 million in additional VAT payments to the Exchequer, as gangmasters have been brought into the formal economy and compliance with taxation obligations are met.²³ The GLA are able to deploy both informal and formal sanctions against providers who breach their licenses. And the cost of licensing is kept to a minimum: if a licence is valid for three years the fee averages between £585 and £750 per year. It is estimated that this will reduce labour provider profits by less than one per cent per annum.²⁴ The GLA merely seeks to cover the cost of licensing and in the coming year will be reducing its fees.

5.

Assessing the impact of the Gangmasters Licensing Act

"I worked for an agency in a food-processing factory near Hull. The agent there took advantage of our lack of English and lack of knowledge of employment law. He would not pay sick or holiday pay. He threatened that we would not be paid for the last week if we left. And he did not deal with problems such as excessive deductions for accommodation."

Dominik, from Poland, living in Hull

The research found considerable evidence that the GLA had improved conditions for workers, as a result of the combination of the licensing regime and the agency's approach to enforcement. A number of key successes in terms of approach and powers were highlighted.

Effective operation of the Gangmasters Licensing Authority

Licensing has substantially raised standards

The GLA has substantially raised the quality of employment available through the licensing regime. Originally, 70 per cent of gangmasters who went through the licensing process had to improve their practices in order to obtain a licence.²⁵ Over time, the number of gangmasters needing to resolve conditions on their licence has fallen: by October 2008, just six per cent had outstanding conditions to fulfil, implying that better employment practice had become more widespread. Advice and support agencies noted that considerably fewer cases of exploitation were being reported and workers' terms and conditions were more transparent. One person interviewed for the research noted that the practice of transporting people around the country and sleeping in barns "*with absolutely nothing*" was far less prevalent than it had been in 2002-03, prior to the existence of the GLA. Representatives of major retailers told us that the GLA had pushed the issue of agency labour up the agenda and that this has led to significant change.

Publicity is used to deter exploitation

This study found that the GLA uses publicity effectively to deter exploitation, warning gangmasters, labour users, and retailers of the consequences of non-compliance, and raising awareness amongst workers. The threat of negative publicity affects gangmasters and labour users, who are aware of the potential impact on the willingness of supermarket buyers and their ethical trading teams to do business with them.²⁶ Retailers, keen to avoid a backlash from their customers, responded positively to the use of publicity to promote self-regulation by gangmasters.

The GLA has taken part in two high-profile multi-agency operations to enforce the law. *Operation Ruby* involved nine agencies and 200 officers, targeting 21 premises in response to intelligence on forced labour;²⁷ *Operation Ajax* will target 30 major exploiters over a period of 18 months. Both of these secured significant coverage in the national media and in the food industry and retail trade media.

Light-touch enforcement

The GLA has a positive track record of intervention short of licence revocation, in order to ensure that standards are being complied with and achieve redress for specific violations. Their emphasis is on raising standards, rather than disrupting supply-chains or reducing employment opportunities. The GLA has been willing to use its position to remind employers of their responsibilities to employees, on occasion providing a more accessible and quicker mechanism than formal enforcement to seek redress. For example, in December 2007, staff at Pride Management Services of Southall were paid more than £26,000 holiday pay arrears. GLA Chairman Paul Whitehouse commented: *“This is exactly the type of result that the GLA seeks... We recognise that not all labour providers understand every aspect of employment law, and we don’t penalise those who get it wrong if they rectify matters immediately.”*

Licence revocation where necessary

Although the GLA has a clear preference for encouraging better practice rather than immediately revoking licences, it has also used its powers to revoke licences where necessary. Following the initial two years of issuing licences and working with gangmasters to improve their practice, in 2008 the agency shifted its operations into enforcement and compliance. This led to an increase in unannounced inspections; several respondents related examples of the GLA curtailing the activities of particularly vicious, abusive, and threatening gangmasters through licence revocation.

Following their first year of active enforcement by the GLA, 93 licences have been revoked, eight with immediate effect.²⁸ And the GLA’s 97 per cent success rate in defending appeals against revocation suggests it is not overstepping the mark.²⁹ In addition, 22 per cent of all businesses that the GLA has come into contact with have now been refused a licence or have otherwise ceased trading.³⁰ However, there are suggestions that some businesses that have failed to meet the GLA’s standards, and have had their licences to operate revoked, have simply moved into sectors beyond its remit, as will be explored later in this paper.

Working with gangmasters and retailers

Many gangmasters have welcomed the GLA’s licensing regime as it has helped reduce the downward pressure on pay and conditions, whilst not imposing onerous burdens on employers. Independent research undertaken by the University of Sheffield and the University of Liverpool found that 79 per cent of gangmasters were in favour of licensing and only 18 per cent described their contact with the GLA as burdensome.³¹

Confidence in the effectiveness of the employment rights enforcement regime in closing down unscrupulous employers is crucial. Nearly two-thirds of gangmasters surveyed felt the GLA had had a positive effect

“Now the farmers and growers are far less inclined to use gang labour that isn’t registered because of the penalties that they are going to incur. It is a disincentive.”

Independent researcher, South Lincolnshire

on reducing worker exploitation and business fraud and had reduced the number of unlicensed gangmasters. This therefore creates a positive cycle, in which licensed gangmasters have an incentive to report illegal gangmasters who seek to undercut those who guarantee their workers basic legal rights.³²

The GLA has also built strong relationships with retailers, including producing a responsible labour user guide with Marks & Spencer, and establishing a protocol between the GLA and supermarkets to help combat exploitation.³³ Indeed, the GLA's licensing system partly relieves retailers of the burden of investigating their suppliers. There are also a growing number of labour providers who are voluntarily undertaking independent audits and sharing them with those they supply via the Supplier Ethical Data Exchange (SEDEX). Another positive impact can be seen in the formation of the Association of Labour Providers, which acts as a centre of expertise and good practice.

"Labour providers... are saying we want to share the fact that we have good practice with our customers... and we want to push ahead. We don't just want to be compliant with the GLA, we want to prove that we are working to this better practice. And because people want to prove that they are doing more, it may well change the landscape going forward."

Senior officer, major retailer

"The GLA have been quite effective. What they tend to do is collect information about an agency and then they will go in and investigate when they have quite a few cases, but they will also go in on just one case. We've had them ring up companies and explain to them that this is not the procedure that they should be following. And the companies have changed their practice as a result."

Citizens Advice Bureau, South Holland, Lincolnshire

Impact assessment to prevent negative impact on workers

The GLA publicly states that its primary role is to curb the exploitation of workers.³⁴ Too often, enforcement further disadvantages individual exploited workers, who may lose their jobs and their accommodation and may not receive compensation or pay that they are owed. In contrast, the GLA carries out impact assessments to ensure workers are able to be re-employed and do not lose their accommodation.

GLA policy: protecting workers

"Before we take action we always conduct what we call a community impact assessment. That is where we try to estimate the likely impact of the action we take, the size of the workforce, the nationalities, and whether they would need to be provided with emergency housing, for example. And that is where we have worked with the local authorities and other organisations – charities, migrant worker groups, church groups – to try to make sure there is a support safety net in place... because we do not want, as an unintended consequence of our actions, to make the immediate situation worse for the workers."³⁵

GLA Head of Policy

And, as noted above, the GLA has been willing to use its position to remind employers of their responsibilities to employees, on occasion providing a more accessible and quicker mechanism than formal enforcement to seek redress. Advice agencies particularly welcomed GLA activity to curb abuses, where the onus is usually on the individual employee to seek redress through the tribunal system. This is a difficult and time-consuming process, which rarely provides positive outcomes for complainants. We were told of GLA interventions whereby complainants received immediate redress to longstanding grievances through the informal pressure applied to labour providers.

Evidence of continued exploitation by gangmasters in GLA sector

"I worked cutting leeks for 70 hours, and was paid just £20 for a week's work. The wage slip recorded just 14 hours. There was also a charge of £10.52 per week for transport to the field."

Anka, from Poland, living in Lincolnshire

"There were some irregularities with our monthly wages; the payments were never clear. Then one day they called me to the office and just fired me. The advice agency said I had a case against the company, but it's too costly to pursue it."

Jozef, from Poland, works in construction in Hull

"I found one woman who started out with £149 as her net wage and by the time all the illegal deductions were taken out, was left with £19. Its disgraceful, but not unusual."

Independent researcher, Lincolnshire

Despite the successes, there is some way to go to root out all exploitation. It is to the GLA's credit that standards have been raised significantly, and considerable exploitation has been rooted out. However, our research suggests that the GLA still has some way to go in eradicating exploitation from the sectors within its remit and a small number of gangmasters continue to exploit their workers in defiance of their license.

Before spring 2008, the GLA had revoked the licences of six gangmasters whose labour practices matched some of the International Labour Organisation's indicators of forced labour:

- The intimidation of workers with threats of violence.
- Attempted forced evictions from tied accommodation.
- Debt bondage.
- Withholding of wages.
- Threats to cut off water and electricity from tied accommodation.³⁶

Our research indicated that the recession is causing gangmasters to increasingly turn to exploitation as they strive to cut their costs. The GLA themselves found this, noting that more than half of agency workers surveyed felt that over the past year *"work has become harder,"* with one-third of workers saying that they felt that *"treatment of workers by employers and agencies... [was] getting worse."*³⁷

Exploitation by licensed and unlicensed gangmasters in GLA-regulated sectors

However, it is clear that although it has reduced there is still a considerable level of exploitation by gangmasters in the food and agricultural industries, both by licensed and unlicensed gangmasters. The research revealed instances of:

- **Contracts:** workers being deliberately misled about their contracts; workers being given verbal assurances of permanent, well-paid work, which did not materialise on their arrival in the UK.
- **Wages:** systematic and deliberate underpayment or non-payment of wages; failure to pay wages which met the national minimum wage; deliberate understatement of hours worked, leading to incorrect wages; failure to pay sick pay or holiday pay; non-payment for the final week of work; workers being transferred to 'new' agencies who are nonetheless under the same management as their previous employer, yet refuse to honour wages owed.
- **Deductions:** excessive deductions for transport to and from fields and workplaces, and for protective equipment.

“Those who insist that their papers are returned are sometimes assaulted or dismissed, or lose their accommodation. Or all three.”

Parish priest, Hull

“My accommodation was arranged by the agency in Poland. There were 12-16 people in the house. It had three toilets, but only two were working. And two-to-three people in each bedroom. The agency would simply move new people in as they wanted to. They would initially sleep on sofas until new bedrooms were sorted out. We were told if we left our accommodation we would lose our jobs; and if we left our jobs we would lose our accommodation.”

Lech, from Poland, living in Hull

- **Excessive working hours:** enforced excessive working hours; compulsory overtime, leading to regular 60-70 hour weeks under threat of dismissal, with no overtime premium being paid.
- **Immigration processes:** use of the immigration process to coerce workers, with documents being retained illegally by employers; workers not being registered with the Workers Registration Scheme, despite paying fees to their employers to register them; threats to report workers to immigration authorities.
- **Dismissal:** unfair and instant dismissals, which are so common as to be inherent in the employment model. Workers may lose their job and/or accommodation if they report abuse to authorities, protest about the conditions of work, are ill or request sick or holiday leave, or become pregnant.
- **Accommodation:** strong links between gangmasters and the accommodation providers. There were repeated reports of considerable over-crowding and substandard accommodation, and ‘hot-bedding’ remains endemic. Despite a drop in gangmasters maintaining a direct link to accommodation – which was attributed to the work of the GLA – employers now seem to place migrants in the hands of unscrupulous landlords. We heard many reports of migrants living 10-12 to a two-bedroom flat, with little access to cooking and washing facilities, and no private space. It was also clear that a number of local authorities were failing to enforce housing standards for people living in dangerous and unsuitable conditions, because there is no alternative accommodation if they shut down the unscrupulous landlords.

Issues hindering effectiveness of the GLA

Unlicensed labour providers

That exploitation of workers continues at the hands of licensed labour providers is a major cause for concern for all respondents to our study. Of far greater concern, however, was the unknown – but certainly significant – number of gangmasters operating in GLA sectors without a license. In the year October 2007-September 2008, the GLA received 1,485 intelligence reports overall; of those, 415 related to unlicensed gangmaster activity. It is thought that 25-40 per cent of gangmasters in sectors within its remit are unlicensed.³⁸ Unlicensed gangmasters are undoubtedly perpetrators of the worst forms of exploitation.

Under-resourcing of the GLA

Our research found that many working with vulnerable workers believed that the resourcing of the GLA was insufficient, with too few staff. It was suggested that this reflected merely a token commitment from government to tackling gangmaster exploitation.³⁹ At the time of the research, following a recent increase in staffing, the GLA operations

department had 33 staff: seven working in intelligence, seven in compliance, twelve enforcing the law, plus seven administrative, project and management staff.⁴⁰

“There aren’t enough GLA inspectors. We realised this from the beginning – that it was so much bigger a job than anybody realised and the scale of it was so much greater than anybody realised.”

Citizens Advice Bureau, Boston

“They would like to do more. They are aware of the abuses out there. But I just don’t see how they can because they’re not resourced well enough.”

Independent researcher, South Lincolnshire

The GLA themselves are understandably reluctant to categorically assert the need for greater resources, believing that the argument needs to be developed alongside solid research to evidence greater need, and that increasing the remit of the GLA into other sectors would enable economies of scale. However, they have recently noted that the difficulties of the current economic climate have increased the amount of information the body is receiving and the amount of offences which are being committed.⁴¹

Under-reporting of exploitation

The true scale of exploitation within GLA-regulated sectors is difficult to assess as workers are often unwilling or unable to report exploitation, and trade unions and advice agencies have limited capacity to deal with cases. There is also a considerable lack of awareness by workers of their rights at work and of the agencies that are supposed to enforce those rights: only six per cent of agency workers have even heard of the GLA, for instance.⁴² In addition, even statutory and voluntary advice bodies are confused and unclear about the roles and powers of different government enforcement bodies and about how complaints might be made. Workers also have a lack of faith in obtaining personal redress from the authorities; often they would rather look for another job than invest time trying to achieve compensation.

A key factor for the continued under-reporting of exploitation relates to the vulnerabilities experienced by migrants. Migrant workers, who constitute an overwhelming majority of the workforce in GLA-regulated sectors, often cannot blow the whistle without potentially jeopardising their own and others’ employment and ability to remain in the UK. Exploitation is in many cases facilitated by employers using migrants’ fears, and lack of knowledge about their immigration status, against them. In addition, many migrants experienced violence of threats of violence against themselves or their families in their countries of origin.

This is compounded by the requirement for the GLA to inspect workers’ immigration status, and share such information with the UK Border Agency (UKBA). The consequence of this is two-fold: both regular migrants who are unsure of their immigration status, and migrants who know that their status is irregular, will be discouraged from reporting abuses; and secondly, irregular migrants will be more likely to be driven to work for unlicensed, exploitative gangmasters. The GLA has struggled to eradicate exploitation at the very bottom of the market – undoubtedly in part due to its inability to protect all workers, irrespective of their immigration status. In contrast, the Health and Safety Executive is not required to enquire about immigration status, which has contributed to its success in reaching the most vulnerable working environments.

Migrants are also less likely to report abuse as they may lack language skills; this may also limit their options in terms of finding other job opportunities. Many were clear that they would not wish to return home without having saved money from their work. In addition, restricted benefits entitlements for migrant workers mean that they are entirely dependent on work for their income. Instances were reported where gangmasters would deliberately not enrol workers onto the Workers Registration Scheme for this very reason – in order to cut off their access to social security and thus discourage workers from leaving.

Phoenix companies

A major concern of many working with vulnerable workers was the phenomenon of ‘phoenix’ companies. These are rogue gangmasters who have been caught exploiting workers, have had their licences revoked, and ostensibly ceased to operate, but in fact have remained in the labour-provider business, either operating under a different name, behind the scenes, or with different ‘front-men’. Two major retailers gave examples of three companies where this has happened.

Phoenix companies

“The labour provider, you know... ‘Johnson’s’, gets its licence revoked, and then labour provider ‘Johnson’s Limited’ very coincidentally has applied for a new licence the very next day... and that’s very well known to the GLA. Nobody is idiotic enough not to notice that the senior management is the same, and the workers on the books are the same, and the client book is the same. So clearly it’s the same organisation, just rebranded and reapplying. But all the good work that the GLA has done with the revocation seems not to have a bearing on the application from the new outfit!”

Ethical manager, major retailer

Labour providers felt that the GLA, whether due to its internal organisation or its legislative base, lacked teeth when it came to tackling a hard-core of criminal, rogue gangmasters. There was particular concern about small-scale, unlicensed field gangs; large organised criminal gangs; double bookkeeping; and figureheads used to front apparently legitimate licensed businesses on behalf of well-known local crooks.⁴³

The GLA has now developed a concerted strategy to identify and refuse or revoke licenses of phoenix companies. In 2008, the GLA carried out successful operations against Primeval Limited, PTE UK Limited/EMP Solutions, and another phoenix gangmaster in Spalding, Lincolnshire.^{44 45} The GLA has been helped in this by the expansion of their remit in April 2009, to cover judging whether gangmasters are fit and proper people to be licensed.

However, some stakeholders believed that phoenix companies were actually less likely to resurrect themselves in the sectors regulated by the GLA, when they could simply switch to work in the construction, hotel, and catering industries, where they don’t need a licence at all.⁴⁶

Lack of prosecutions

There remains concern over the number of prosecutions of unlicensed gangmasters. Whilst the diligence of the GLA in acquiring a body of evidence prior to approaching gangmasters is welcome, the existence of only one conviction, given the number of unlicensed gangmasters, does not inspire confidence in the GLA's ability to bring exploiters to swift and certain justice. However, it should be noted that the GLA's enforcement role has only been fully operational over the past year and it currently has a total of 207 open (ongoing) investigations.

The power of those at the top of the supply chain

This research highlighted the role of supermarkets in creating price pressure, which causes labour-users down the supply chain to use the cheapest labour, which is therefore most likely to be exploited. There are a number of examples of exploitative gangmasters supplying some of the UK's biggest companies, who in turn go on to supply major supermarkets.⁴⁸ The effectiveness of the GLA, and its ability to combat worker exploitation, is therefore inextricably linked to the purchasing practices of supermarkets, which place immense pressure on buyers to squeeze the margins of suppliers. The GLA itself notes that licensing represents a solution focused on outcomes rather than causes and therefore will not address deeper, underlying factors that contribute to worker exploitation.⁴⁹ Inevitably, the extreme price-based competition fostered by supermarkets will impact upon the workplace lower down the supply chain.⁵⁰

"Most illegal work services the legitimate economy. The companies that really benefit insulate themselves through complex webs of contractors and subcontractors."

John Denham MP, then Chair of Home Affairs Select Committee, 2006⁴⁷

Conclusion: assessing the effectiveness of the GLA

The gangmasters' licensing regime has clearly had a significant impact on the industries that are regulated by it; we can confidently state that exploitation has reduced. In addition, the GLA has developed into an effective and responsive organisation, which works well with employers. Organisations working with vulnerable workers are particularly appreciative of the GLA's approach, which places priority on maintaining workers' livelihoods.

"I was working through an agency as a cleaner in a factory in Hull. They were happy with me, but then I had to take three months off sick. When I went back the agency said they did not need me because I could not clean fast enough any more."

Piotr, from Poland, living in Hull

However, it is clear that exploitation does continue to exist in the regulated sectors, both in agencies who are already licensed and those operating without a licence. The revocation of a number of licences after reports of severe exploitation, suggests that the GLA requires greater resources to ensure that standards are adhered to by all licence-holders. And the appearance of phoenix companies further suggests that the GLA has been unable to fully deter rogue gangmasters. It should be noted, however, that the GLA has itself recognised these weaknesses and has improved its operations by undertaking more in-depth assessments of gangmasters, and is putting forward proposals for greater penalties.⁵¹

Nevertheless, the existence of unlicensed gangmasters remains a significant problem for the GLA. Its struggle to reach the very worst exploitation is largely linked to workers' fear that exposing exploitation might lead to the loss of their jobs, accommodation or ability to stay in the UK. Given the GLA's reliance on workers speaking out, and given that many workers within its remit are migrant workers, the GLA's role in enforcing immigration law and sharing information with the UK Border Agency fundamentally thwarts its ability to fully achieve its goal of ending worker exploitation.

6.

Exploitation by gangmasters in sectors beyond the remit of the GLA

The other major barrier to reducing the exploitation of workers by gangmasters – one that the GLA itself can do nothing to tackle – is the almost non-existent regulation of, and enforcement in, sectors other than food processing and agriculture. A similar reliance upon a cheap, highly-flexible workforce can be seen in other sectors. Though the market, which forces labour providers to compete on cost and flexibility, bears much responsibility for wages and exploitative terms and conditions for workers, the lack of effective enforcement outside the GLA-regulated sectors also plays a significant role.

It comes as little surprise – given the nature of the workforce required, and the diversification of gangmasters into these sectors – that the widespread exploitation within these sectors bears a striking resemblance to that found in the GLA-regulated sectors: underpayment of wages, debt bondage, excessive hours, and spurious deductions. However, the research team noted that what were exceptions in the GLA’s field of operation were the norm in other sectors. Whilst exploitation may stretch to every part of the labour market to differing degrees, it was clear that there were three sectors in which exploitation was rife: construction, hospitality (hotels, catering, and cleaning), and the care sector.

The agencies that operate in these sectors are often gangmasters that also operate within the GLA-regulated sectors. Indeed, a number of respondents reported that gangmasters, faced with being sanctioned by the GLA in regulated sectors, have deliberately moved beyond the remit of the GLA into sectors in which it does not operate and are instead poorly regulated by EAS. The GLA recently gave evidence to the Home Affairs Select Committee about companies whose licences they had revoked which still continued to operate in construction.⁵²

“I was working 10-12 hours, seven days a week, as an apprentice plumber – and was being paid about £1.84 per hour. My employer said this was normal and I should be grateful. Then he attacked me because I asked for a copy of my terms and conditions. This is the 21st century, not the 14th century. These things should no longer be allowed to happen.”

Roman, from Poland, living in Lincolnshire

Construction

Construction is one of the sectors where worker exploitation is most prevalent. In common with others who have studied this sector recently,⁵³ we found that severe and systematic violations of health and safety procedures were common, with repeated instances of threats to sack workers if they raised concerns. We heard of many instances of accidents and injuries on construction sites. Respondents to our study expressed grave concern at the fact that fatal accidents and serious injuries are increasing on building sites.

We were particularly concerned that agency and migrant workers may well have less access to training and safety equipment than the standard workforce, and thus may be more likely to be the victims of accident or injury. However, the nationality of a worker is recorded only when he is the victim of a fatal accident; there is no current recording of the involvement of migrant workers in the accidental deaths or serious injuries of others. The impact of gangs of untrained and semi-trained migrant workers cannot be adequately measured, but may be significant. As Barckley Sumner of the Union of Construction, Allied Trades and Technicians (UCATT) comments: *"When you work for agencies or gangmasters you just don't get the training or the safety protection... that kind of safety ethos isn't there. It's an industry where 72 people died last year, 79 the year before, and last year 12 migrant workers were killed."*

We found particularly strong evidence that workers were being designated 'self-employed', which gives them fewer rights, when in fact they do not have the independence and autonomy over their work that characterise genuine self-employment.⁵⁴ Bogus self-employment is actively encouraged by gangmasters. Statistics on the scale of the problem vary: some have estimated that there are just under 200,000 construction workers with unclear employment status,⁵⁵ but UCATT has suggested that half of those employed in the construction industry – around one million workers – are engaged in bogus self-employment.⁵⁶ The Construction Industry Tax Scheme allows for 20 per cent tax to be deducted at source. As the workers involved are classed as self-employed, their employers do not have to pay any employers' national insurance contributions, meaning that the workers are less likely to have a full entitlement to social security support if they become unemployed or ill. This shortfall in national insurance contributions amounts to £2.3 billion a year annually, and an additional £2.2 billion is lost through under-reporting in annual tax returns.⁵⁷ Workers are unable to turn down work for fear that they will not be used again by the gangmaster.

"One agency... for one worker's clothes – a pair of trousers, two T-shirts and a sweatshirt – they charged him £250. He called it his 'Versace gear'."

Advice Agency Worker,
Lincolnshire

In addition, we found evidence of other forms of exploitation. Some construction workers were paying very high rates for overcrowded, very low-standard, tied accommodation, or were sleeping on the building sites; and many faced excessive deductions for tools and transport. We heard of very low wages and systematic underpayment, with very few records kept, making redress virtually impossible. It is also clear that agencies that can no longer operate in GLA-regulated sectors because their licence has been revoked, are now moving into unregulated sectors – for example, Timber Ltd.⁵⁸

Recently, the concern about workers' safety and protection on building sites and in the construction industry generally has increased, and it is clear that there is a widespread consensus amongst those that work with and on behalf of construction workers, of the need for greater regulation of the construction industry. There is certainly a marked similarity between agriculture, where contractors agree to go in and undertake work such as harvesting with a group of workers, with the situation of a building contractor who runs a gang of labourers – yet this last type of labour provision is not even regulated by the Employment Agency Standards Inspectorate.

As this report was going to press, the Work and Pensions Select Committee had endorsed the findings of Rita Donaghy's report⁵⁹ into deaths in the construction sector,⁶⁰ and has called for an extension of the remit of the Gangmasters Licensing Authority to construction. A well-organised group of MPs and trade unionists are mounting a campaign for extension of the GLA to construction.

Exploitation in construction

"I've done jobs in all parts of the country... Leicester, Leeds, Manchester. You're taken in the back of a van, and sometimes I don't even know where I've been when I get back. The vans are overcrowded, unsafe, uncomfortable. The gangmaster phones you and says... come to a certain place... certain major road junction at 5.00 am. So you go and wait.

"Sometimes you work for a week, including Saturday and Sunday, and might get just £50. You don't get a wage slip – it's cash-in-hand. Transport to and from jobs often eats up most of your money. Often you sleep at the site.

"The gangmasters have a way of hooking you in. You work for a week and they pay you, but next week they won't pay you. They ask you to come back next week and they pay you for this, but they still owe you one or two weeks work so you can't really leave them. They don't pay sick or holiday pay of course.

"I did a health and safety in construction course, so I tend to always take my own helmet, mask, gloves and boots, which I've picked up from other sites. The other workers don't have hats and boots, as they are not provided. There is no concern for our health and safety."

John, from Nigeria, former construction worker

Hospitality and contract cleaning

There is also severe exploitation in the cleaning and hospitality sector. We found particular evidence of systematic exploitation in the hotel industry in London, but believe that this occurs throughout the country, across many hotels, replicated in every major city and resort.

Over the past decade, there has been a fragmentation of responsibility in the hotel industry. Many hotels no longer directly employ most of the workers who deal with maintenance and cleaning, preferring instead to 'buy in' the services of agency workers. It is rare to find a hotel that does not use agency labour in the housekeeping department, and many hotels have contracted out that entire function to an agency. These agencies compete primarily on the cost of labour, rather than on the quality of service. Agencies have therefore devised ways of getting more from their workers for the minimum cost, in the same way as is seen in GLA-regulated sectors.

Key stakeholders also noted that agencies were driving each other down to the lowest common denominator, as they had no choice but to cut corners to compete. Indeed, the subcontracting of responsibility by large, international hotel chains results in agencies being all too willing

to exploit their workers in the race to win contracts, safe in the knowledge that they are unlikely to be caught by an enforcement agency. One union organiser noted that the hotels must be aware of the exploitation because *“it’s happening so frequently, right under their noses, in almost every hotel”*.

In addition to the standard forms of exploitation common to the labour model, such as underpayment and non-payment of wages, spurious and excessive deductions for cleaning equipment, transport and uniforms, and denial of sick and holiday pay, we were particularly concerned that the practice of paying piece-rates per room cleaned routinely resulted in a wage below the national minimum wage. This is by no means uncommon in the hotel industry: recent research has found that 17.5 per cent of workers in hospitality are paid below the minimum wage.⁶¹ We again found evidence of bogus self-employment and considerable bullying and intimidation.

Our research found that most ‘backroom’ jobs were dominated by migrant agency workers. Again, we see that gangmasters are using migrants as they can exploit their vulnerabilities and unwillingness to complain. We were even informed of instances where permanent staff were being replaced wholesale by irregular migrants to drive down the cost of labour.

Agencies clearly exert significant power over their workers. Trade unions find it difficult to forge a presence – with union density still at 4.3 per cent compared to the national average of just over one-quarter of the workforce – as agencies will often actively discourage workers from joining a union.⁶² The high turnover rate, and, to some degree, the cultural suspicions of unions by migrant workers, result in a lack of collective bargaining power.

More work is needed to establish an evidence base for worker exploitation in restaurants and takeaways. This report did not undertake any primary research into this sector, but from secondary evidence that was gathered we believe this sector is also in desperate need of greater regulation. As with the food-processing industry, where the visibility of the supermarkets to the end consumer has encouraged self-regulation, we believe that the publicity the GLA could generate about labour practices in hotel chains could deter exploitation and considerably raise standards.

Exploitation in the hospitality industry

“I’m cleaning rooms in a small hotel with 20 rooms. I got the job through an agency when I was still in Spain. The hotel pays me £25 for eight hours’ work. They pay me cash-in-hand – no wage slip. I know they should pay me the minimum wage, but what can I do? The agency won’t defend me or help me with this.

“After working nine days in a row at the hotel, I hurt my knee at work and was in a lot of pain. The hotel said I could only have a day off if I found a friend to work instead of me. I had to pay the friend, so I did not make any money that day.

“The agency also makes me stay in their accommodation, even though I had somewhere to stay. They charge me £80 a week for a room shared with three other people, sleeping on mattresses that are totally rotten. There are 15 people in the house altogether – and one bathroom, one kitchen.

“A lot of people have a problem with this agency. They are a big agency... on the Internet... and they supply people to work in hotels all over London. They get away with it because people cannot speak English, so they can’t defend their rights.”

Julia, from Spain, currently cleaning hotel rooms in London

The care sector

We also found considerable evidence of exploitation in the social care sector. The UK, like much of Europe, has an ageing population. It is estimated that by 2030, more than 20 per cent of the population will be aged 65 years and over, up from 16 per cent in 2007. In particular, those aged 80 years and over will double to around eight per cent of the population by 2030.⁶³ This is likely to have a major effect on the expansion of the care sector in years to come.

This sector has historically had high staff turnover and low rates of pay. As a result, increasing numbers of agencies are looking to employ migrant workers in addition to the local workforce. The Centre on Migration, Policy and Society (COMPAS) recently found migrant workers accounted for nearly one-fifth of all care workers looking after older people, and, significantly, nearly 28 per cent of those recruited in 2007.

In this sector, excessive hours of work were particularly prevalent, with some employees working nearly 100 hours per week, and an expectation – because of the need for carers to be available all the time – that workers would not take holiday. In addition, travel time between clients’ homes was not paid, and many workers were paid below the national minimum wage, as is the case for nearly one-in-five care workers.⁶⁴ We also found evidence of debt bondage, with workers paying up to £2,000 for a job in the UK to be arranged, and considerable deception about the pay promised to workers, both at the time of recruitment and on their work permit.⁶⁵ It was clear that abuse was widespread and combines to create a highly intimidating situation for the workers.

Oxfam has previous experience of working with employers to raise standards within the social care sector. In 2008, we ran a project with Liverpool Social Care Partnership, Migrant Workers North West, and social care employers to promote best practice in the employment of migrant workers. The project had a significant positive impact for those workers employed by participating companies⁶⁶ and indicates that the introduction of licensing in the social care sector might thus achieve considerable change.

7. Discussion and analysis: how best to protect vulnerable workers employed through gangmasters?

Enforcing rights for agency workers – comparing EAS with the GLA

This research has shown that exploitation of workers employed as flexible agency labour is occurring in several sectors of the economy. It is often driven by market needs and essentially allowed to continue by the lack of enforcement of employment rights.

The existence of several different employment rights enforcement agencies, each with different and overlapping models of enforcement and remit, as well as an under-resourcing common to all enforcement agencies, ensure that even organisations supporting vulnerable workers will struggle to navigate the enforcement regime. Workers, for the most part, will not be able to navigate it at all.

Currently the GLA is restricted to enforcing standards of labour suppliers in five sectors of the economy. Those who are supplying labour beyond the GLA's remit are subject to the employment agencies' legislation and regulations, enforced by the Employment Agency Standards Inspectorate (EAS). Oxfam is concerned that those workers employed by agencies who are supposedly protected by EAS are not, in fact, effectively protected at all.

The Home Affairs Select Committee noted in 2008 that "*outside the GLA's sectors, enforcement is at best patchy and at worst non-existent*".⁶⁷ Our research found widespread criticism of the effectiveness of EAS. For example, advice and support agencies acting on behalf of migrant workers and immersed in migrant worker employment issues, admitted that they had no knowledge of EAS or of its remit. Even those who were aware of EAS had had no contact with it and had seen no promotional publicity for it. The research team found not a single migrant worker who, prior to our visit, was aware of the existence of EAS. It should be noted, however, that EAS is currently running a £1.25 million campaign to raise awareness of employment rights among vulnerable agency workers, including raising the profile of the Employment Agency Standards Inspectorate,⁶⁸ and this is further reflected in its 2009/10 strategic plan.⁶⁹

EAS is also particularly poorly resourced given the size of its remit. Even though the number of inspectors was doubled from 12 to 24 in July 2008,

the sheer number of agencies operating in the UK makes it unlikely that EAS will have enough impact. In high-risk sectors, the chances of inspection are unacceptably low: EAS has one inspector for every 700 agencies.⁷⁰ EAS investigated just 1,494 agencies during the course of 2007-08.⁷¹

EAS has also failed to secure the support of businesses in its sector. Employers have little incentive to comply with labour standards when the lack of enforcement means that their competitors can (and will) flagrantly exploit their workers to undercut them. The EAS model focuses far too much on written compliance, which means that they take the word of agencies for their good practice, without checking the evidence. In addition to failing to uncover exploitation, this means that they are able to recover less revenue for the Exchequer. EAS also recovers little for exploited workers: since March 2008, it has recovered just £26,000 of illegally-withheld workers' wages, and a further £21,900 in other payments.

Oxfam believes the current standard of employment rights enforcement by EAS fails vulnerable workers. The ineffectiveness of EAS, and the restriction on the remit of the GLA, creates a system whereby gangmasters can move into more poorly-enforced sectors of the economy to escape punishment. Currently, just one-quarter of gangmasters operate in sectors regulated by the GLA.

It is instructive to compare EAS with the GLA. This research has shown that the licensing model of enforcement, as employed by the GLA, has driven up standards for the majority of workers. Gangmasters, unions, and migrant support organisations alike are all supportive of the GLA's work. In contrast to EAS, the GLA has the support of gangmasters in its ability to create a more level playing field, and has promoted self-regulation. Furthermore, the GLA has assisted in recovering more than £2 million in revenue for the Exchequer, as agencies are brought into the formal sector, make good arrears in tax and national insurance, and start fulfilling their obligations.

The model that the GLA uses is light/tough, giving employers a chance to rectify their mistakes and compensate their employees, before using formal powers to revoke licences and pursue grievances. The GLA is not out to shut down labour providers and it explicitly considers the impact on workers of taking action against employers. In pursuit of this, it has deliberately moderated the cost of licences, even though some smaller agencies have still struggled to pay. The licensing regime, as demonstrated in the current sectors, does not cause a significant burden and the initial findings from the Hampton Implementation Review – which assesses how regulators are following the Hampton principles of better regulation – have been very positive about the way the GLA operates.⁷² It has a high public profile, which it has used effectively to deter exploitation.

It should, however, not be taken from this paper that Oxfam thinks that the GLA is performing as strongly as it might in preventing the exploitation of workers. Alongside others, we believe that the GLA in

some ways lacks the teeth and resources to tackle exploitation to the fullest extent, and is hamstrung by a regressive requirement to enquire about and report on immigration violations.

One body to enforce agency workers' rights?

Overall, and based on our labour rights work in the UK and all over the world, Oxfam believes that employment rights enforcement is best achieved through a single, proactive enforcement agency with the power to pursue claims for redress.

Although this has been considered, it is clearly a long-term goal. The Department for Business, Innovation and Skills (then the Department for Business Enterprise and Regulatory Reform) in its Vulnerable Worker Forum did demonstrate some awareness of the need for a more joined-up approach to enforcement, through the recent establishment of the Fair Employment Enforcement Board.

In the absence of the political will to re-vision employment rights protection for all workers in the UK, Oxfam suggests that the current restriction of the GLA's remit to certain sectors creates a two-tier system of labour rights enforcement. We believe that the extension of the GLA to cover more sectors and more workers would be a proportionate, appropriate, and effective response to the problems of exploitation that we have uncovered, and we now outline two ways in which this could be achieved.

It should be noted that the BIS/BERR Vulnerable Worker Forum did consider the extension of the GLA into further sectors of the economy in 2008. The proposal was rejected in favour of a doubling of inspectors for EAS – from 12 to 24 – and a commitment to raise the visibility and reputation of EAS among vulnerable agency workers and within the industry. However, as our research has shown, these changes and the existing flaws in EAS' model of working have made little difference to the level of exploitation in the sectors covered by EAS.

We suggest, therefore, that EAS should be merged into the GLA, so that the GLA covers all sectors of agency labour. This is logical, in terms of regulating a model of labour provision no matter which sector; efficient, as it will get over the information-sharing and cultural barriers which currently exist; and would be a good use of public resources, as the joint agency would be able to achieve operational efficiency and avoid duplication. Change is also urgent, as exploitation in unregulated sectors is rife, and agencies that exploit and are known to exploit can currently change sectors and escape sanctions with impunity.

The GLA has demonstrated significant success in clamping down on the vast majority of abuse and increasing labour standards. A merger between the GLA and EAS would drastically improve the labour standards for workers within these sectors. Improving regulation in this way could also result in an increase in revenue, more than compensating for resources spent on enforcement.

Alternatively, the remit of the GLA could simply be extended piecemeal to cover the three priority sectors where exploitation is currently evident – construction, hospitality and care. Paul Whitehouse, Chair of the GLA comments: “Our model of enforcement is cost effective and is known to work in tackling abuse in the food industry. I have no doubt our approach could be translated across all areas of the UK economy. And if our remit were ever to be extended the unit cost of licensing would drop substantially.”

Protecting labour rights for all – including migrants

In one story told to Oxfam's researcher, six men from an unknown country had been injured by collapsing scaffolding on a building site. Before help could arrive, they ran away, their concern at being detected for working illegally preventing them from seeking medical assistance.

Unpublished Oxfam research

Poverty and exploitation of rights is inextricably linked to the status of many workers as migrants. This is true, whether migrants are of regular or irregular status.

The role of the GLA is to end exploitation of workers. However, one criterion for a licence to provide labour works against this aim. Licensing Standard 7.2 states: ‘A worker must have entitlement to undertake the work in question in the UK’⁷³. This criterion results in the GLA undertaking an element of immigration policy, which is distinct from its role in upholding workers’ labour rights.

Effectively, through the inclusion of this standard, the GLA creates a distinction between the labour rights of regular migrants and irregular migrants. The consequence is two-fold: both regular migrants unsure of their immigration status and irregular migrants will be discouraged from reporting abuses; and secondly, irregular migrants will be more likely to be driven further underground and work for unlicensed and more exploitative gangmasters.

With an estimated 725,000 irregular migrants in the UK,⁷⁴ many of whom arrived as regular migrants, unscrupulous gangmasters will never be in short supply of highly vulnerable workers to exploit.

As noted above, the GLA has struggled to eradicate some of the very worst exploitation by unlicensed gangmasters. This is undoubtedly in part due to its inability to openly state that it protects all workers, irrespective of their immigration status. This can be compared to the approach of the Health and Safety Executive (HSE), which does not inquire about status or report information on irregular migrants to the UK Border Agency, as the GLA is required to do. HSE feel that their universal approach to securing the health and safety of workers is vital to ensuring that they reach the very worst exploitation.⁷⁵

Oxfam believes that the approach of the GLA fundamentally thwarts its ability to carry out its duties. Through the requirement to implement immigration policy when enforcing its licensing regime, the GLA cannot gain the trust of the most exploited – and will therefore never receive intelligence of the worst exploitation. There can be no end to exploitation of workers, and no end to the undercutting of decent employers, should the GLA continue to undertake this aspect of immigration policy.

We therefore argue that this element of the GLA's licensing regime should be dropped, and that the GLA should be under no duty to report to the UK Border Agency.

Making sure employees can access their rights

It is also clear that the employment status regime contributes to, and is often a root cause of, the vulnerability of workers. The difference in protections afforded 'employees' and 'workers' means that those engaged in agency labour lack two crucial protections – protection from unfair dismissal, and redundancy pay.⁷⁶ Consequently, workers can be employed for years by an agency or gangmaster and yet be sacked at a moment's notice without any prospect of challenging the decision. This lack of protection means that workers will often resist challenging their working conditions for fear of being sacked.

Worse still, there is substantial evidence of false (or bogus) self-employment in the sectors of construction and hospitality. False self-employment is where an individual is treated by their employer as 'self-employed', when they are, in reality, dependent workers who do not have the independence or autonomy over their work that characterises genuine self-employment. Those who are designated as self-employed are not entitled to *any* employment rights, including the National Minimum Wage. The existing barriers to the labour market for migrants from A10 countries – the Workers Registration Scheme and the limited access for A2 migrants – encourages the use of self-employment by gangmasters and, in turn, promotes exploitation.

Crucially, in order for a bogusly self-employed worker to claim their rights, they would need to undergo the lengthy process of adjudication by an Employment Tribunal. The employment status regime therefore clearly favours the employer, and allows for systematic exploitation of their workers, denial of rights, underpayment to the Exchequer, and deprivation of workers' future social security entitlements. A review of the employment status regime which clarifies the situation, and makes it more difficult for employers and gangmasters to exploit workers in this way, is long overdue.

Conclusions

Over the past decade, the way that workers are employed in competitive labour-intensive, low-waged sectors has transformed. Greater downwards pressure on price, the advent of large numbers of migrant workers, limited employment-rights enforcement, and the deregulation of agencies have combined to give rise to a situation where workers employed through gangmasters and labour providers have a very high chance of experiencing exploitation. The GLA has shown that it is possible to reduce exploitation significantly, whilst retaining the support of employers. Learning from this model should quickly be extended across all sectors where agency and gangmaster labour models predominate.

This is particularly true in a recession, where the temptation to exploit employees can only increase, and more workers may be discouraged, through fear of losing their jobs, from exposing exploitation. It should be the case that, alongside price, agencies, gangmasters and sub-contractors should compete on quality too – and to change this, rogue agencies have to be prevented from exploiting their workers to enable reputable agencies, who fulfil their responsibilities and treat their workers fairly, to compete. With over two million vulnerable workers in the UK, more effective enforcement would significantly reduce the number of people in vulnerable work, and help lift people out of poverty.

8.

Recommendations

To government

Oxfam believes that a single labour inspectorate, empowered to proactively protect all rights at work for all workers, and to ensure that victims receive redress, would be the most effective form of labour rights enforcement and would be a significant and vital lever in reducing poverty in the UK. However, in the absence of a single labour inspectorate, Oxfam feels that much can be done to immediately improve the situation of vulnerable workers, and therefore recommends the following changes:

- The current limitation of the GLA to license labour providers operating only in the agricultural and food-processing industries is illogical. The Employment Agency Standards Inspectorate (EAS) should be folded into the GLA so that the new larger body covers all labour providers.
- Failing this, the remit of the GLA should be extended to cover the care, construction, and hospitality industries with immediate effect.
- The GLA should no longer have a duty to enforce immigration policy or share information with the UK Border Agency.
- The resources available to the GLA should be increased so that it can scale up its operation, employ more field inspectors, and increase its intelligence about the number of legal and illegal gangmasters currently operating and the form and extent of agency labour exploitation.
- The GLA should be given additional powers to confiscate criminal assets and provide guidance to courts on sentencing for those who breach the licensing regime, operate without a licence, or exploit their workers.

To the Gangmasters Licensing Authority

The GLA has proved effective in tackling exploiters and protecting the exploited. However, it has struggled to fully root out unscrupulous gangmasters. Oxfam therefore recommends that the GLA:

- Re-evaluates its position on securing prosecutions.
- Undertakes more unannounced visits and random inspections of gangmaster operations.
- Establishes an in-house undercover facility to reduce dependence on migrant workers as whistleblowers.
- Builds stronger links with trade unions and voluntary organisations, and with migrant community organisations, both in the UK and in key source countries, to facilitate awareness-raising and advice about rights at work. The GLA should also work with a range of agencies to ensure that, where a gangmaster operation is terminated, the workforce will be found alternative employment.

- Proactively seek engagement with local authorities, encouraging them to better police the standards of migrant worker accommodation and inform the GLA of any suspicious gangmaster activity in their locality.

Further recommendations

Oxfam's report also revealed several areas beyond the immediate work of the GLA where there could usefully be changes to reduce the vulnerability of workers. We therefore propose that the government:

- Urgently reviews the employment status regime, which is currently widely used to deprive workers of basic protections.
- Fast-tracks implementation of the Temporary and Agency Worker Directive and extends it to cover notice periods and compensation for the loss of employment.
- Funds support to assist vulnerable workers through the employment tribunal process; and investigates the possibility of state-led enforcement of unpaid tribunal awards, or even state payment of compensation and monies owed to the employee – to be recovered from the offending employer, to ensure that workers do not remain out-of-pocket.
- Investigates the growing use of 'zero-hour' contracts, which leaves some of the most vulnerable workers without a source of earned income and ineligible to claim benefits.
- Supports local authorities to extend Houses in Multiple Occupation Licensing to smaller properties in areas where there is a suspicion that large numbers of migrant workers live in unsafe and overcrowded rented or tied accommodation.
- Encourages stronger trade union engagement in all sectors of the economy where vulnerable workers are employed. Trade unions should also be invited to engage in the inspection process.
- Undertakes an independent review into the role of supermarkets and the extent to which their purchasing practices encourage a 'race to the bottom' in terms and conditions of employment.

As founder members of the Ethical Trading Initiative (ETI), Oxfam also recommends that large corporations in the hospitality sector should consider joining the alliance as a means to raise standards across the sector.

9.

Appendices

A. List of stakeholders

1. Bill Adams, Regional Secretary, Yorkshire & Humber TUC
2. Sean Bamford, TUC representative to the UK Human Trafficking Centre Prevention Committee
3. Jo Carby-Hall, UK Honorary Consul, Republic of Poland (Author of *The Treatment of Polish and other A8 Economic Migrants in the European Union Member States* (2007), Report for the Commissioner for Civil Rights Protection of the Republic of Poland)
4. Jim Cessford, Manchester Advice
5. Lesley Chester, Integration Officer, Lincolnshire Community Foundation/Independent Researcher of migrant worker issues, South Lincolnshire
6. Diane Clay, Manager, Spalding Citizen's Advice Bureau
7. Dee Combes, Former advice worker, Anfield Citizen's Advice Bureau
8. Kevin Curran, Unite, T&G Section, Hotels and Catering and London Citizens
9. Helena Danielczuk, Migrant Worker Advocate, Polish Workers Federation, Bradford
10. The Reverend David de Verny, (David de Verny, former Chaplain for New Arrival Communities in the South East, St. Botolph's Church, Boston, South Lincolnshire. Currently Anglican Chaplain, The University of Hull)
11. Pauline Doyle, Head of Campaigns, Unite, T&G Section
12. Richard Dunstan, Social Policy Officer, Employment, Immigration & Asylum, Citizens Advice Bureau
13. Don Flynn, Director, Migrant Rights Network
14. Dominka Futyma, Manager, Polish Advice Bureau, Hull
15. Derek Johnson, UCATT Regional Secretary, Yorkshire Region
16. Wayne King, Regional Industrial Organiser, Unite, Hotels and Catering
17. Denise McDowell, Former Coordinator of Migrant Workers North West and current Director of Greater Manchester Immigration Aid Unit
18. Maggie Peberdy, Manager, Boston Citizen's Advice Bureau
19. Dan Rees, Director, Ethical Trading Initiative
20. Nicola Smith, Senior Policy Officer, TUC
21. Barckley Sumner, National Press and Research Officer, UCATT
22. John Thorpe, Head of the Employment Agency Standards Inspectorate, BERR

23. Dave Turnbull, Regional Industrial Organiser, Unite, Hotels and Catering

24. Paul Whitehouse, Chairman, Gangmasters Licensing Authority

* Also consulted were several ethical trading/responsible sourcing officers at major retailers, advice agency workers and migrant workers who chose to remain anonymous.

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