

‘PAPERS PLEASE’

The Impact of the Civil Penalty Regime
on the Employment Rights of Migrants
in the UK



MRN Migration Perspectives Series

'Papers Please' is the first report in MRN's Migration Perspectives series. The series will feature papers which discuss aspects of migration policy, focusing on their impacts on migrants and migrant communities. Future papers in this series will cover migration to provincial regions of the UK, poverty and migrant communities, strategic migration partnerships across the UK, and developments in European policy. Details of each publication will be posted on the MRN website: www.migrantsrights.org.uk.

The 'Papers Please' research was conducted on behalf of the Migrants' Rights Network by Dr Yara Evans, Visiting Research Fellow, Queen Mary, University of London, with the assistance of Oleg Pasitchnyi and Laura Zorilla. The report was edited by Don Flynn and Ruth Grove-White.

Many thanks go to all those who took part in interviews or discussions during the research. In addition, we are grateful to Jack Dromey, Donna Reeve, Drazen Kerzan, Sonia McKay, James Lee, Clare Taylor, Hugh Hartford and Greg Davies who all contributed their time and assistance to the report.

'Papers Please' was made possible by the generous support of the Barrow Cadbury Trust and Unite the Union, and was produced in November 2008.

Migrants' Rights Network

Club Union House, 253 -254 Upper Street, London N1 1RY

Tel 020 7288 1267 Fax 020 7354 5620

www.migrantsrights.org.uk

Charity number 1125746 Company number 6024396

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ACRONYMS

AAS	Afro-Asian Advisory Services
ABRAS	Brazilian Association in the UK
AIRE	Advice on Individual Rights in Europe
A2	Accession 2 Countries: Romania and Bulgaria
A8	Accession 8 Countries: Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovakia, Slovenia
BIA	Border and Immigration Agency (now UKBA)
BHA	British Hospitality Association
CICC	Chinese Immigration Concern Committee
CSSA	Cleaning and Support Services Association
EEA	European Economic Area
HO	Home Office
HMRC	Her Majesty’s Revenue and Customs
HR	Human Resources
IAS	Immigration Advisory Service
ILR	Indefinite Leave to Remain
LAWA	Latin American Workers’ Association
LW	Living Wage
MRN	Migrants’ Rights Network
NI	National Insurance
NMW	National Minimum Wage
PBS	Points-Based System
RAS	Romanian Advisory Service
RC	Refugee Council
REC	Recruitment and Employment Confederation
SBS	Sector-Based Scheme
SERTUC	Southern and East TUC
UKBA	United Kingdom Border Agency
TUPE	Transfer of Undertakings (Protection of Employment) Regulations

NOTE ON TERMINOLOGY

The terms ‘**illegal migrants**’ and ‘**illegal working**’ are commonly used by the Government and other commentators on immigration policy. They imply that the ordinary residence of a person for the purpose of employment becomes a criminal matter if the individual does not have an explicit permission from the authorities permitting these activities. Acceptance of this idea has major implications for the position of many migrants whose rights to remain in the UK are circumscribed by dense layers of regulation and law. For migrant workers in this position, the lapse into ‘illegality’ arises for a wide range of reasons not normally associated with criminal activity. Disputes with employers, battles to pay off debts arising from entry into migration, the need to support dependents in countries of origin, and the pursuit of survival strategies within a limited range of options, all give rise to what the authorities term ‘illegality’.

The implications of the term have led many civil society organisations working with migrants, such as trades unions and community associations, to resist this designation, or at least its use without inverted commas. In the ‘Papers Please’ report we use the term ‘**undocumented migrants**’ to refer to people who do not have official permission from the authorities to live and/or work in the country. The term ‘**irregular migration**’, or variations thereof, is used to describe the processes by which people become undocumented migrants. Where it is clear that we are referring to a position adopted by the UK Government and its immigration authorities, we use the term ‘illegal’ placed in inverted commas.

FOREWORD – JACK DROMEY, UNITE THE UNION

Our country is built on a history of successive waves of migration. Our economy needs migrant workers. Migrants who come to our shores enrich our culture and society. They are welcome. The task is then to ensure that the newly arrived are not exploited and workers here for generations are not undercut.

Every country has the right to manage migration to its shores. The system should not, however, discriminate or expose workers to exploitation. What the “Papers Please” report demonstrates is the real impact of document checks on the workforce. Although the civil penalty regime is currently unfolding day by day in a highly publicised UK Borders Agency campaign to show that the Government is “acting tough on illegal working”, not until now has there been exposure of the impact of the regime on workers themselves.

“Papers Please” exposes the problems of enlisting employers as de facto immigration officers, making migrant workers more vulnerable to discrimination in the workplace. The civil penalty regime also threatens a devastating impact on many of the half-a-million undocumented migrants who are currently amongst the most vulnerable workers in the UK, many of them doing the dirtiest, most dangerous and most demeaning work available.

Those undocumented workers are being forced into an increasingly desperate situation by the civil penalty regime and many are already facing destitution as a result. Those undocumented workers cannot easily return to their country of origin. Besides many have families here and are pillars of both their workplace and local communities. It would be impractical and immoral to pretend that half-a-million people can be hunted down and deported. That is why a sustainable regularisation programme must be put in place.

In welcoming “Papers Please”, all those with responsibilities should act. Government needs to think again. So too should employers reflect on their responsibilities. The task of all of us, in particular, in tough economic times, is to unite our country and the world of work, not divide.

Jack Dromey

Deputy General Secretary of Unite the Union

FOREWORD – DON FLYNN, MIGRANTS’ RIGHTS NETWORK

In February 2008, new regulations came into force which further entrenched immigration management into the relationship between employers and employees in the UK. The ‘civil penalty regime’, part of the Government’s enforcement strategy for immigration, has increased the penalties for employers of undocumented migrants in an effort to tackle ‘illegal working’. Less than one year after the introduction of the new regime, widespread and damaging impacts in workplaces across the UK have emerged.

The civil penalty regime has arisen out of the Government’s move towards a ‘managed migration’ strategy since 2001; a strategy which aims to control labour migration to the UK whilst reinforcing the immigration system’s capacity to act against migrants judged to be surplus to the economy’s requirements.

As such the Home Office aims towards a tough and uncompromising stance on undocumented, or ‘illegal’, immigration in the UK.

The current immigration enforcement agenda is based on the unfounded premise that ‘illegal migrants’ living and/or working in the UK largely act with the cynical intention of gaining an unmerited advantage and as such are ‘harmful’ to the UK. By this rationale, the jobs done by such migrants should be considered as acts tantamount to theft, deserving a severe criminal penalty. The civil penalty regime is a key weapon in the Home Office battery against such migrants.

The ‘Papers Please’ research is the first attempt to consider the implications of the civil penalty regime from the standpoint of migrant workers themselves. The report – an introductory, qualitative mapping

conducted during the summer of 2008 – provides a clear indication that the new measures have added to the already high level of insecurity characterising the areas of employment in which many migrants are concentrated. Employers’ concern to reduce their own risk to the inadvertent engagement of undocumented migrants is leading many to withhold job offers to people considered to be in a potentially problematic situation. Further, the sheer complexity of immigration regulation, which frequently confuses the approaches of the UK Border Agency authorities as well as employers and migrants, is creating many instances in which migrants who have the right to reside and work in the UK are being deprived of the opportunity of employment.

For undocumented migrants, many of whom are already exploited through clandestine employment, the regime has proved devastating, forcing them into an ever-more vulnerable position. Contrary to the Home Office presentation, many of the undocumented migrants who were interviewed for this report had begun their migration lawfully with the expectation that it would reward them with appropriate, though usually modest benefits in exchange for hard work. It is likely that many of the 500,000 undocumented migrants currently estimated to be present in the UK fell into an irregular position as a result of the UK’s systemic failures to identify migrants in need of protection under the provisions of the refugee and human rights conventions, as well as measures which have loaded costs onto groups such as students and people on labour migration schemes without accompanying protection from exploitation.

The civil penalty regime has had additional costs for British employers, based as it is on ungrounded assumptions about their willingness to take on new responsibilities relating to an intensely complex immigration system, and their ability to do so without generating negative impacts. The costs for particular business sectors have been high – in particular UKBA published statistics show a remarkable concentration of fines on employers from BME backgrounds, with more than half involving businesses in the fast food and restaurant sector.

We can expect that the task of checking the immigration status of workers in the workforce will continue to be controversial in the period ahead, and will generate activity and advocacy in defence of rights across a wide range of networks. Groups across

the country should prepare for this eventuality, and ensure that they have the resources and the capacity to act in support of the workplace rights of migrants in the future. The proliferation of injustice and exploitation in the labour market and discriminatory practices on the part of the enforcement authorities are grave concerns which need to be urgently investigated as consequences of the type of managed migration policies implemented as a part of the government’s current programme of reforms.

The fundamental message is that we need a much greater scrutiny of ‘tough’ immigration policies to draw in sections of civil society and the public services into control measures directed against migrants. UKBA is developing ‘Immigration Crime Partnerships’ - information-sharing relationships between the immigration authorities and the police, in addition to local authorities, public service providers, financial institutions, the NHS and bodies such as HMRC. In the planned network of monitoring and assessment, the role for employers in monitoring immigration status plays only one part. But the tremors already caused by the civil penalty regime allow a preview of what we can expect from wider enforcement mechanisms planned by the Home Office over the coming months.

We hope that ideas on how a fresh scrutiny of Government immigration policy might be developed will arise from discussion about the issues raised in this report. The MRN very much looks forward to new contacts with groups supporting migrants’ rights as we advance this agenda.

Don Flynn
Director, Migrants’ Rights Network

EXECUTIVE SUMMARY

Section 1 – 'Papers Please': the Research in Context

Sections 15-25 of the *Immigration, Asylum and Nationality Act 2006* came into force on 29th February 2008. New provisions in the 2006 Act, termed the 'civil penalty regime', increased employers' responsibilities for monitoring the immigration status of their workforce, and the penalties which could be levied against them by the Home Office for failing to do so.

The civil penalty regime is part of a broad Home Office enforcement drive against 'illegal migrants' in the UK. As such it has been accompanied by an increase in the level of workplace raids ('compliance visits') by immigration officials - 6,300 were carried out in 2007, with an expected increase by a further 20% by April 2009.

UK Border Agency (UKBA) records show that 91 civil penalties were issued to employers between 29th February and 30th September 2008. This is a significantly higher number than in previous years; according to Home Office reports, just 37 employers were found guilty of offences under previous legislation on 'illegal working' between 1997 and 2006.

Employers' concern about new regulations appears to have been manifest through an increase in incidences of immigration document checks in the workplace. MRN embarked upon the Papers Please research as a qualitative 'mapping' of the impact of the civil penalty regime on migrant workers, in particular examining incidences of workplace document checks. The research focused on organisations and individuals based in the London area.

Section 2 – 'Papers Please': Research Findings

Impact on Workers

Interviewees for 'Papers Please' reported that many employers, fearful of high penalties, have been conducting 'en masse' or selective document checks on existing members of their workforce since 29th February 2008. It emerged that workplace document checks had had negative impacts on some migrant workers, apparently due to the complexity of the new regime as well as the high stakes for employers who 'got it wrong'.

Undocumented migrant workers reported incidents such as immediate dismissals, withholding of back-pay and incidents in which employers appeared to have colluded with UKBA to 'ambush' workers on the work premises in return for reduced fines.

Reports extended beyond those whose position was irregular to include interviewees who were legally entitled to work, such as refugees, work permit holders, and those varying their leave in the UK. Such migrants were reported to hold documentation which had been claimed by employers as inadequate to prove the right to work. This had led to cases in which employers had unfairly dismissed workers or refused to engage them despite their entitlement to work. Nationals of Bulgaria and Romania also emerged as having been affected by the civil penalty regime.

Avoidance of discrimination when conducting document checks had clearly been a problem in some workplaces, with concerns that this could lead some employer to avoid taking on people considered to be migrants - which could also impact on some black and ethnic minority (BME) British citizens. The new measures around document checks in the workplace appeared to have advantaged some exploitative employers. Checks on the immigration status of workers had also apparently been used by some employers to dismiss workers involved in trade disputes or who had joined trade unions, with a wider impact on the workforce campaign.

Impact on Employers

Employer organisations interviewed for the research reported that the new regime was burdensome for employers, requiring them to implement immigration control policies which they did not properly understand.

The apparent targeting of small ethnic catering businesses by UKBA for fines had caused further concern among interviewees - 68% of recorded civil penalty fines had been levied thus far at ethnic catering businesses. Additional concern around the labour force in this sector was reported in relation to the new Points-Based System for immigration.

Section 3 – The Future for Migrant Worker in the UK

The Home Office has claimed that the civil penalty regime aims to ‘*tackle the exploitation underpinning illegal immigration*’¹. Interviewees for the research expressed their lack of confidence that the regime would challenge the exploitation of undocumented migrant workers in the UK. Incidents were reported by migrant workers in which civil penalty measures appeared to have been used by employers to further exploit vulnerable migrant workers and undocumented migrants. The regime has not been accompanied by a broader strategy to address the causes and effects of migrants’ exploitation in the workplace.

The Home Office has additionally expressed the intention to ‘*deny the privileges of the UK to those here illegally*’² through the civil penalty regime. This was also criticised by many research interviewees during the research as short-sighted and inhumane. The over-riding perspective of interviewees was that undocumented migrants who are directly or indirectly affected by the regime are unlikely to leave the UK voluntarily. It was thought more likely that they will move into more clandestine employment in the UK, becoming exposed to greater exploitation.

A key issue which emerged from the research was the negative impact of the regime on the employment rights of a wider group of migrant workers than those with clearly irregular status. We believe it is possible that, in the long-term, the regime could lead to an aversion to the employment of migrants within some sectors of the UK labour market.

Section 4 – MRN Recommendations

On the basis of the ‘Papers Please’ research findings, MRN proposes the following measures:

1. The organisation of a full inquiry into the impact of the civil penalty regime on the employment and human rights of migrants, conducted by an independent and authoritative body, such as the Equality and Human Rights Commission.
2. Trades Unions and NGOs confirm their commitment to the rights of all migrant workers by supporting these issues where possible.
3. The new Government Fair Employment Enforcement Board takes a role in tackling incidents where migrant workers, including undocumented migrants, are exploited or mistreated in the UK.
4. A long-term Government strategy is developed which aims to address the position of undocumented migrants in the UK.

¹ Home Office Border and Immigration Agency (BIA), *Prevention of Illegal Working: Comprehensive Guidance for Employers on Preventing Illegal Working* (2008a:4)

² Ibid

SECTION 1 – ‘PAPERS PLEASE’: THE RESEARCH IN CONTEXT



PREVENTION OF ‘ILLEGAL WORKING’ AND THE CIVIL PENALTY REGIME

Employers have been required to check the right of their employees to work in the UK since 27th January 1997, under Section 8 of the *Asylum and Immigration Act 1996*. Under the *1996 Act*, it became a criminal offence to take on a new employee whose immigration status would prevent them from legal employment. Employers were able to provide a statutory defence against a possible £5000 fine if they had checked one of thirteen documents specified by accompanying guidance to the Act before the start of employment, and satisfied themselves that the worker was legally able to take the job. The defence required that employers had also copied or kept their employees’ documentation – which could include among others a passport, National Insurance (NI) number, or a work permit - when making an initial check. The *1996 Act* did not impose responsibility on employers for the immigration status of their workforce beyond the point of initial employment.

In adopting this provision the UK moved closer to schemes monitoring migrant employment which had existed for many years in other parts of Europe, aiming to bear down on irregular migration, although it was met with opposition at the time of introduction. The Secretary of State for Employment in the Government which passed the *1996 Act*, Gillian Shepherd, warned her cabinet colleagues that many employers would respond to the risk of prosecution by refusing to employ any individual whom they judged to have a problematic immigration status³. It was felt that this category would be bound to include some black and minority ethnic workers whose personal and family histories of migration might be too complex for many employers to understand. Additional concerns were raised by trade unions and the Commission for Racial Equality (CRE)⁴, leading to the release of CRE and Home Office guidance booklets for employers on the avoidance of discrimination.

Employers also lobbied against the measure on their own behalf. They complained that the obligation to scrutinise thirteen different types of document, from passport stamps through to evidence provided by National Insurance numbers, was simply too onerous a task to be taken on. The *Nationality, Immigration*

and Asylum Act 2002, which entered into force on May 2004, further complicated employers’ task of establishing a ‘defence’ against a fine, as a measure to avoid document fraud. Guidance accompanying the *2002 Act* dividing the list of eligible documents into two lists (List 1 and List 2) – List 1 documents could be checked individually; List 2 documents needed to be checked in specific combinations with one another. From this point, a National Insurance number could no longer provide evidence of the right to work in the UK without being accompanied by another suitable document.

The most recent revision to the immigration and employment framework brought into effect sections 15-25 of the *Immigration, Asylum and Nationality Act 2006* on 29th February 2008. The new provisions in the *2006 Act*, referred to as the ‘civil penalty regime’, aimed to make it more difficult for unauthorised workers to remain in employment, make it easier for employers to ensure that they only employ people authorised to work, and make it easier for the UKBA to take action against employers using undocumented labour.

The *2006 Act* increased the responsibilities, and potential penalties, associated with the employment of migrants in the UK. Section 15 of the Act raised the penalty imposed on employers who fail to check their workers’ entitlement to work in the UK, from £5,000 to a maximum of £10,000 per unauthorised worker, issuable as an ‘on-the-spot’ civil penalty fine. Section 21 made it a criminal offence to take on and/or to continue to employ a person known to lack permission to work in the UK, leading to prosecution and a maximum two year prison sentence. The *2006 Act* effectively extended employers’ responsibility for the immigration status of all new employees taken on after 29th February 2008, beyond the point of employment. As a result, employers must now ensure that these workers are not in breach of their immigration conditions at any point during their contract of employment.

Employers can present a statutory defence against the offence, if they can demonstrate that they have

³ Daily Telegraph, 6th October 1995

⁴ Daily Telegraph 25th October 1995

checked and copied immigration documents according to the Home Office guidance. The documents which can be checked by employers are divided into two lists: List A outlines the documents which demonstrate the person’s permanent right to work in the UK and need only be checked and copied once at the point of recruitment. List B details the documents which show the worker has a temporary right to work in the UK and which must be shown to the employer in specific combinations. For an employer to establish a defence against a possible fine, List B documents must be re-checked at least once every 12 months to ensure that permission to work has not expired or been breached.

Employers who report suspected undocumented workers and cooperate with immigration authorities during compliance visits may have their penalty reduced, by up to £2,500 per worker. The UKBA has also reserved the right to publicise data about employers who are served with penalty notices⁵. Details of enforcement actions and civil penalties are frequently released to local newspapers and radio stations.

UKBA has published an 80-page *Comprehensive Guidance for Employers*, detailing the documents which are acceptable evidence of a person’s right to work in the UK, and the procedures which employers should follow in doing so⁶. Employers are recommended to obtain further advice and clarification online or through a designated ‘Employers’ Helpline’. The *Comprehensive Guidance for Employers* notes that prevention of irregular working must not give rise to unlawful discrimination on grounds of race, colour, ethnic origin or nationality under the *Race Relations Act 1976*. To this end, the UK Border Agency has produced an accompanying *Code of Practice*, which advises employers on the avoidance of racial discrimination whilst conducting document checks on prospective recruits⁷. It is recommended that employers do so by conducting document checks equally on all prospective employees to whom a job offer has been made.

Both the *Comprehensive Guidance for Employers* and the *Code of Practice* advise employers on carrying out document checks on new recruits. They do not include

specific guidance for employers on how to carry out the repeat document checks which are now part of an employer’s defence against a fine for List B document holders. As the provisions under the *1996 and 2002 Acts* continue to apply to workers whose current employment began before 29th February 2008, the new guidance documents do not advise employers regarding retrospective document checks on workers taken on before this date.

The Points-Based System and Civil Penalty Regime

The civil penalty regime has been introduced in tandem with the Government’s new ‘Points-Based System (PBS)’, which is changing the face of economic migration to the UK. The new system is intended to attract “*the brightest and the best from across the world*”⁸ targeting skilled migrants who can attain the required number of ‘points’ for key attributes specified by the Government.

The PBS aims to replace around 80 immigration routes for work or study in the UK, instead comprising five ‘Tiers’ – highly-skilled migrants (Tier 1); skilled migrants with a job offer (Tier 2); unskilled migrants (Tier 3); students (Tier 4) and temporary labour/youth schemes (Tier 5). The PBS is being phased in during 2008/9 – with Tier 1 already in operation, Tiers 2 and 5 planned to launch from November 2008 and Tier 4 opening in Spring 2009. Tier 3 has been indefinitely suspended.

PBS Tiers 2, 4 and 5 will introduce a more active role for employers and educational establishments in monitoring migrants, sharing key details about employment or study with UKBA. Under the new system, employers wishing to recruit migrants from abroad under Tiers 2 or 5 will be required to become approved ‘sponsors’, following a Human Resources (HR) audit and registration process with UKBA. During the period until October 2008, employer concerns about sponsors’ responsibilities and accountability to UKBA appeared to have led to extremely low levels of ‘sponsor’ registration. By the end of September, just 309 employers had completed the registration process⁹, despite a planned launch date of 27th November 2008 for Tiers 2 and 5.

⁵ Current data available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/listemployerspenalties/

⁶ BIA (2008a)

⁷ Home Office Border and Immigration Agency (BIA), *Prevention of Illegal Working: Code of Practice (2008b)*

⁸ Charles Clarke, in ‘*A Points-Based System: Making Migration Work for Britain*’, Home Office, (2006)

⁹ Current data available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pointsbasedsystem/pbsregisterofsponsors%20

THE CIVIL PENALTY REGIME IN FORCE

Immigration Enforcement

The introduction of the civil penalty regime has been accompanied by a marked Government increase in enforcement operations. Low rates of employer prosecution indicate that prior to 2007 the pursuit of undocumented workers was not a priority for the Government. Between 1997 and 2006, just 37 employers were found guilty of offences under Section 8 of the *1996 Act*¹⁰.

The release of the March 2007 Border and Immigration Agency (BIA) enforcement strategy contained new Government pledges to tackle irregular immigration, accompanied by an increase in the number of publicised workplace raids. In 2007, the BIA reported that around 60 enforcement operations on employers were conducted each week in London¹¹. One prominent example of a workplace raid, referred to during the course of the research, took place in October 2007. In this incident over 100 immigration and police officers descended on London's Chinatown during lunchtime, storming the premises of five Chinese restaurants. Officials removed 49 workers suspected of being undocumented, although only seven were eventually deported¹². Around 6,300 'compliance visits' were conducted in 2007, leading to the arrest of 5,060 individuals suspected of immigration offences¹³.

The UK Border Agency (UKBA) replaced the BIA in April 2008 as a shadow agency of the Home Office, responsible for immigration and border control in the UK. Its duties in relation to the civil penalty regime include overseeing and enforcing the regime through officers empowered to conduct searches, seizure and detention of offenders. Since 2007, UKBA has assigned over 1000 additional immigration staff to enforcement, including issuing warnings, enforcement operation, compliance visits, removals and deportations¹⁴. The number of UKBA workplace enforcement officers is planned to further increase by

20% by April 2009, and a target of a further 5000 compliance operations against businesses and organisations responsible for committing immigration offences has been set for 2008/9¹⁵. UKBA has placed publicity at the centre of its enforcement strategy by releasing details of enforcement actions and civil penalties to local media outlets.

Interviews for the 'Papers Please' research reported the scale and impact of enforcement raids on workplaces since the introduction of the new civil penalty regime. The following specific incidents were described or referred to during the course of the research:

May 2008: reportedly acting on a tip-off, immigration officers and the police launched a dawn raid on a food processing factory in West London, arresting and removing 22 suspected undocumented workers¹⁶.

July 2008: a cleaning contractor based in central London sent text messages to six employees, telling them to report to the office to collect their overdue wages. The workers were met by immigration officials, charged with working irregularly and removed from the workplace; the contractor reported three more workers in a similar fashion in August, leading to their arrest and removal¹⁷.

August 2008: 30 immigration officers dawn-raided the premises of a car-part distribution warehouse in West London, leading to arrest of five workers confirmed to be undocumented and questioning of a further 12 workers suspected of working irregularly; the operation was launched after a tip-off¹⁸.

¹⁰ Hansard 12th June 2008
www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080612/text/80612w0020.htm

¹¹ BBC News 11/10/07; Harrow Observer 27/08/08

¹² BBC News 11/10/07

¹³ UK Border Agency (UKBA) *Enforcing the Deal: Our Plans for Enforcing the Immigration Laws in the United Kingdom's Communities*, (2008)

¹⁴ Ibid

¹⁵ Ibid

¹⁶ *Ealing Gazette* 2/05/08

¹⁷ Interview (TU)

¹⁸ *Harrow Observer*, 27/08/08

Civil Penalty Notices

An increase in UKBA enforcement actions has reportedly led to a higher number of penalty notices being served on offending employers, although exact figures are unclear. According to a UKBA press release in July 2008, a total of 265 civil penalty fines had been issued by mid-June 2008, worth £2.3 million¹⁹. This claim contradicts data published elsewhere on the UKBA website, which records the details of just 91 establishments which had been fined under the new regulations by the end of September 2008²⁰. Data recorded on the UKBA website shows that offences for which fines have been issued have generally been small-scale - 75 of employers (82%) whose details are on UKBA’s public records were fined for having one or two undocumented workers. The names of the establishments fined indicate that 62 out of the 91 businesses fined (68%) were ethnic minority catering businesses, primarily Chinese, Indian, Bangladeshi and Turkish. UKBA has been accused of adopting a biased approach thus far in its enforcement of sanctions against irregular working²¹.

Retrospective Workplace Document Checks

The *1996* and *2006 Acts* both require employers to check workers’ documents before employment begins in order to establish a defence against a fine. During the course of the research, MRN heard reports of employers conducting retrospective checks on their workforce, either en masse or on selected workers. Such checks appeared to have been used as a risk avoidance strategy for employers. The *2006 Act* clearly provides that civil penalties can only be avoided in the event of ‘illegal working’ by proving that checks were carried out, before the worker began employment, regardless of subsequent checking. Employers carrying out retrospective checks may therefore be doing so in order to identify and dismiss workers whose presence would expose past failures to secure a defence against a penalty.

¹⁹ www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2008/recordnumbersofforeigncriminals

²⁰ Current data available at:
www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/listemployerspenalties

²¹ Migrants’ Rights Network Special Bulletin June 2006:
www.migrantsrights.org.uk/enews/2008/specialbulletin_june.pdf

‘PAPERS PLEASE’: THE RESEARCH

The Migrants’ Rights Network embarked on the ‘Papers Please’ research with the primary objective of investigating the effects of the civil penalty regime on migrant workers. We were concerned about the extent to which increasing immigration controls in the workplace might jeopardise the labour market chances of migrants, exposing them to an increased risk of discrimination and heightened vulnerability. Our interest extended to businesses, focusing primarily on the extent to which they are seeking to comply with the new regulations and whether it was perceived that the new regime would generate disproportionate impacts on specific sectors.

The research was conducted as an introductory mapping of the impact of the civil penalty regime, particularly focusing on experiences around employer document checks in the workplace. The key issues addressed by the research were:

- ▶ how employers notify workers of the requirement to submit documents for inspection
- ▶ how workers respond to this requirement
- ▶ how employers confirm the entitlement of employees to work in the UK
- ▶ incidents where workers have been dismissed due to doubts about right to work
- ▶ how employees challenge employers decisions
- ▶ incidents where employers call in UKBA to check workers’ papers
- ▶ whether outstanding wages and other pay are settled on departure

The ‘Paper Please’ findings are drawn from a total of thirty two interviews conducted with migrant workers, employer organisations, trade unions, advisory and advocacy services and community support groups, during July and August 2008. Twelve migrant workers

were interviewed, primarily contract cleaners on public transport, offices and hospitals, and workers in hospitality and leisure. These interviews form the basis of the case studies, although their names have been fictionalised to ensure anonymity²².

The focus of the research was on the qualitative experiences and perspectives of migrants and relevant organisations around the civil penalty regime, although relevant data has been sourced where possible to contextualise the perspectives presented by interviewees. As such, the interviews and data aimed to identify key areas of concern for voluntary organisations, trade unions and policy makers alike. The research was largely conducted in London, although we consider it likely that similar accounts of the civil penalty regime would be reported from elsewhere in the UK.

²² The workers interviewed for the research are listed in Appendix I, although names have been changed. Organisations are listed in Appendix II; the names of some trade unions have been omitted from references throughout the text where requested.

SECTION 2 – ‘PAPERS PLEASE’: RESEARCH FINDINGS



IMPACTS ON WORKERS

The ‘Papers Please’ research findings indicate that the highest costs arising from the civil penalty regime are being borne by individual workers in the course of workplace document checks.

Research interviewees reported a number of large-scale incidents in which workers’ documents were being checked in the workplace since 29th February 2008. One high-profile supermarket chain reportedly wrote to 3,000 employees in March, requesting that they produce their immigration documents to management for checking²³. Later in the spring, a major cleaning contractor operating in London seemingly sent out letters to its entire workforce, comprising ‘a few thousand’ workers. In August, another cleaning contractor summoned 100 cleaning staff to their offices in South East London to submit documents for checking²⁴. Other reports described how employers had selected individual workers to produce immigration documents for checking – in some cases this appeared to be arbitrary, whilst in others this request was based on the suspicion or certainty that selected workers were undocumented.

‘Papers Please’ interviews revealed a number of situations where workers had felt forced to resign or were unfairly dismissed as a result of document checks. In addition to loss of earnings, workers who have a case for unfair dismissal can expect to face hefty legal costs to obtain legal representation if they decide to pursue their claim. This is a route that many may be prevented from taking due to a lack of resources.

Reports outlined through the case studies, and gathered anecdotally through the course of the interviews, showed how the working lives of some migrant workers have been severely disrupted as a result of unfair suspension or dismissal, discrimination and victimisation, resulting from document checks. Research findings have been divided between issues which had arisen from the complexity of the UK immigration system and, incidents in which employers had actively mistreated workers through immigration checks.

²³ Interview (trade unionist)

²⁴ Interview (trade unionist)

ISSUES ARISING FROM THE COMPLEXITY OF THE IMMIGRATION SYSTEM

Checking and verifying a worker’s immigration documents emerged through the research as demanding a substantial effort on the part of the employer. The 80-page UKBA *Comprehensive Guidance for Employers* features 63 images of the valid documents, letters, ID cards and immigration stamps which may be presented to the employer either singly or in specified combinations. Reports indicated that even conscientious employers may have difficulty in doing so successfully, due to the range of documentation which may demonstrate a right to work in the UK.

During the course of the research some interviewees expressed concerns that employers were ‘playing it safe’ by refusing to accept less common documents, thereby disadvantaging certain groups of migrants. A diverse group of migrant workers had had their jobs or employment opportunities jeopardised by employers’ failure to act correctly on UKBA regulations and guidance, either during or prior to the checks. Further issues emerged over Home Office failure to provide workers with evidence of that permission in reported cases.

Refugees

Asylum seekers who have been granted refugee status or other forms of protection are permitted to work in the UK, for the duration of their leave. However, it was reported that convincing employers of this entitlement in the context of the civil penalty regime has caused serious difficulties for some refugees. Refugees will not have a national passport and their right to work in the UK is confirmed by a letter from UKBA and an Immigration Status Document (ISD)²⁵. The *Comprehensive Guidance for Employers* indicates that either the letter or ISD should be produced in combination with a document confirming the person’s National Insurance number.

However, accounts given by two refugees and the Refugee Council described how some employers and prospective employers have rejected the Home Office letter as adequate proof of the right to work in the UK, demanding an additional document with a photograph as further proof of the right to work. In cases where the employer was unsatisfied with any further

²⁵ The Immigration Status Document contains a photographic image of the holder, personal details, status and leave to remain in the UK

documentation produced, the employee was dismissed or denied an employment opportunity.

The Refugee Council reported other cases in which refugees have similarly struggled to find work in the UK whilst an application for status extension has been under consideration. Those making applications for further leave are required to send their documentation to the Home Office. As a result, they will not have the original ISD or Home Office letter required under the Guidelines for employers to copy and will not have been issued with documentation confirming a continued right to work whilst awaiting a final decision.

It is expected that similar incidents will come to light in the future, as refugees seek to enter the UK labour market under the new regime²⁶. Case Study A illustrates this situation.

Case Study A – Refugee Documents Rejected

Amad Abdou

Amad is a refugee from Liberia. He turned 18 a couple of years ago and applied for an extension on his leave to remain. He got a reply from UKBA stating that his application had been received and was being processed. But, when looking for a job, prospective employers repeatedly denied him job offers because he couldn't produce an 'acceptable' identity document. They claimed they couldn't tell whether the letter was genuine or whether he was the person named in the letter. Besides, the letter said nothing about his entitlement to work.

Amad was recently granted further leave to remain which proves his entitlement to work in the UK. In June 2008 he applied for a security job through his local job centre but his letter from UKBA was refused as proof of identity. The staff at the Job Centre contacted UKBA to check his status, only to be told that Amad was not allowed to work in the UK. Alarmed, Amad sought assistance from the Refugee Council who then wrote to the UKBA on his behalf asking for clarification. At that stage UKBA confirmed his right to work and apologised for having given out the wrong information previously. Amad still has not managed to find a job. He is on income support but won't be entitled to it for much longer.

Amad told us: *“I don't know what I am going to do now because it is difficult for me to get a job...people here say that we are living on benefits and don't want to work.... But when I find a job, I can't take it because they say I don't have the papers”.*

Migrants Extending or ‘Switching’ Immigration Status

Extending or ‘switching’ immigration categories can leave migrants without definitive proof of immigration status during the processing period. Whilst their applications are pending a final decision, migrants may find themselves unable to satisfy prospective or existing employers if their documents are checked. During the course of the research, migrant workers with outstanding applications with the Home Office seemed to be inevitably disadvantaged when asked to produce their documents for checks, with the potential for job-loss as a result.

In one case referred to during the course of this research, the immigration documents which had been requested by an employer appeared to be sitting with an application for review with UKBA, awaiting a Home Office decision. The only document the worker could produce was a letter received from UKBA confirming that the application was being considered – a process which could take several months or even years, depending on the case.

In this case, the employer was reportedly reluctant to accept the letter from the Home Office as proof of entitlement to work in the UK, because it gave no confirmation that the applicant had retained that right whilst the application was under consideration²⁷. The *Comprehensive Guidance for Employers* does not address this scenario, leaving employers to use their discretion in such cases. One interviewee speculated that in such cases it would be likely that employers, uncertain about their validity, would reject such letters and retract a job offer or dismiss the worker in order to play it safe²⁸.

Work Permit Holders

Some migrants on work permits have reportedly experienced difficulties during document checks, as the validity of their documentation relies on employers having correctly followed Home Office procedures in the past. According to the rules governing work permits, employers are responsible for applying for a work permit for prospective employees who are subject to immigration control. The work permit is issued to the employee for a particular position with a specified firm and, although it is not transferable, it

²⁶ Interview (Refugee Council)

²⁷ Interview (trade unionist)

²⁸ Ibid

may be renewed. Once a work permit is issued, the employee is responsible for applying for leave to enter the UK to take up the designated position. After five years in the UK on a work permit, an employee may then apply for Indefinite Leave to Remain. The work permit thus constitutes an important route into permanent settlement for migrants. Case Study B illustrates how the past negligence of employers in relation to workers’ work permits can have detrimental effects on employees during document checks.

Case Study B – Work Permit Holder Difficulties

Uzoma Kayode

Uzoma arrived in London from Nigeria in 2002, on a work permit. In 2004 he applied for a position with a major contractor to provide railway maintenance on public transport. At the interview, he produced his passport and work permit and was offered the job. Early in 2008 Uzoma sent these documents to UKBA along with an application for Indefinite Leave to Remain (ILR).

In May 2008, the Human Resources (HR) department asked him to produce his papers again. This time Uzoma could not provide them, as they were with UKBA. HR then told Uzoma that his work permit was not valid, as it had originally been issued to another employer and they were risking a fine by employing him. The only solution would be for Uzoma to present his passport showing he had ILR, which would prevent the need for a work permit. He was given four weeks to report back with the passport but, unable to do so, Uzoma received notice of termination of employment.

With support from his trade union, Uzoma appealed against the decision. At the appeal hearing, the HR department admitted their failure to apply for a new work permit on his behalf, but could do nothing except extend the notice period. An alternative would be for Uzoma to ‘fast track’ his papers with the UKBA. The union and the employer are prepared to share the costs. Should Uzoma lose his job, he will file for unfair dismissal although he is not sure that he will be able to pursue it. Uzoma is now extremely anxious about his future as his family, who are now in London, depend totally on him.

As Uzoma noted: *“the ironic part of it is that people who are really working, going about their normal business, they are the ones who get punished...those who tell lies, I don’t know, they get along in the system”*.

A2 nationals

Nationals from A2 countries (Romania and Bulgaria) emerged as adversely affected by the complexity of UKBA regulations around their employment in the UK. The accession of Romania and Bulgaria to the European Union in January 2007 conferred their citizens the freedom of movement within the EEA. In the UK, they have no automatic right to work except in certain circumstances – for instance, if they are self-employed.

A2 nationals wishing to work in the UK must first obtain authorisation from UKBA, including a work permit, registration certificate or worker accession card, to avoid fines if found working. It seems, however, that some A2 nationals arrive in the UK unaware of this requirement. It was reported that some employers may deliberately take on A2 nationals without asking for papers, in order to bypass employment legislation.

Furthermore, confusion among employers has reportedly emerged around what constitutes self-employment for A2 nationals, arising from a lack of clarity on what UKBA will treat as self-employment for the purpose of immigration control. As a result, A2 nationals appear to have been unduly targeted for workplace inspections by UKBA. One reported case is that of Romanians working as self-employed on building sites, some of whom have been issued fines for failing to convince immigration officials of their self-employed status. As one commentator observed *“90% of the workers [on building sites] are self-employed. That is a common thing, but the Home Office only target the Romanians, they don’t check the English, the Scottish and the Irish, who are in far greater numbers in building sites”*²⁹. An organisation working in this sector informed us that around 140 Romanians were fined in 2007 for allegedly working without authorisation, whereas no employers were fined³⁰.

There are also indications that A2 workers may be missing out on work opportunities because of delays in processing their applications for authorisation cards and NI number. In one case, an interviewee reported being told by an official during the application stage: *“you look self-employed, you look Romanian, but you*

²⁹ Interview (Southern and East Trades Union Congress)

³⁰ Interview (Romanian Advisory Service)

know what, we'll hold on to your passport for further checks". The official reportedly held onto the passport for a number of days, and the applicant was required to attend three interviews before a final decision was made. According to a community organisation, "a lot of Romanians don't want to say that they come from Romania for fear of being marginalised and exposed to all this nonsense"³¹. Case Study C illustrates the issues confronting A2 nationals who are unaware of or confused about their need to obtain authorisation to work in the UK.

Case Study C – A2 National Difficulties in Accessing Legal Work

Lenuta Dobre

Lenuta is Romanian. She came to the UK in 2007 to work as an au-pair for a family based in a small village just outside Manchester. She did not mind the job itself: the family was friendly, she had her own room, the workload was reasonable and the wages were fine at £60 per week. After a few months, however, she began to feel lonely and isolated and decided to move to London. Once in London, Lenuta looked for a new job through agencies. Some would tell her that she needed an authorisation card and an NI number to be able to work. Others told her she could be self-employed. Confused, she carried on searching.

Lenuta found work, although she moved through jobs in quick succession. First she looked after an old lady, next she cleaned flats, then she got a live-in job cleaning a school. When the cleaning job came to an end, she was still owed £500 in wages. She chased the employer for several weeks, and in the end recouped £170. Next, Lenuta got a job as a cleaner in a hotel. There was a heavy workload, there was no training, no cleaning materials and no gloves. On the fourth day she told the boss she was leaving and asked for her £80 outstanding pay. The employer told her that he never paid for less than a week's work but after an exchange, she managed to walk out with £40.

Unemployed again, Lenuta needs a job. Unable to pay rent, she has been told to vacate 'the boiler room' she had been occupying. Although she is having little luck in finding a decent job as things stand now, Lenuta is keen not to break the law, saying "I don't want to get fake papers".

TUPE transfers

TUPE transfers occur when a company takes on a contract previously awarded to another firm, becoming the new employer of workers already engaged on that contract. As the Home Office develops or alters its procedures, requirements for document checks may be subject to change. The research found that employers may not be aware of the latest developments.

Particular confusion has emerged since the introduction of the civil penalty regime over whether employers acquiring workers through a TUPE transfer are required to check the documents of such new employees. The guidance to employers advises them to check their new employees' documents within 28 days of the transfer³². However, in response to a query put by one lawyer's practice, a UKBA official admitted that their guidance lacked clarity. The advice was that employers need not carry out checks on employees transferred through TUPE transfers³³. TUPE transfers are of particular concern to undocumented migrant workers as they are often followed by document checks on transferred staff. Case Study D suggests that employers may not be aware of changes to the TUPE requirements.

Case Study D – TUPE Transfer Document Checks

Raul Sanchez

Born in Colombia, Raul has been in the UK since 2002. Soon after arriving, he took up a job as a cleaner. He has been working for the same company for six years, cleaning the offices of a local authority in West London. In June 2008, the local authority decided to bring the cleaning service back in-house. Workers were told that, as part of TUPE, they would need to present their documents again.

Knowing his documents were not valid any longer, Raul decided not to show up on the day scheduled for document checking. When he next went to work the manager asked for his papers. Raul admitted that they were 'no good'. The manager told him to go and sort them out and then come back. But Raul decided that it was best to leave his job quietly. He has since been looking for another job, but has found it difficult as more employers are now demanding papers.

³¹ Interview (Romanian Advisory Service)

³² BIA (2008a)

³³ Private communication, June 2008

ISSUES ARISING FROM EMPLOYERS’ MISUSE OF DOCUMENT CHECKS

Discrimination

The Home Office *Comprehensive Guidance for Employers* document warns against breaching anti-discrimination law when requesting evidence of right to work in the UK from prospective employees. Section 4 of the *Race Relations Act 1976* makes it unlawful for employers to discriminate on racial grounds, including on the basis of race, colour, nationality (including citizenship), ethnic origin and national origin. It also provides that race discrimination can be direct or indirect, and may take the form of victimisation and/or harassment.

The *Code of Practice* released by the Home Office to accompany the *Comprehensive Guidance for Employers*, advises employers to treat all prospective workers equally, in order to avoid direct discrimination. It states that immigration checks should be carried out on all prospective employees, regardless of their appearance, accent or dress. The manner and nature of such checks should be equal for all prospective staff members to avoid differential treatment.

An area of concern which emerged through the course of the research was the occurrence of discrimination during repeat or retrospective document checks in the workplace. Neither the *Code of Practice* nor the *Comprehensive Guidance for Employers* includes advice on the avoidance of discrimination when carrying out repeat checks on employees holding ‘List B’ documentation. There is no framework for employers on practice relating to retrospective document checks carried out on their workforce.

Reports received from trade union representatives and migrant workers during the ‘Papers Please’ research indicated that retrospective document checks have been taking place in a number of workplaces. In some cases workers appear to have been selected for checks on the basis of the employer’s assumptions about their right to work in the UK. Any worker who is singled out for specific treatment in relation to the checking of their immigration documents may experience direct or indirect discrimination in the process. In such cases it is unlikely that many migrant workers would have the resources to take discrimination cases to an employment tribunal.

Case Study E demonstrates how repeat or retrospective document checks can create an awkward atmosphere, resulting in victimisation of ethnic minority or migrant workers by an employer and/or other staff members.

Case Study E – Victimisation through Document Checks

Kwame Mosi

Kwame is Nigerian and has been in the UK since 2006, on a student visa. For a period, he worked part-time as a customer assistant in a major high street betting shop, joining a workforce of fifteen. Except for him and his friend, all workers were white British-born.

In April 2008, Kwame was about to clock into his shift when he noticed posters in the workplace instructing all employees to present evidence of their eligibility to work in the UK. Kwame felt embarrassed by this approach, whilst his British-born colleagues felt indignant. Kwame took the matter up with the manager who told him that the message had to go out to all workers to avoid discrimination.

A week later, Kwame was approached by the assistant manager who told him, in full view of customers and workers, that he would have to bring his papers next time he came to work, otherwise he would be dismissed. He felt embarrassed and uncomfortable. His British colleagues now seemed resentful towards him. He was not sure that they all had enough time to obtain passports and birth certificates, which many did not possess, but none of them had been threatened with dismissal. A further confrontation with management led him to walk out and file for constructive dismissal.

Kwame commented: “*this process might look legitimate or right to ensure that people are not targeted because of their colour or ethnic background. But it had different effects on employees... it has led to me and my friend feeling victimised, if not on racial grounds, on nationality grounds*”.

‘Surplus’ Workers

Reports indicate that one of the effects of the new civil penalty regime has been to encourage some employers to dismiss undocumented workers and withhold their wages. Some employers who had previously accepted a particular immigration document as authentic when first hiring a worker, may find it convenient to now

‘discover’ that the document is not in fact genuine. MRN heard one report which illustrated how employers, aware of the undocumented status of their workers, may check workers’ documents with the aim of dismissing them and withholding wages, detailed in Case Study F.

Case Study F – Undocumented Worker Fired and Wages Withheld

Samanya Tendai

Born in Nigeria, Samanya Tendai has been in the UK for 19 years. In the summer of 2005, she got a job with a contractor to clean the premises of a major insurance company in London. At the interview, she showed her documents to the supervisor, who accepted them without query.

Last June, the supervisor wrote to all cleaners, some 40 workers, asking them to bring in their passports and National Insurance (NI) number for inspection within a week. Samanya presented the same documents she had done before. This time, the supervisor rejected her NI number, claiming that it was bogus and noting that she would not like to have the immigration authorities check these documents. She suggested that it would be best for Samanya to resign from her job. Samanya has no other source of income and her three children still depend on her. She has a pending application with UKBA for a review of her status, and so reasoned that maybe there was no need to resign. But the supervisor disagreed, arguing that she would not risk a fine for employing somebody without proper papers.

Samanya decided to resign and sent in a letter soon after giving two weeks’ notice. Some weeks after leaving work she was still owed holiday pay and wages, totally nearly £1,000. She thinks she was asked to resign because the manager had been saying that the company is overstaffed and needed to make some cuts. Nobody has been dismissed yet. But several of her colleagues are undocumented. Some simply left after the request for papers.

Reflecting on her predicament, Samanya commented: *“you know, when you don’t have papers... there is nothing you can do about what people tell you, you just have to take it...”*

Outspoken Workers

Other reports described cases in which employers had apparently used document checks to get rid of workers who were outspoken about poor working conditions or exploitative practices, such as delaying wages or making unfair deductions.

As one commentator observed, *“[employers] were quite happy to take on people who they know were paperless, without much enquiry. But as soon as those workers became “difficult”, employers would use their lack of ability to work in the UK as a way of getting rid of them, and would call in the immigration service”*³⁴, as illustrated by Case Study G.

Case Study G – ‘Outspoken Worker’ Singled Out for Checks

Emiola Olamide

Emiola is from Ghana. Seven years ago she secured a job as a domestic cleaner for a major contractor at a NHS hospital in East London. When Emiola applied for the job, she gave HR a letter from UKBA saying that her application for a visa was being considered. The manager checked it, photocopied and filed the copy away. She was never asked to produce any documents again.

Over the six years that Emiola worked at the hospital, her working conditions got worse and worse. Before the transfer of the cleaning contract to a new company a few years back, there used to be two cleaners per ward, now it was down to one. On top of that, cleaners had to make do with constant shortages of cleaning materials. There was often a shortfall in her wages due to ‘computer mistakes’. Emiola started to complain about her working conditions and outstanding wages.

In May 2008 she was arrested at her workplace for allegedly giving false documents to her employer and spent five weeks in jail, before being let out on bail. The more she thought about her predicament, the clearer it seemed to Emiola that she had been punished for voicing her unhappiness about her working conditions. The union learned of Emiola’s fate and has provided her with financial assistance and legal representation. She has appeared in court twice, but her next appearance won’t be until spring 2009.

Emiola now finds herself in a very precarious situation. She is still owed wages and is living off some limited savings. Emiola cannot leave the country as she has to report to the police twice a week and attend court early next year. She is concerned for her two children and her mum back home because they all depend on her. Her future looks bleak.

³⁴ Interview (Trade unionist)

Case study H indicates that workers who are lobbying for fair treatment in the workplace may be specifically targeted by employers. In this case, not only were the serious health and safety and outstanding pay issues raised by the worker left unaddressed, but she was ‘ambushed’ in her workplace by immigration officials.

Case Study H – Outspoken Worker Ambushed by UKBA at Work

Gabrysia Zaleskia

Gabrysia is from Ukraine and has been in London for 12 years. Her main job was for an agency, cleaning the offices and depot of a firm. Over the years the workload increased and she felt that she “*did the work of two people*”. She developed health problems from handling strong chemicals, and on one occasion burned her face and had to stay off work for a week without any sick pay. There were often shortfalls in her wages, “*there was always an error, always an error*”. Recently, she had been asking management for overdue holiday pay amounting to £700.

In the summer of 2008, Gabrysia’s new manager asked to see her immigration documents. She showed him her National Insurance number, which the manager said was fine. But soon after, he told her to come to his office and as she arrived, she was met by immigration officials and arrested for producing false documents. Three other colleagues who had also been complaining about overdue wages were arrested, although she knows that there are many more undocumented workers at her workplace who were not arrested.

Gabrysia was removed to a detention centre, where she spent several days, before being released on bail. She has a solicitor looking into her case now, and is due to appear in court soon. Gabrysia has had an application pending with UKBA for a review of her undocumented situation for years now – she hopes somehow to be able to stay in the UK.

Unionised Workers

Accounts gathered through the research also indicate that employers have used document checks in order to intimidate, threaten or dismiss undocumented workers who have become activists in the workplace, particularly as part of union action. This has created a climate of fear and intimidation which has extended to other members of the workforce who are also campaigning for better working conditions.

The ‘Justice for Cleaners’ campaign began in 2006, challenging poor working conditions and low pay for contract cleaners on London’s public transport system. Bolstered by major trade unions, cleaners demanded a living wage from their employers, along with other basic benefits, such as sick pay, holiday pay, travel passes and pensions. The high number of migrants working in this sector also led to the involvement of some immigrant rights activists and organisations. During the summer of 2008, many contract cleaners working on London’s public transport system were reportedly subject to threats and intimidation by employers for taking part in industrial action to resolve ongoing disputes.

During August and September 2008, campaigners reported a number of incidents relating to employers’ use of document checks against unionised migrant cleaners, in actions intended to threaten and victimise³⁵. Such actions had included threatening workers with dismissal if they took part in industrial action, suspending workers without pay until they submitted documents for re-checking, and initiating disciplinary action or dismissal. Case Study I provides an example of worker harassment and disruption of union action through workplace document checks.

³⁵ Including the Campaign Against Immigration Controls: www.caic.org.uk

Case Study I – Unionised Worker Suspended After Taking Strike Action

Themba Wekesa

Themba is Ghanaian and has been in London since 2004. Over the last two years or so he’d worked as a train cleaner at a depot in Northwest London. Soon after starting on the job, he joined the union and within six months was elected a rep.

Over the time that he was with the company, Themba noticed a steady change for the worse. When he first began the job there were around 36 workers on his shift, but recently there were only 23. As a result, his workload increased. Workers were denied proper health and safety training and equipment, despite the fact that they routinely use highly toxic cleaning chemicals and are exposed to their fumes. As a result, many developed health problems. Themba raised these issues with management time and again but without success, because *“management don’t care, it is all about the client, what the client wants”*.

In recent years, Themba’s union led a living wage campaign, demanding higher pay and better conditions for cleaners, as well as an end to management’s harassment of workers and exploitative practices, which include bullying workers who turn down offers of extra work and withholding wages. Failure to reach an agreement over these issues led the union to call for strike action, with workers walking out during the summer of 2008.

Themba was actively involved in one strike action. Soon after it ended, he received a letter from management, informing him of his suspension from work without pay until he could produce his National Insurance number for verification. He was suspended for three weeks and then dismissed. He has wages outstanding and his salary is his only income. He is worried about the future, especially as his wife and young children depend on him.

Workplace struggles through ‘Living Wage’ campaigns were also reported to have taken place among contracted workers in major London universities during 2007 – 8. It was reported that document checks have also been used to disrupt campaigns with a high participation of migrant workers³⁶.

Case Study J illustrates how a context of workers’ struggle prompted employers to demand documents for checking. It is also a case in which collective action against an employer who demanded to see workers’ documents resulted in the demand being dropped.

Case Study J – Collective Action Used to Resist Document Checks

Pablo Diaz

Pablo Diaz has been in London nearly 10 years. He has worked for a contractor for eight years now, cleaning the premises of a major university in central London. When he was recruited, he presented papers that the supervisor knew not to be genuine, but this was not an issue at the time.

About two years ago, there was a change of contracts and a new company took charge. This firm already held the contract for neighbouring buildings, where the workforce had been shrinking from three cleaners per floor to one cleaner alone. As Pablo reflects, *“those who oversee the contractors do nothing about it, and this just goes on and on. I have spoken up about the exploitation that goes on but nothing is ever done about it”*.

Pablo has been union member for several years and was recently elected a representative. He had been leading a Living Wage campaign which came to a successful end a few months ago, when the university governing body committed to enforcing a living wage on all contracted staff on campus from August 2008.

Whilst the Living Wage gained momentum, Pablo’s employer sent out a letter to all cleaners asking them to produce their papers. The workers got together and agreed that they should all refuse to show their papers, including documented workers. He says the employer simply dropped the request and nobody has been dismissed or suspended yet. Pablo attributes this important victory to the fact that *“because we are united and ... we are also well organised, people are slowly losing their fear”*.

³⁶ Interview (trade unionist)

IMPACTS ON EMPLOYERS

The civil penalty regime has had a significant impact on businesses thus far in its implementation. This is consistent with reported Home Office predictions in 2007 that the new system would entail significant costs to employers – predictions made at this time estimated costs would be around £27 million³⁷. According to key employer organisations interviewed during the course of this research, the main effect of the civil penalty regime on businesses has thus far been an increase in costs related to human resources – in particular staff training and implementing IT³⁸. Such costs have varied greatly, depending on the type, size and sector of the business.

Whilst it was reported that some employers have welcomed the new regime, viewing it as a means of stamping out unfair competition from unscrupulous employers, others have expressed resentment at being told to act as “*unpaid immigration officers*”³⁹. Employer organisations agreed that it is difficult for employers to ascertain whether a person is entitled to work in the UK.

Specific criticisms emerging from interviews with employer organisations were:

- ▶ the high number of documents that may be presented to employers as evidence of right to work
- ▶ the uneven quality of information given out on the UKBA Employers’ Helpline
- ▶ the lack of guidance for employers about whether employees with pending visa applications retain right to work whilst waiting for a decision

Civil Penalties in the Ethnic Catering Sector

Of those employers who have been adversely affected by the new regime, it appeared that among the worst hit thus far have been ethnic catering businesses, particularly South Asian and Chinese, mostly comprising small, family-run businesses⁴⁰.

The majority of businesses served with civil penalty fines by the end of September 2008 were ethnic catering establishments, such as takeaway and kebab shops. The UKBA civil penalty list for the period May - September 2008 indicated that just 163 individual undocumented workers were the object of fines during this period⁴¹ - a small percentage of the undocumented population in the UK, estimated by the Home Office to be between 370,000 and 500,000⁴². Despite the focus on ethnic caterers, it seems unlikely that they are the ‘big fish’ in the employment of undocumented workers. Targeting these businesses for raids was viewed by one interviewee as “*meant to cause the greatest resentment so the message gets through*”⁴³.

The Chinese catering sector, whose success has been heavily dependent on its ability to recruit from abroad, was cited by an interviewee from a migrant community organisation as an example of an industry which has been affected by the regime. Many Chinese migrants who arrived between the 1980s and 2000 came to the UK as asylum-seekers and were allowed to work if no decision had been made on their claim by the end of six months. That rule was reversed in 2002, denying permission to work to asylum seekers unless they had not received an initial response to their application within their first year in the UK. Unable to leave, banned from working and denied access to mainstream social benefits, many Chinese asylum-seekers felt little choice but to work without permission⁴⁴.

³⁷ As reported in Personnel Today, 3/09/07 www.personneltoday.com/articles/2007/09/03/42132/dealing-with-illegal-workers-how-much-responsibility-should-fall-on-employers.html

³⁸ From interviews with British Hospitality Association (BHA), Cleaning and Support Services Association (CSSA), Recruitment and Employment Confederation (REC).

³⁹ Interview (CSSA)

⁴⁰ From interviews with Chinese Immigration Concern Committee (CICC), Immigration Advisory Service (IAS) and BHA

⁴¹ Current list available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/listemployerspenalties

⁴² Home Office - Sizing the Illegally Resident population in the United Kingdom, (2005) www.homeoffice.gov.uk/rds/pdfs04/rdsolr5804.pdf

⁴³ Interview (IAS)

⁴⁴ Interview (CICC)

Several Chinese restaurants in London’s Chinatown were raided by the UKBA in October 2007, reportedly followed by several other raids during 2008. Repercussions in the community since then have been serious; one Chinese community member reported to MRN that “*employers and workers now operate in an atmosphere of fear*”⁴⁵. Faced with the prospect of heavy fines and prison, many employers have reportedly been checking their workers’ papers, discovering that many are failed asylum-seekers without permission to work and dismissing them.

Labour Shortages in Ethnic Catering Sector

Businesses within the ethnic catering sector have until now largely been able to meet their skilled and low-skilled labour needs from abroad. Labour issues faced by the ethnic catering sector are likely to increase, if the critical shortage of labour predicted to arise from the new Points-Based System for immigration, in combination with the civil penalty regime, materialises.

The introduction of the new Points-Based System during 2008/9 will change recruitment from overseas, requiring employers to become registered sponsors before taking on migrant workers. Low sponsorship take-up for Tier 2 by the end of September 2008 – the UKBA website recorded just over 300 completed employer registrations⁴⁶ – indicates a reluctance on the part of employers to take on further immigration duties in new roles as sponsors. Under the proposed Shortage Occupation list released by the Migration Advisory Committee during September 2008, only skilled chefs paid a minimum of £8.10 per hour would be eligible for recruitment from overseas under the new Tier 2⁴⁷.

The assumption underlying the new immigration regime appears to be that the ethnic catering sector should warm up to the idea of recruiting low-skilled labour from within the UK. Interviewees from the

sector reported acute difficulties in recruiting new staff locally, due to career aspirations among the younger generation which are leading them away from the sector and a lack of vocational training on ethnic cookery in the UK⁴⁸.

Seeking to recruit ‘non-ethnic’ groups, including European Union nationals, to address the possible labour shortage, was also viewed as unrealistic, and as overlooking the skills and culture that may be necessary for such jobs. Ethnic caterers are reported to have been advertising vacancies outside their communities without success. One interviewee speculated that other workers who have taken up jobs in ethnic restaurants, such as Eastern Europeans, “*don’t last two minutes*”⁴⁹.

⁴⁵ Interview (CICC)

⁴⁶ Interview (BHA). Current data available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pointsbasedsystem/pbsregisterofsponsors

⁴⁷ Migration Advisory Committee Recommended UK Shortage Occupation List for Tier 2 of the PBS (2008) www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/uklist

⁴⁸ Interview (CICC)

⁴⁹ Interview (IAS)

SECTION 3 – THE FUTURE FOR MIGRANT WORKERS IN THE UK



THE FUTURE FOR MIGRANT WORKERS IN THE UK

UKBA documents assert Home Office intentions that the civil penalty regime will both tackle the exploitation of undocumented migrants and prevent undocumented migrants from working in the UK. The civil penalty regime forms a cornerstone of the implementation of the UKBA enforcement strategy 2007, which aims to “ensure and enforce compliance with our immigration laws, removing the most harmful people first and denying the privileges of the UK to those here illegally”⁵⁰.

According to the perspectives canvassed in this research, there is little likelihood that these objectives will be met through the civil penalty regime. Through the interview discussions, research participants’ accounts coalesced around the negative impacts of the regime. The measures were variously seen as short-term and simplistic, failing to tackle the real causes of exploitative labour practices, the occurrence of irregular working, or the longer term issues faced by undocumented migrants in the UK. Participants also highlighted the prospect that there would be a negative ripple-effect onto the employment prospects of a wide range of migrant workers in the UK.

Tackling the Exploitation of Undocumented Migrant Labour?

In the Introduction of the *Comprehensive Guidance for Employers* UKBA states “there is evidence that some of those who are working illegally are paid less than the minimum wage, do not pay tax, and may be doing dangerous work that breaks health and safety regulations... This is harmful to the workers involved”⁵¹. The Introduction goes on to state that “We will ... take tough action against those employers who seek to profit from exploiting illegal labour”.

As detailed in a recent report by the TUC Commission on Vulnerable Employment, low-skilled or poorly paid migrant workers are vulnerable to exploitation, often lacking the confidence or resources to better

their position⁵². Undocumented migrants are generally unable to claim employment rights, making them even more susceptible to maltreatment in the workplace. Migrants who overstay their visa or work in breach of their working conditions may find that they have an illegal employment contract and therefore have virtually no options for enforcing their rights⁵³. The majority of undocumented migrants ‘are likely to be doing jobs that could be characterised as dirty, difficult and dangerous’⁵⁴. ‘Papers Please’ interviewees with uncertain immigration status referred to the additional precariousness and potential for exploitation within contracted agency work⁵⁵.

National-level bodies tasked with tackling exploitation in the workplace are in operation in the UK, including the Gangmasters Licensing Authority, the Vulnerable Workers Enforcement Forum, the Health and Safety Executive and the HMRC National Minimum Wage enforcement teams. The introduction of a new Fair Employment Enforcement Board, announced by the Government in August 2008, aims to improve collaboration between these bodies. It is, however, ambiguous as to the extent that undocumented migrants are willing or able to use these bodies to tackle incidents of exploitation in the workplace.

There has been no indication thus far that the Home Office is seeking to tackle the exploitation faced by many undocumented and/or vulnerable migrant workers through the civil penalty regime. Incidents reported during the course of this research indicated that exploitative employers may gain further advantages by cooperating with the civil penalty regime, rather than bearing the brunt of the ‘tough action’ referred to by UKBA.

Employer cooperation with UKBA is encouraged through the terms of the regime. Employers who ‘turn in’ their own workers, or those who cooperate during a raid, may receive a reduction in a fine by up to

⁵⁰ Immigration and Nationality Directorate (IND), Fair, effective, transparent and trusted: Rebuilding confidence in our immigration system, (2006:2)

⁵¹ BIA (2008a)

⁵² TUC Commission on Vulnerable Employment (2008) *Hard Work, Hidden Lives*. www.vulnerableworkers.org.uk

⁵³ Anderson, B. (2006) *A Very Private Business: Migration and Domestic Work*, Centre on Migration, Policy and Society. Oxford: Compass

⁵⁴ Institute for Public Policy Research, *Irregular Migration in the UK: An IPPR Fact File*, April 2006:11. For further reading refer to Bridget Anderson and Ben Rogaly (2005), *Forced Labour and Migration to the UK*, COMPAS; and Yara Evans et al, (2005) *Making the City Work: Law Paid Employment in London*, Queen Mary University of London

⁵⁵ See Case Studies F, G and H

£2,500 per undocumented worker. In one study, employers had used deception, inviting undocumented workers into a ‘meeting’ later revealed to be a UKBA ambush⁵⁶.

The weighting of the regime against the welfare of undocumented migrants has been illustrated by reported incidents in which undocumented workers had been abruptly dismissed and their outstanding wages kept by employers⁵⁷. There is currently no mechanism in place which would ensure that back-pay withheld from undocumented workers who have been dismissed is not kept by employers.

Rather than feeling confident that the civil penalty regime will assist exploited migrants, many of those interviewed for this report thought that the regime would instead create an underclass that would be pushed into ever-greater vulnerability. It was thought likely that there will always be employers who are willing to provide work for undocumented migrants, but as the impact of the civil penalty regime builds it is likely that such work will be increasingly clandestine or even criminal in nature.

Ensuring that Undocumented Migrants Cannot Obtain Work in the UK?

The civil penalty regime aims to “*work together with employers to ensure that illegal workers cannot obtain work in the UK*”⁵⁸. Research interviews cast strong doubts over the theory that the civil penalty regime will prevent working in the UK for undocumented workers. Broad agreement emerged over the theory that undocumented migrants would be more likely to remain in the UK, in ever-more hidden employment or potentially facing destitution.

During the course of the research, several commentators criticised the Government for pursuing a policy that appears to deliberately seek to force people into destitution. Below are some comments made during the course of the research:

*“People [are being] pushed to the edges by the immigration system, it is horrendous”*⁵⁹.

*“A number of us have said [to the government]: ‘look, you keep talking about being tough and denying illegal people access to the NHS, and children’s education, all you are doing is creating a criminal class, because the only way they can survive is by acting illegally, not only working illegally, but acting illegally’”*⁶⁰.

*“Once you make it difficult for half a million people to find employment, then you push them into illegal occupations, you create a situation where people are more vulnerable because the only employers who will give them work are on the fringes of society, those who have criminal intent themselves. So there is a paradox in creating a situation where paperless workers are more likely to become illegal workers in the true sense of the term”*⁶¹.

*“You can’t build, consciously, as a government, a whole underclass of people who have no status and are not allowed to work. The only choice for them is to work illegally in order to survive”*⁶².

Assisting the Removal of Undocumented Migrants?

It was felt by a number of interviewees that the civil penalty regime was aiming to help remove undocumented migrants from the UK, but that this strategy would not succeed. Undocumented migrants would be likely to lack the will – “*People are not going to go back because, whatever you think of this country, for many of them it is where there is an opportunity to earn money, it is home, they have family and friends, they have settled here for many years*”⁶³ – or in other cases the resources or ability to do so.

The impacts of the civil penalty regime were criticised by one interviewee from an employment agency as actively inhumane - “*I think the government’s stance on this is immoral... you’ve arrived at the situation where you deny people benefits, you deny people work, you deny them social services, and you are actually starving them out. That is immoral. It should not be done in the 21st century*”⁶⁴.

⁵⁶ See Case Study H

⁵⁷ See Case Studies F, G, H and I

⁵⁸ BIA (2008a)

⁵⁹ From interview with Advice on Individual Rights in Europe (UK) (AIRE)

⁶⁰ Interview (BHA)

⁶¹ Interview (UNISON)

⁶² Interview (IAS)

⁶³ Interview (CSSA)

⁶⁴ Interview (CSSA)

The social costs of removing, interrogating, accommodating and eventually deporting undocumented migrants were viewed as high. It was proposed that such a system would be likely to require a monitoring and enforcement system which would not only impede on migrants’ equality in the UK but on the rights of British citizens⁶⁵. No interviewees expressed the opinion that the potential costs to civil liberties and human rights from the widespread removal of undocumented migrants could be justified.

In addition to the social costs removing undocumented migrants from the UK, interviewees identified significant financial costs would be involved in doing so. As argued by one critic during the course of this research, *“it is disingenuous to say ‘we’ll remove all these people’, because they don’t have the finances to do it”*⁶⁶. As estimated by the Institute for Public Policy Research (IPPR), the removal of undocumented migrants on average costs the Treasury £11,000 per person. With an estimated population of 500,000 undocumented migrants in the UK, total deportation costs would reach around £5 billion and could take up to 30 years⁶⁷. Given the high investment necessary, it is unlikely that UKBA will aim to remove all undocumented migrants from the UK, raising questions about how a long-term resolution of their status can be reached.

The Long-Term Impact of the Civil Penalty Regime on Migrant Workers in the UK

The civil penalty regime, rather than acting as the effective tool for immigration and employment control presented by UKBA, emerged from this research as having introduced a new set of potential obstacles for both documented and undocumented migrant workers in the UK.

The potential for a wider negative impact on migrant workers more generally has emerged through the research. This initial mapping presents an indication that increasing the duties of employers to monitor the immigration status of their workers has had, and will likely continue to have, negative implications for other groups of migrants.

Implementation of employers’ new responsibilities under the civil penalty regime has, as shown in the Case Studies, butted up against the complexity of immigration status. In particular this has directly impacted on the ability of specific groups of migrants who may have the right to work on a temporary or discretionary basis, such as recognised refugees, citizens of the European Economic Area (EEA) those varying their leave or those awaiting decisions from the Home Office on leave applications, to do so.

In the long term, there is the potential for systemic discrimination in the workplace against migrant workers and/or ethnic minorities to emerge, ultimately impacting on their employment prospects. The complexity of document checks required at the recruitment stage may lead to some employers deciding to ‘go white’ with their workforce by only recruiting white British workers, who they believe are easily identifiable. By placing such increased responsibilities, and penalties, on the shoulders of employers, the Home Office has introduced a new source of potential inequity for migrant and ethnic minority workers in UK workplaces.

⁶⁵ Interview (Trade unionist)

⁶⁶ Interview (IAS)

⁶⁷ IPPR (2006) Irregular Migration in the UK: an ippr factfile

SECTION 4 – MRN RECOMMENDATIONS



MRN RECOMMENDATIONS

The 'Papers Please' research findings suggest that the civil penalty regime has had serious impacts in the UK to date. We conclude that the risk it poses to the employment rights of migrants is disproportionate to the claims made for its wider benefits. Our view is that the Home Office needs to rethink how to address workplace exploitation and introduce a long-term solution for undocumented migrants in the UK which would avoid infringements on the rights of migrant workers.

MRN has identified four key areas where we feel attention needs to be focused:

1. Inquiry into Impact of the Regime on Migrants' Human and Employment Rights

MRN's research findings have demonstrated the negative repercussions of the civil penalty regime on the rights of migrant workers in the UK. There are grounds for believing that the discriminatory effects have been considerably greater than was anticipated by the regulatory and race impact assessments conducted by the Home Office when preparing the legislation and accompanying regulations⁶⁸.

We believe that a full investigation needs to be launched into our assertions that the civil penalty regime has increased the exposure of a wide range of migrant workers to discrimination and exploitation, with possible long-term consequences for their employment rights in the UK. We urge that the practices which have emerged since the introduction of the civil penalty regime on 29th February 2008 be investigated in terms of their impact on migrants' basic human and employment rights in the UK by a competent authority, such as the Equalities and Human Rights Commission.

A further issue which merits attention is the impact of the enforcement activities of the Government on BME firms involved in catering. UKBA has provoked resentment from some ethnic minority communities

in the UK by conducting enforcement operations in a way which could be viewed as racially discriminatory. MRN awaits the outcome of the 2008 Home Affairs Committee inquiry into the Points Based System, which is expected to address specific issues faced by the ethnic catering sector within its final report.

2. Trades Union and NGO Commitment to the Rights of Migrant Workers

The civil penalty regime poses significant challenges to all those concerned with the rights of migrant workers, such as trade unions and labour associations, migrants' rights and advocacy organisations and community groups. Trades Unions and Non-Governmental Organisations can play a role by affirming their strong commitment to the rights of all migrant workers in the UK, regardless of immigration status. We believe it is crucial that groups working on behalf of worker rights are willing to support all workers who are experiencing problems during or as a result of document checks, whether documented or undocumented.

In the specific case of trade unions, work to increase membership and involvement of migrant workers will require a greater capacity to deal with issues which are specific to this group. The increasing interaction between employment rights and immigration status will mean unions developing perspectives on the needs of this group of workers, and strategies aimed at their empowerment in the workplace. Although positive initiatives are underway at national level by many trade unions, reports during the research indicated that improvements are still needed around union responses to incidents of migrant discrimination and exploitation in workplaces. This could be pursued through the development of firm and inclusive union policies, and supported by training and awareness-raising activities at shop floor level.

⁶⁸ Including the Home Office Illegal Working Taskforce Regulatory Impact Assessment for Immigration, Asylum and Nationality Bill, June 22 2005 and Border and Immigration Agency Prevention of Illegal Working: Immigration, Asylum and Nationality Act 2006 Equality Impact Assessment May 2007

3. Role of Fair Employment Enforcement Board in Tackling Poor Employment Practices

MRN is concerned about the general context of the continued vulnerability of many migrant workers to exploitation in the workplace. In the light of concerns expressed through this report around the potential concessions granted by the civil penalty regime to exploitative employers, we believe that the civil penalty regime may be making an active contribution towards increasing the vulnerability of migrants – particularly undocumented migrants – to mistreatment by unscrupulous employers. Employment inspectors therefore need to take a more central position in determining abusive practices which impact on migrant workers, including undocumented migrants.

Positive developments are underway. The work of the Gangmaster Licensing Authority (GLA) in the agriculture, forestry, horticulture, shellfish gathering and food processing industries focuses on employment inspections with a view to enforcing workplace standards – an approach which we believe may produce more constructive improvements in working conditions than workplace raids by UKBA officials. Labour agencies including the BERR (Department for Business, Enterprise and Regulator Reform) Vulnerable Workers Enforcement Forum, the HMRC National Minimum Wage enforcement teams and the Health and Safety Executive also play important roles in addressing exploitative conditions for vulnerable workers, although the extent to which migrants, and in particular undocumented migrants, benefit from these bodies is unclear.

The August 2008 announcement that the Government is establishing a Fair Employment Enforcement Board in order to promote collaboration between existing enforcement bodies is a positive step forward in order to address these issues in the long term. To avoid the danger that immigration enforcement could supersede improvements in working conditions for migrant workers, we urge the new Board to establish clear working guidelines which will distinctly recognise and enforce employment rights of all workers, regardless of immigration status. Related policy ought to aim

towards encouraging a culture of respect and consciousness of employers’ obligations to provide decent working conditions and appropriate wage rates across their workforce.

4. Long-Term Government Strategy around Undocumented Migrants in the UK

MRN does not believe that the civil penalty regime and the accompanying raft of enforcement measures implemented by UKBA will in any way support a resolution to the position of the 500,000 undocumented migrants estimated to be resident in the UK, many of whom are working covertly. Ultimately, long-term measures by the Government will be necessary if a meaningful improvement to their position is to come about. Measures proposed by interviewees during the course of this research in order to enable a more effective and humane solution to the issue of undocumented migrant working included an earned regularisation⁶⁹; providing papers to undocumented migrants already in work⁷⁰ and granting temporary work permits to workers operating in the ‘shadow economy’⁷¹.

The merits of a one-off amnesty and/or sustainable regularisation programme have been variously argued by a number of organisations, including CentreForum⁷² and London Citizens through the Strangers into Citizens campaign⁷³. It is likely that a sustainable Government strategy addressing the uncertain position of undocumented migrants in the UK would necessarily include a form of regularisation programme.

⁶⁹ Interviews (IAS, CSSA)

⁷⁰ Interviews (TU, CICC)

⁷¹ Interview (PRAXIS)

⁷² Papidemetriou, D. G. And Sommerville, W. (2008) Earned Amnesty: Bringing Illegal Workers Out of the Shadows, Centre Forum <http://www.centreforum.org/publications/earnedamnesty.html>

⁷³ Details of the Strangers into Citizens Campaign can be accessed at: www.strangersintocitizens.org.uk/

BIBLIOGRAPHY

Anderson, B. (2006) A Very Private Business: Migration and Domestic Work, Centre on Migration, Policy and Society. Oxford: Compass. Available at: www.compas.ox.ac.uk/publications/Working%20papers/Bridget%20Anderson%20WP0628.pdf

Anderson, B. and Rogaly, B. (2005) Forced Labour and Migration to the UK, Centre on Migration, Policy and Society. Oxford: Compass. Available at: www.compas.ox.ac.uk/publications/papers/Forced%20Labour%20TUC%20Report.pdf

Evans, Y., et al, (2005) Making the City Work: Law Paid Employment in London, London: Queen Mary University of London. Available at: www.geog.qmul.ac.uk/globalcities/Report2.pdf

Home Office (2005) Illegal Working Taskforce Regulatory Impact Assessment for Immigration, Asylum and Nationality Bill. London: Home Office. Available at www.homeoffice.gov.uk/documents/ria-imm-bill-migrant-220605?view=Binary

Home Office (2006) A Points-Based System: Making Migration Work for Britain. London: Home Office. Available at www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs/

Home Office (2007) Enforcing the Rules: A strategy to ensure and enforce compliance with our immigration laws. London: Home Office. Available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementstrategy/

Home Office Border and Immigration Agency (2007) Prevention of Illegal Working: Immigration, Asylum and Nationality Act 2006 Equality Impact Assessment. London: Home Office. Available at: www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/illegalworking/newpowerstopreventillegal/annexd_equalityimpactassess1.pdf?view=Binary

Home Office Border and Immigration Agency (2008a) Prevention of Illegal Working: Comprehensive Guidance for Employers on Preventing Illegal Working. London: Home Office. Available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/

Home Office Border and Immigration Agency (2008b) Prevention of Illegal Working: Code of Practice. London: Home Office. Available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/

Home Office (2008) UK Border Agency: Business Plan. London: Home Office. Available at <http://ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/businessplan/april2008march2011/ukborderagencybusinessplan.pdf?view=Binary>

BIBLIOGRAPHY

Home Office UK Border Agency (2008) Enforcing the Deal: Our Plans for Enforcing the Immigration Laws in the United Kingdom’s Communities. London: Home Office.

Available at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementbusinessplan08_09/enforcementbusinessplan08_09.pdf?view=Binary

Home Office UK Border Agency (2008) Employers Against Whom Notices of Liability (NOLS) Have been Issued and Civil Penalties Imposed for the Use of Illegal Migrant Workers (September 2008)

www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pointsbasedsystem/pbsregisterofsponsors%20

Home Office UK Border Agency (2008) Register of Sponsors Licensed Under the Points-Based System. Available at:

www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/registerofsponsors

Institute for Public Policy Research (2006) Irregular Migration in the UK: an ippr factfile, IPPR: London. Available at:

www.ippr.org.uk/publicationsandreports/publication.asp?id=446

Migration Advisory Committee (2008) Recommended UK Shortage Occupation List for Tier 2 of the PBS. Available at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/uklist

Papademetriou, D. G. And Sommerville, W. (2008) Earned Amnesty: Bringing Illegal Workers Out of the Shadows, Centre Forum

www.centreforum.org/publications/earnedamnesty.html

TUC Commission on Vulnerable Employment (2008) Hard Work, Hidden Lives.

www.vulnerableworkers.org.uk

NEWS REPORTS

Daily Telegraph, 6/10/95

Daily Telegraph, 25/10/95

BBC News Diners Stunned by Chinatown raids, 11/10/07.

Ealing Gazette, Police raid factory, 2/05/08.

Harrow Observer, Immigration officials raid Wembley warehouse, 27/08/08.

Personnel Today ‘Are you ready for immigration changes’, 12/11/07.

The Guardian (2007a), 10,000 in security industry could be illegal, 14/11/07.

The Guardian (2007b) 11,000 illegal migrants licensed to work as private security guards, 14/12/07.

The Guardian (2008) Security work ban for ‘illegals’, 31/01/ 2008.

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APPENDIX II – ORGANISATIONS CONSULTED/INTERVIEWED

AAS	Afro-Asian Advisory Services
ABRAS	Brazilian Association in the UK
AIRE	Advice on Individual Rights in Europe
BHA	British Hospitality Association
CICC	Chinese Immigration Concern Committee
CSSA	Cleaning and Support Services Association
GMB	Britain's General Union
IAS	Immigration Advisory Service
ILPA	Immigration Law Practitioner's Association
LAWA	Latin American Workers' Association
PRAXIS	Advisory Organisation for Displaced People
RAS	Romanian Advisory Service
RC	Refugee Council
REC	Recruitment and Employment Confederation
RMT	National Union of Rail and Maritime and Transport Workers
SERTUC	Southern and East TUC
SIA	Security Industry Authority
T&G	Transport and General Workers' Union
UNISON	Public Sector Union
VWP	Vulnerable Workers Project

This report was produced with the support of

