

Turning the Tide

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



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

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

Summary

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

Anka, from Poland, Lincolnshire

The Gangmasters Licensing Authority (GLA) and its licensing regime have been effective at reducing exploitation, raising labour rights standards for workers, and creating a more level playing field for employers. The GLA's work is supported by the majority of gangmasters (labour providers), unions, retailers, and worker support organisations.

However, a significant number of unlicensed gangmasters continue to exist, and exploitation of workers is still reported. The GLA's efforts to reduce exploitation are fundamentally thwarted by the workers' fear of blowing the whistle, particularly during a recession.

Furthermore, gangmasters have diversified into sectors beyond the remit of the GLA where there is less regulation of labour standards. Oxfam's research found that exceptional instances of abuse in GLA-regulated sectors were the norm in sectors beyond its remit. Specifically, exploitation in the sectors of construction, hospitality, and care was found to be endemic.

Oxfam therefore recommends that the GLA's remit is immediately extended to cover the sectors of construction, hospitality, and care. In the longer term, the functions of the Employment Agency Standards Inspectorate (EAS) should be folded into the GLA to create one enforcement body to cover all agency labour. The GLA's duty to inspect the immigration status of workers must also be ended in order to improve its ability to protect all workers.

Exploitation in agriculture

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

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

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

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

Teresa from Poland, Cornwall

Why Oxfam?

Oxfam works all over the world to end poverty and suffering, including here in the UK. Our experience shows us that the denial of rights at work – including the right to the minimum wage, holiday and sick pay, and decent and safe working conditions – is a significant cause of poverty in this country. We therefore work with vulnerable and exploited workers to help them claim their rights, and we campaign for increased protection at work.

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

Monica, from Romania, cleaning hotels, London

In 2008, Oxfam commissioned the Wilberforce Institute for the Study of Slavery and Emancipation (WISE) at Hull University to conduct an independent evaluation of the protection available to workers employed through gangmasters or labour providers. This briefing, and Oxfam’s recommendations for changes to the regulation of labour providers, are based on this research.

The nature of work

The globalisation of the past 30 years has put a higher premium on workplace practices that support flexibility and adaptability, often at the cost of security and rights for workers.² In 2008, the TUC estimated that more than two million people in the UK are in vulnerable employment:³ they work in an environment where the risk of being denied employment rights is high, but do not have the capacity or means to protect themselves.⁴ Vulnerable work perpetuates poverty because those working in these jobs are often unable to get better-paid, more secure jobs, and may be prevented through a lack of knowledge, or through coercion and the threat of retribution, from reporting abuses or demanding better treatment.

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

- **Minimal workplace protection.** The UK labour rights enforcement regime is fragmented and under-resourced. Employers can break the law with impunity, knowing they are unlikely to be caught, and, even if caught, will rarely face more than minimal punishment.⁵
- **The vast increase in agency labour.** More than 80 per cent of UK employers now subcontract parts of their business.⁶ The agency sector has quadrupled since the mid-90s, and is now the largest agency sector in the EU.^{7 8} Agency workers have fewer rights and are less visible to end consumers than those employed directly.
- **The increase in numbers of migrants working in the UK.** More than 700,000 migrants from the A8 countries have entered the UK since May 2004. Alongside this, there are estimated to be nearly the same number of undocumented (‘illegal’) migrants.⁹ Migrant workers are more likely to be in vulnerable work, because they are unfamiliar with the UK labour market, and because employers take advantage of their lack of knowledge of their legal entitlements or exploit uncertainty or irregularity in their immigration status.

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

Jozef, from Poland, working in construction, Hull

The Gangmasters Licensing Authority

On 5 February 2004, 23 Chinese cockle pickers drowned in rising tides in Morecambe Bay because of the negligence of their gangmaster, who failed to ensure their safety. Traditionally, gangmasters had provided temporary labour at short notice to meet the seasonal needs of farm and food production. However, with the arrival of large numbers of workers from EU accession countries, labour provision through gangmasters in the agricultural and food processing industries began to take on a more exploitative nature, and reports of abuses began to surface on a scale and of a type not previously encountered.

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

Roman, from Poland, Lincolnshire

Following the tragedy at Morecambe Bay, the pressure for change was irresistible, and culminated in the creation of the Gangmasters Licensing Authority (GLA) in 2006. The GLA is a non-departmental public body, sponsored by DEFRA, which licenses gangmasters who meet acceptable operating standards in the food processing, agriculture, and associated sectors only. As of June 2009, there were 1,230 gangmasters licensed by the GLA.

Assessing the effectiveness of the Gangmasters Licensing Authority

The research conducted by WISE on behalf of Oxfam found considerable evidence that the GLA had improved conditions for workers, as a result of the combination of the licensing regime and the agency’s approach to enforcement. The research found that:

- The GLA has substantially **raised standards** through licensing, with advice and support agencies reporting considerably fewer cases of exploitation. Seventy per cent of gangmasters who went through the licensing process had to improve their practices as part of getting the licence.¹⁰
- The GLA uses **publicity effectively to deter exploitation**, warning gangmasters, labour users, and retailers of the consequences of non-compliance, and raising awareness amongst workers.
- The GLA is prepared both to **revoke licences** and to **use interventions** short of licence revocation. Their emphasis is on raising standards rather than disrupting supply chains or reducing employment opportunities. At the same time, they have revoked licences where necessary: 93 licences have been revoked, eight with immediate effect.¹¹
- The GLA publicly states that its primary role is to **curb the exploitation of workers**. Too often, enforcement further disadvantages individual exploited workers, who may lose their jobs and their accommodation, and may not receive compensation or pay that they are owed. In contrast, the GLA carries out impact

assessments to ensure workers are able to be re-employed and do not lose their accommodation. In addition, the GLA has been willing to use its position to remind employers of their responsibilities to employees, on occasion providing a more accessible and quicker mechanism than formal enforcement to seek redress.

- The GLA has also built **strong relationships with employers**. It works well with gangmasters and retailers to raise standards, including producing a responsible labour user guide with Marks & Spencer, and establishing a protocol between the GLA and supermarkets to help combat exploitation.¹² In addition, the GLA has helped reduce the downward pressure on pay and conditions whilst not imposing onerous burdens on employers, so that unscrupulous gangmasters are far less able to undercut those who guarantee their workers basic legal rights. Only 18 per cent of gangmasters describe their contact with the GLA as burdensome.¹³

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

Piotr, from Poland, Hull

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

- **Contracts.** Workers being deliberately misled about their contracts; workers being given verbal assurances of permanent well-paid work, which did not materialise.
- **Wages.** Systematic and deliberate underpayment or non-payment of wages; failure to pay sick pay or holiday pay; workers being transferred to 'new' agencies who are under the same management, yet refuse to honour wages owed.
- **Deductions.** Excessive deductions for transport and for equipment.
- **Working hours.** Enforced excessive working hours.
- **Immigration processes.** Use of the immigration process to coerce workers, with documents being retained illegally by employers; workers not being registered with the Workers Registration Scheme despite paying to register; threats to report workers to immigration authorities.
- **Dismissal.** Unfair and instant dismissals, which are so common as to be inherent in the employment model. Workers may lose their job and/or accommodation if they report abuse to authorities, protest about the conditions of work, request sick or holiday leave or get pregnant.
- **Accommodation.** Strong links between gangmasters and the accommodation providers. There were repeated reports of considerable over-crowding and substandard accommodation, and hot-bedding remains endemic.
- **Forced labour.** In several of the cases where licences were revoked, the GLA found evidence of activities which the International Labour Organisation defines as forced labour: intimidation with threats of violence; attempted forced evictions from tied accommodation; debt bondage; withholding of wages.¹⁴

However, the true scale of exploitation within GLA-regulated sectors is difficult to assess, as workers are often unwilling or unable to report exploitation, and trade unions and advice agencies have limited capacity to deal with cases. The requirement for the GLA to inspect workers' immigration status, and share such information with the UK Border Agency, is a major obstacle to ending exploitation: migrant workers, who are in the majority in regulated sectors, cannot blow the whistle without potentially jeopardising their own and others' employment and ability to remain in the UK. The GLA is also hampered by the extreme competition fostered by supermarkets, which place immense pressure on produce buyers to squeeze the margins of suppliers lower down the supply chain.¹⁵

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

Dominik, from Poland, Hull

There also remain many gangmasters in the food processing and agricultural sectors who operate without a licence: it is estimated that between 25-40 per cent of gangmasters in the sectors within the GLA's remit are still not licensed.¹⁶ Unlicensed gangmasters are undoubtedly perpetrators of the worst forms of exploitation.

Exploitation in sectors outside the GLA's remit

The other major barrier to reducing the exploitation of workers by gangmasters – one which the GLA itself can do nothing to tackle – is the almost non-existent regulation of, and enforcement in, sectors other than food processing and agriculture. We found evidence that gangmasters who had had their licences revoked or who were the subject of enforcement action were deliberately moving to less regulated sectors.¹⁷

Oxfam's research found that exploitation by gangmasters was widespread in construction, hospitality (hotels, catering, and cleaning) and care. Exploitation within these sectors bears a striking resemblance to that found in the GLA-enforced sectors: underpayment of wages, debt bondage, excessive hours, spurious deductions, dangerous and unsafe working conditions. However, what were exceptions in those now-regulated fields appear to be the norm in unregulated sectors.

In theory, gangmasters and agencies operating in unregulated sectors are subject to employment agency legislation, enforced by the Employment Agency Standards Inspectorate (EAS). However, our findings demonstrate that EAS is not effectively protecting workers employed by labour providers. There is very low awareness of its work amongst advisors to vulnerable workers or workers themselves. It does not have sufficient resources, given the size of its remit: while the GLA has one inspector for every 92 gangmasters, EAS has around one for every 700 agencies.¹⁸ And the inspectorate is not effective enough to foster a culture of compliance amongst agencies, leaving them open to undercutting by those who do not fulfil their obligations.

Construction:

Construction is one of the sectors where worker exploitation is most prevalent. Severe and systematic violations of health and safety procedures were common, with repeated instances of threats to sack workers if they raised concerns. We heard of many instances of accidents and injuries on construction sites. In addition to the types of exploitation common to gangmaster-dominated industries, we found evidence that workers were being designated 'self-employed', giving them fewer rights, when in fact they do not have the independence and autonomy over their work that characterise genuine self-employment.¹⁹ Some construction workers were sleeping on building sites, were not provided with essential safety gear or training, and faced excessive deductions for tools and transport.

Exploitation in construction

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

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

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

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

John, from Nigeria, former construction worker

Social care:

We also found evidence of significant exploitation in the social care sector. This sector has historically had high staff turnover and low rates of pay; as a result increasing numbers of agencies are looking to employ migrant workers in addition to the local workforce.²⁰ In this sector, excessive hours of work were particularly prevalent, with some employees working nearly 100 hours per week, and an expectation, because of the need for carers to be available, that workers would not take holiday. In addition, travel time between clients' homes was not paid, and many workers were paid below the national minimum wage, as is the case for nearly one in five care workers.²¹ We also found evidence of debt bondage, with workers paying £2,000 for a job in the UK to be arranged.

Hospitality:

Finally, there is also severe exploitation in the cleaning and hospitality sector. We found particular evidence of systematic exploitation in the hotel industry in London, but believe that this occurs throughout the country. Many hotels have contracted out housekeeping and maintenance to agencies, which compete primarily on the cost of labour rather than on the quality of service. In addition to the standard forms of exploitation common to the labour model, we were particularly concerned that the practice of paying piece-rates per room cleaned, routinely resulted in a wage below the national minimum wage. We were even informed of instances where permanent staff were replaced by irregular migrants to drive down the cost of labour. We again found evidence of bogus self-employment, and considerable bullying and intimidation.

Exploitation in the hospitality industry

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

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

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

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

Julia, from Spain, currently cleaning hotel rooms in London

Discussion: how to protect workers employed through gangmasters

The spread of unscrupulous gangmasters and agencies into less-regulated sectors creates a two-tier level of protection for vulnerable workers. Oxfam continues to believe that employment rights enforcement is best achieved through a single, proactive enforcement agency. However, failing this, it is clear that the model of licensing, enforcement and publicity used by the GLA has many features to recommend it. Alongside reducing considerably the exploitation of workers, it has also brought in a considerable sum in revenue – more than £2 million – from increased taxes and VAT receipts. The nature of the exploiters, and of the exploitation, warrant greater licensing and enforcement in all areas of agency labour.

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

Lech, from Poland, Hull

Throughout this research, it was difficult to escape the conclusion that exploitation was in many cases facilitated by employers using migrants' fears and lack of knowledge about their immigration status against them. This is compounded by the GLA inspecting for compliance with immigration law. The consequence is two-fold: both regular migrants unsure of their immigration status and irregular migrants will be discouraged from reporting abuses; and, secondly, irregular migrants will be more likely to be driven to work for unlicensed exploitative gangmasters.

The GLA has struggled to eradicate exploitation at the very bottom of the market – undoubtedly in part due to its inability to protect all workers, irrespective of their immigration status. In contrast, the Health and Safety Executive is not required to enquire about immigration status or report to the UK Border Agency, which has contributed to its success in reaching the most vulnerable working environments. There can be no end to exploitation of workers, particularly those in the most dangerous environments, without the separation of immigration status and labour rights.

Recommendations

Having thoroughly investigated the current regime of protection offered to workers employed by gangmasters, Oxfam is calling on the government to urgently implement the following recommendations:

- The remit of the GLA should be extended to construction, care and hospitality with immediate effect.
- The functions of the Employment Agency Standards Inspectorate should be folded into the GLA, ultimately extending the GLA's licensing regime to all areas of agency labour. Any new body must keep the proactive orientation, support for workers, and willingness to work with employers that the GLA has shown.
- The GLA should no longer have a duty to inspect the immigration status of workers or share information with the UK Border Agency.
- The current resources available to the GLA should be increased so that it can scale up its operation, employ more field inspectors, and increase its knowledge of the gangmaster labour market.
- The GLA should be given additional powers to confiscate criminal assets and provide guidance to courts on sentencing.
- The Temporary and Agency Worker Directive should be fast-tracked, and extended to cover notice periods and compensation for the loss of employment.
- The employment status regime, which is currently used to deprive workers of basic protection, should be reviewed.

The GLA is an effective agency, but struggles to reach the most hidden and exploitative gangmasters. Oxfam therefore also recommends that the GLA:

- Re-evaluate its position on securing prosecutions – given the low level of prosecutions to date.
- Undertake more unannounced visits and random inspections of gangmaster operations.
- Establish an undercover capacity to reduce dependence on workers for intelligence.
- Build stronger links with trade unions, voluntary organisations, migrant networks and local authorities to increase intelligence about gangmaster activity.

Notes:

- ¹ The term 'gangmaster' is a generic term to cover any individual or agency whose primary purpose is to organise the supply of labour to employers.
- ² Chaykowski and Gunderson, *The Implications of Globalization for Labour and Labour Markets* (2001), pp.33-34
- ³ Trades Union Congress, *Commission on Vulnerable Employment* [herein CoVE], (2008), Full Report, p.24
- ⁴ BERR, *Vulnerable Worker Enforcement Forum: Final Report*, August 2008
- ⁵ CoVE, Short Report, p.37
- ⁶ CoVE, Full Report, p.5
- ⁷ Demos, *Recruitment 2020: How recruitment is changing and why it matters* (2007), p.26-27
- ⁸ European Foundation for the Improvement of Living and Working Conditions, *Temporary Agency Work in an enlarged European Union* (2006), p.6
- ⁹ LSE, *Economic Impact on London and the UK of an earned regularisation of irregular migrants in the UK* (2009)
- ¹⁰ Ian Livsey of the GLA, *Home Affairs Committee - The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008-09
- ¹¹ GLA, *2nd Year Review* (2009), p.16
- ¹² *Consultation on the GLA and Supermarket Protocol* (2009), available at http://www.gla.gov.uk/embedded_object.asp?id=1013524
- ¹³ GLA, *2nd Year Review* (2009), p.48
- ¹⁴ *Home Affairs Committee - The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008-09, Vol.1, p.49
- ¹⁵ GLA, *Evaluation Study - Baseline Report* (2007), p.6-7
- ¹⁶ GLA, *2nd Year Review* (2009), p.89
- ¹⁷ See also GLA's evidence to the Home Affairs Select Committee about agricultural labour providers whose licences they had revoked switching to work in construction. *Home Affairs Committee - The Trade in Human Beings*, p.48
- ¹⁸ CoVE, Short Report, p.39
- ¹⁹ BERR, *Government Evidence to the Low Pay Commission: Non-economic Evidence* (2008), p.16
- ²⁰ Oxfam, *Best Practice in the recruitment and employment of migrant workers in the social care sector in Merseyside* (2008), p.10, available at <http://www.oxfam.org.uk/resources/ukpoverty/resources.html>
- ²¹ Cangiano, Shutes, Spencer and Leeson, *Migrant Care Workers in Ageing Societies* (COMPAS: 2009)

Published by Oxfam GB, July 2009

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This briefing was written for Oxfam by Krisnah Poinasamy and Antonia Bance, based on research undertaken by Dr Mick Wilkinson, Senior Lecturer at the Wilberforce Institute for the Study of Slavery and Emancipation (WISE), University of Hull. The full research report is available at www.oxfam.org.uk/uk

Oxfam would like to thank all the workers who helped us with the research and told us about their experiences. Names have been changed to protect identities.

Oxfam would also like to thank Kirsty Hughes, Farah Kurji, Jason Bergen, Lucy Brill, Julie Jarman, Harris Nyatsanza, Louie Fooks, Jim Boyle and everyone who contributed to the development of this briefing.

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