

Inquiry into recruitment and employment in the meat and poultry processing sector

Report of the findings
and recommendations



**Equality and
Human Rights**
Commission

Acknowledgements

We are grateful to all the organisations and individuals who took the time to submit evidence to our inquiry.

We would also like to thank:

- The staff of the meat and poultry processing firms we visited, and the representatives of the agencies that supplied workers to them. They generously gave their time to provide us with the information and insights we needed.
- The organisations and individuals who helped us to contact people working in the industry and arrange interviews with them.
- The British Poultry Council, the British Meat Processing Association, the Recruitment and Employment Confederation and the Association of Labour Providers for their input.

Contents

	Page
Foreword	1
The role of the Equality and Human Rights Commission	3
Our inquiry into recruitment and employment in the meat and poultry processing sector	4
Our methodology	6
The recruitment of agency workers	7
The problems agency workers face	10
Experiences of agency workers with agencies	14
Additional problems for migrant workers	17
What causes agency workers to be vulnerable to poor treatment?	20
The impact of poor practices	24
Good practice by agencies and processing firms	26
Managing agency workers well makes good sense for business	27
Why the current system and planned initiatives are not sufficient to prevent abuse	29
The way forward	36
References	44
Contact us	45

Foreword

The meat and poultry processing industry contributes hundreds of millions of pounds to the British economy every year. Many products, from Welsh lamb to Cumbrian beef, are recognised internationally for their quality. They are a source of local income and pride.

Yet this industry owes much of its success to agency workers, many of them born outside this country. One third of the permanent workforce and 70 per cent of the agency workers in the industry are migrant workers.

Over the past 15 months processing firms, work agencies and workers themselves have all talked to us about how staff, particularly agency workers, are recruited and treated in the workplace. We are grateful to them for their time and insights. We also thank all the Commission staff who were involved, particularly Susie Uppal, Director of Legal Enforcement, and Dr Neil Wooding as Commissioner to the Inquiry, for their contribution to this important piece of work.

Our evidence shows there are significant challenges facing the industry if it is to uphold ethical standards and effectively promote equality and inclusion. We found evidence of widespread poor treatment of agency workers, particularly migrant and pregnant workers, both by agencies and in the meat processing factories. Some amount to breaches of the law and

licensing standards – such as coercing workers to do double shifts when they are tired or ill. Others are a clear affront to respect and dignity.

This mistreatment not only blights the lives of individuals, but damages good relations in the workplace and communities. Yet much of it remains hidden. Sadly, many of these agency workers endure even physical and verbal abuse without complaint, fearful that complaining will wreck their chance of securing stable employment.

But that is not the full picture. There are processing firms and agencies who take steps to act responsibly and reject the mistreatment of agency workers. We heard from firms who treat all workers as an integral and valued part of their workforce. Some have come up with imaginative ways of including migrant workers.

Their motivations are economic as well as ethical. Being known as employers of choice, rather than of last resort, enables them to attract and retain the more talented and motivated staff.

Our report also highlights the important role of good regulation. Two-thirds of agencies agree that the Gangmasters Licensing Authority has improved standards by preventing unscrupulous agencies from operating.

The supermarkets, as the biggest customers of British meat, can exercise a significant influence on the behaviour of producers. And unions can provide a voice for those who have concerns about workplace practices.

Today, based on our Inquiry findings, we are recommending a series of steps to firms, agencies, supermarkets, government and unions. Taken together, we believe that these solutions will promote consistent standards and equality, bringing about systemic change in the industry.



Trevor Phillips
Chair,
Equality and Human Rights Commission

March 2010

The role of the Equality and Human Rights Commission

The Equality and Human Rights Commission (the Commission) works to eliminate discrimination, reduce inequality, and make sure everyone has a fair chance to take part in society. We have a duty to promote good relations between all people, ensuring that the conditions for social division are not allowed to ferment.

We are responsible for promoting awareness, understanding and protection of human rights. This includes international human rights conventions, such as those covering human rights in the workplace, drawn up and overseen by the International Labour Organization.

In the employment market we want to create a fairer Britain by promoting fair competition between businesses, rooted in an environment of equality and respect for all workers.

We want to make sure that:

- the legal and regulatory framework governing the employment market effectively upholds equality and human rights, and
- workplaces are environments where diverse workforces can operate together harmoniously, confident with each other's differences.

Our inquiry into recruitment and employment in the meat and poultry processing sector

In October 2008, the Commission launched an inquiry into recruitment and employment in the meat and poultry processing sector in England and Wales.

We wanted to examine how the people working in this industry are recruited, and how they are treated once they are at work. This would help us to identify practices that inhibit equality and damage relations between different nationalities and types of worker, and barriers that prevent progress. It would also allow us to make recommendations to overcome these issues by drawing on current good practice in the industry.

We looked at employment and recruitment issues related all stages of meat and poultry processing and packaging activity prior to delivery to retail outlets but excluding the slaughter and initial preparation of red meat.

This is a summary of our findings and the recommendations we believe will bring about change. Further information about our findings is available from our website.

The background to the Inquiry

The food and drink manufacturing industry is the largest manufacturing sector in the UK **(1)**. The meat and poultry sector is a significant part of this, employing 88,800 people, a third located in the East of England and East Midlands **(2)**. The red meat sector is of particular importance to the Welsh economy, employing over 33,000 people and contributing £361 million a year, including exports worth £108 million **(3)**.

There is considerable use of agency, predominantly migrant, workers in this sector. Overall, migrant workers make up 70 per cent of agency staff in processing firms and over one-third of their employees **(4)**.

We had received evidence that agency workers were treated differently to directly employed workers in terms of pay and conditions and their treatment at work, and that there were tensions between different nationalities in the workplace. We wanted to explore the extent of these issues and recommend ways of resolving them.

The aim of the Inquiry

We therefore carried out a statutory inquiry (in accordance with our powers under section 16 of the Equality Act 2006) to:

- understand the issues affecting these workers
- examine the impact of current recruitment and employment practice on individuals and on relations between workers of different nationalities, and
- look for examples of good practice which promote equality of opportunity for agency workers and good relations between different nationalities in this sector.



Our methodology

The Commission gathered a broad and authoritative evidence base from a wide range of individuals and organisations across England and Wales. We obtained a rounded picture of the supply chain: from the agency staff working on production lines, the work agencies that supply them, the processing firms at which they are placed, to the supermarkets who buy around 80 per cent of the meat products from this sector (5). We were also greatly assisted by the voluntary sector and the regulatory bodies.

Our evidence base includes:

Written evidence

We sent out a ‘call for evidence’, translated into 12 languages, to organisations and individuals working in this sector, and received over 150 responses. 120 of these were from individual workers, three-quarters of which were in languages other than English, half being in Polish.

We also obtained written evidence from supermarkets, unions, industry representative bodies, regulators, and government departments.

Worker interviews

We conducted 140 face-to-face interviews with meat processing workers in 15 different locations across England and Wales. 120 were migrant workers. Over

2,000 pages of verbatim transcripts of interviews were analysed using qualitative analysis software.

Surveys of meat processing firms and agencies

The research agency GfK NOP conducted and analysed two in-depth online surveys on behalf of the Commission. We received:

- 190 responses from meat and poultry processing firms
- 131 responses from work agencies supplying labour to this sector.

Case studies

We conducted in-depth studies of seven organisations – both processing firms and work agencies – which were recognised as displaying good practice in terms of recruitment, employment, equality and integration. We interviewed a further 50 managers and staff involved in production at various levels of seniority, and examined documentation the firms supplied.

Stakeholder interviews

Interviews were also held with a range of stakeholders – from police officers to advice-giving agencies, and other groups who represent the interests of migrant and/or agency workers.

The recruitment of agency workers

The recruitment industry has a turnover of over £27 billion across the UK, and there are between 1.1 and 1.5 million agency workers **(6)**. Work agencies play an important role in helping businesses respond flexibly to fluctuating customer demand.

In meat processing firms there is a wide variation in the proportions of the workforce made up of agency staff. In larger firms there is evidence that from 10 per cent to over 50 per cent of workers are engaged through an agency.

In most sectors it is not necessary for a work agency to be licensed, but a licence from the Gangmasters Licensing Authority (GLA) is required before an agency can supply labour to the food and drink processing sector.

The 131 work agencies responding to our survey, who supply labour to meat and poultry processing firms, ranged from local firms with only one recruitment consultant, to national chains with 50 or more consultants. They told us that around 70 per cent of workers they supply to processing firms are migrant workers, with Polish being the largest nationality, followed by Lithuanian, Latvian, Czech, Slovakian and Portuguese.

Some large agencies said that over 90 per cent of the workers they supplied to this sector were migrant workers. At one in six meat processing sites, every agency

worker used over the last 12 months was a migrant worker.

The main reason they gave for the high proportion of migrant workers is the difficulty of attracting British workers to the low-paid meat processing jobs, particularly on an agency basis. This was confirmed by responses to our survey from meat and poultry processing firms.

Difficulties attracting British workers

Half of agencies, and a third of processing firms, said it was difficult to recruit British workers. A quarter of processing firms also found it difficult to retain British workers.

Work agencies and processing firms agreed that British workers were probably deterred by:

- a job involving handling meat
- the rates of pay, typically at the national minimum wage
- the working conditions, which include work with frozen products in low temperatures, and
- the physical demands, often involving intensive manual labour over long shifts.

Work agencies placed more emphasis than processing firms on the rates of pay as a disincentive (62 per cent compared to 47 per cent).

One-third of agencies attributed the difficulties in attracting British workers to differences in work ethic between nationalities. Just under half of agencies thought British workers were unwilling to take on temporary work. Agencies were five times more likely to hold this view than meat processing firms, which suggests that British workers may be more willing to accept direct employment on a temporary contract.

Anecdotal reports suggesting that the recession may lead to an influx of British workers in meat processing have not been borne out by data supplied by processing firms and agencies.

Agencies refusing to register workers based on nationality

A few British workers spoke of difficulty registering for work with some agencies who almost exclusively supply migrant workers, generally Eastern European nationals. Interviewees of other nationalities also alleged that agencies had rejected them on grounds of nationality. Any refusal to register an applicant because of their nationality is unlawful under the Race Relations Act and a breach of the GLA licensing standards.

Supplying workers on the basis of nationality

A number of interviewees alleged that particular nationalities were overlooked by agencies for positions within the meat and poultry processing industry. This appears to be supported by the results of our questionnaires.

Most agencies had experience of firms breaching the Race Relations Act in asking for workers from specific countries, primarily Polish and British. A third of agencies confirmed that they also acted unlawfully in sometimes supplying workers by judging what nationality the processing firm would prefer, or responding to direct requests.

The top three reasons agencies gave for why they thought firms preferred workers of a particular nationality were:

- the perceived dependability of particular nationalities
- the idea that some nationalities have a better work ethic than others, and
- ease of communication with other, currently employed, workers.

The goal of finding permanent employment

Migrant workers told us the main benefit of agency work was that it provides access to the UK labour market. Some, particularly those with limited English skills, thought it was the only way open to them to find work.

However we found that, almost without exception, workers would prefer permanent work due to the security and rights it offers. Only four of the 260 workers we gathered evidence from preferred agency work to direct employment, with only two citing the flexibility of agency work as a positive aspect.

“Even now, 10 months on, I wouldn’t be surprised to get a phone call ‘don’t come in tomorrow’. The insecurity, literally the financial insecurity, is terrible. You can’t plan nothing when you’ve got money; you can’t do nothing because you don’t know how long it’s got to last you.”

(English male working in meat factory processing, North West England)

Most workers see the agencies as providing a stepping stone to permanent employment. This is borne out by the recruitment methods adopted by firms who use ‘temp to perm’ as an informal probationary period. This is the most popular recruitment method used by larger firms, who are nearly three times more likely than smaller firms to use it.

In all:

- one-third of firms recruited 90–100 per cent of their new employees from their agency staff over a 12-month period, and
- half of firms recruited over 70 per cent of their new employees in this way.

Many allegations of discriminatory treatment by migrant workers were linked to workers being transferred to permanent contracts. Workers were not aware of any criteria or agreed process for this, and felt that choices were often made on the basis of nationality or nepotism.

Word of mouth is another common method of recruitment, equally popular in both large and smaller firms. Other methods used were Jobcentre Plus and newspaper adverts.

The impact of current recruitment practices

We are concerned that current recruitment practices may be discriminatory in that they:

- indirectly block British workers from getting jobs in the industry – such as the prevalence of ‘temp to perm’
- lack transparency – particularly the process and criteria relating to transferring from agency work to permanent employment
- rely on word of mouth, with the result that certain nationalities, underrepresented in current workforces, may be excluded from consideration, and
- are influenced by stereotypical views about the reliability of some nationalities.

The problems agency workers face

The evidence our inquiry received shows there are significant challenges facing the industry if it is to uphold ethical standards and effectively promote equality and cohesion.

We heard from processing firms who seek to operate both legally and ethically, treating agency workers of all nationalities as an integral and valued part of their workforce. But we also found evidence of widespread poor treatment of agency workers, particularly migrant and pregnant workers, both by agencies and in the workplace.

We found evidence of practices that:

- contravene the various legal requirements governing agencies, employment rights, health and safety, and equality
- breach minimum ethical trading standards and basic human rights, and
- treat agency and migrant workers in ways which, while not necessarily unlawful, are an affront to dignity and in some cases exploitative.

These practices were reported to us by workers from all regions in England and Wales working at meat and poultry processing firms and at fairly similar levels of frequency. This not only affects individuals, it also adversely affects relations between different nationalities and undermines fair competition between firms.

Despite the level of concern raised by our findings, the Commission has no evidence to suggest that supply chain practices in the meat processing sector are more detrimental to workers than in any other sector that makes significant use of low-paid, agency migrant labour. Two thirds of agencies agree that the Gangmasters Licensing Authority has improved standards in this sector, whereas non-regulated sectors have not received the same intervention.

The experiences of agency workers in meat processing firms

Different treatment of directly employed and agency workers

We found that conditions of work and treatment of workers in this industry can vary considerably, not only between companies, but also across sites within the same company.

More than eight out of ten of the 260 workers we took evidence from said that agency workers were treated worse than directly employed workers. The worse treatment covered every aspect of their work – from poorer pay, to allocation of the least desirable jobs, and being treated like ‘second-class citizens’ in the workplace. No one thought that agency workers were treated better than permanent staff.

Toilet breaks

Some workers had been prevented from visiting the toilet by their line manager. This included pregnant women, women with heavy periods, and people with bladder problems. Interviewees described the lasting impact of the humiliation of workers urinating and bleeding on themselves while working at the production line.

The degrading nature of the treatment in refusing workers permission to go to the toilet in such circumstances may amount to a violation of their rights under Articles 3 and 8 of the European Convention on Human Rights.

Physical abuse

Around one-fifth of interviewees told us about being pushed, kicked or having things thrown at them by line managers.

“The managers... they would pull our clothes... and shout at [us]. And they even [threw] hamburgers. They were so angry because we were new and couldn't do the job as fast as we were supposed to... those frozen hamburgers are like stones.”

(Polish male working in meat processing factory, East of England)

Verbal abuse

Over one-third of workers said they had experienced, or witnessed, verbal abuse. These reports came from workers across England and Wales in a variety of processing firms, so it is not an isolated problem. The shouting was experienced as bullying, humiliating and abusive in its intent. The perception of some women interviewees was that women

received more verbal abuse from line managers, and there were instances of sexual harassment.

A number of workers told us about increased levels of anxiety, feelings of humiliation and inability to sleep, due to regular verbal abuse.

“I'll never forget it... I'm not a slave. I just can't speak English. He talked to me like he talked with an animal or something like that. It is so terrible... sometimes I don't even sleep in the night. Because the next day I need to go to there [to that] horrible place again.”

(Brazilian male in poultry processing factory, East of England)

Poor treatment of pregnant workers

A quarter of workers mentioned poor treatment of pregnant workers. Women attributed repeated miscarriages to the lack of adjustments to work. We also received reports of pregnant workers being forced to continue work that posed risks to their health and safety, including heavy lifting and extended periods of standing, under threat of losing their job.

Interviewees were not aware that pregnant agency workers had any rights not to be discriminated against on the grounds of their pregnancy.

Some agency staff were given no further work after managers realised that they were pregnant. This is an issue that requires further attention. Agencies admitted to us that they felt under pressure not to supply pregnant agency workers.

“Well they get rid of them [pregnant agency workers] when they find out... There’s nothing we can do about it... At the end of the day, without being disrespectful, if they ring up for 20 people they are looking for 20 arms and legs to do the job. They don’t want 19 and a pregnant one who can’t do this and can’t do that.”

(Manager of work agency)

“Working at a line, it’s really hard work, and the boxes are about 16kg, each, so they’re quite heavy and my hands are swollen at the end of the day... and painful... There are days I just cannot open the door, or even keep a glass in my hand. I can’t feel anything.”

(Polish female working in meat processing factory, East of England)

Health and safety problems

Concerns about health and safety were raised in over half the interviews. One in six interviewees highlighted health and safety as an area where agency workers received worse treatment.

The main issues were:

- poor quality and ill-fitting personal protective equipment (PPE) – such as gloves which easily split
- lack of appropriate PPE – such as warm clothing for workers in cold areas, or protective gloves for people working with knives and frozen products, and
- sharing PPE – having to share wet, sweaty or soiled overalls and boots which had not been cleaned or dried between shifts.

Workers spoke of pains to the limbs and extreme fatigue, partly due to the lack of job rotation, which meant they had to carry out repetitive tasks on fast-moving production lines for extended periods of time.

Many migrant workers had either not been provided with health and safety training or had been unable to understand it fully.

Only about three in five (59 per cent) firms said that their business provides the agency with a health and safety risk assessment of the relevant job roles before using staff. This is a mandatory requirement to ensure agency workers are placed in a safe environment.

Working time breaches

Some workers told us they worked every day of the week without any days off. We were told:

- the maximum number of hours worked per week, on a regular basis, was 90 hours
- of other workers regularly doing over 60 hours and,
- of individual shifts lasting 16–18 hours, with workers expected to start work again after a few hours’ rest.

Even if workers have signed an opt out of the 48-hour maximum working week – which most agency workers do – they have the right to at least one day off a week and a break of at least 11 hours between one day’s work and the next.

Other problems associated with agency labour

There are other aspects of agency work that were commonly complained about. Although not unlawful, these are causes of tension and resentment between workers, because they do not apply to permanent workers doing the same job.

Agency workers sent home from work

Many agency workers are told they are not needed, either immediately upon arriving at the factory, or after working part of a shift, due to overbooking of agency staff. They are frequently sent home without payment despite many having spent time travelling to work. Those at factories in rural locations reported having to wait unpaid for 10 or 12 hours until the agency-supplied transport could take them home.

Differences in pay rates

Around a quarter of processing firms said their pay rates are higher for directly employed workers than for agency workers. And less than a quarter offer the same enhanced rates to agency workers for doing overtime, or working weekends and bank holidays.

Agency workers expressed their frustration about working alongside directly employed colleagues who, at peak periods, are being paid up to three times as much for carrying out the same work.

Fewer and shorter breaks

Around one in six agency workers said they got fewer and shorter breaks than directly employed staff. They also got unpaid breaks, whereas directly employed staff were paid.



Experiences of agency workers with agencies

Most of the agency workers we interviewed expressed some dissatisfaction with their agency, although there are some good practice agencies taking considerable steps to help migrant workers in particular.

The problems agency workers are experiencing with agencies, found in our inquiry, build on those documented in several previous reports into agency and vulnerable workers generally (7). However, we did not anticipate the level of coercion and fear we found.

Paying agencies to find work

Around one in seven interviewees had paid their agency to find work for them, or knew someone who had done this.

It is unlawful for agencies in the UK to charge a fee before finding work for an individual, but no one who mentioned paying to find work seemed aware of this. People with limited English language skills were more likely to be exploited in this way.

Coercion and threatening behaviour

Some migrant workers had been forced to work – when they were tired after a long shift, ill or pregnant – under threat of losing their job and any further work from the agency.

There were also reports of:

- an agency entering the workers' house and waking up sleeping people to make them work on their day off, and
- agency managers standing at the factory exit and turning back agency workers to force them to work overtime when they tried to leave the factory after their shift had ended.

“The Polish agency managers just treat us very badly... there was a situation where one lady she's been... asked to work overtime and she was tired after eight hours just standing in one place and the Polish manager said, ‘We have to sack, I think 20 people to make the rest realise that they have to do it’.”

(Polish male working in meat processing factory, Yorkshire and Humber)

It is a critical breach of the Gangmasters Licensing Authority (GLA) licensing standards to force or coerce a worker to work against their will.

Problems with holiday pay and taking leave

A quarter of the workers we interviewed said they had had problems taking, and being paid for, their annual leave. This was one of the most common problems people had with their agencies.

“[The agency] says ok, you can go on holiday. When you go back they never pay you. If you argue ... the next day you don’t have the job.”

(Polish interviewee working in a factory processing meat and poultry, East Midlands)

Some agency workers thought only directly employed workers received paid annual leave. A number of workers linked the problems they experienced taking their annual leave and getting holiday pay with a lack of information from the agency on entitlements and how to obtain leave.

The legal minimum holiday entitlement is 5.6 weeks, calculated from the number of hours worked.

Problems getting full payment from agencies

Some agency workers complained of not being paid their full wages. They either didn’t receive the correct payment for the number of hours worked, or didn’t get enhancements they were entitled to. All workers, including agency workers, are entitled to receive at least the national minimum wage and it is a breach of the GLA licensing standards to withhold this.

Some workers who tried to contact their agencies about failure to pay complained about being ignored, their calls not returned, or being passed from one person to another. A small number felt that, because they were always underpaid, this was a deliberate ploy by the agency.

Deductions for housing

Direct provision of housing to agency staff has fallen since 2007 when a maximum charge for deductions was introduced. One-fifth of agencies do help migrant workers find suitable accommodation. However, we heard allegations of housing being supplied at charges above the legal rate by third parties linked to agencies. Two workers told us that agencies they had been with gave them no choice but to live in accommodation provided by the agency. This is a breach of the GLA licensing standards.

“Before when I came into this country, when the [agency] bring us into this country from Poland, in the contract they’ve got a point where [we] must ... live in agency accommodation ... Those houses are very bad quality.”

(Polish male working in meat processing factory, Wales)

Deductions for transport

A number of workers told us their agency was charging them an unreasonable amount for transport.

“We were deducted money for transport, £7 a day..... so there were times we worked and we could earn just [enough] for accommodation and transport.”

(Polish male working in meat processing factory, East of England)

Good practice agencies mentioned competitors who were subsidising their charge rates by deducting high transport costs from workers.

Deductions by payroll 'umbrella' companies

Many agency workers are required to work through a payroll company who pays the wages on behalf of the agency. The worker sometimes gains a few extra pounds in the pocket per week because of a tax allowance scheme which takes them below the level at which they need to pay National Insurance.

However, this means that they will lose out later on when claiming any National Insurance related benefits and, as the payslip below demonstrates, they can lose up to 10 per cent of their weekly wage in an administrative fee deducted by the payroll company.

Example of pay slip issued by a payroll company

EMPLOYER				EMPLOYEE		DATE	
A Payroll Company				An Agency Worker		23/03/2009	
DEPARTMENT		N.I. NUMBER & TABLE		TAX CODE	PAY METHOD	PERIOD	
A Work Agency				6031	BACS	w52	
YEAR TO DATE		RATE	HOURS	PAY		DEDUCTIONS	
Total Pay	89.00	6.50	32.00	Basic 1	208.00	PAYE Tax	0.00
Taxable Pay	89.00					NIC	0.00
Tax	0.00					Umbrella Margin	24.00
Tax Credit	0.00					Tax Relief Expense	95.00
N.I. Employee	0.00						
N.I. Employer	0.00						
N.I. Pay	89.00						
SAP	0.00						
SPP	0.00						
SSP	0.00						
SMP	0.00						
Pension Employee	0.00					Other Deductions	-95.00
Pension Employer	0.00						
(T=Taxable, N = NI'able, B=Both)							
HRS	32.00	TAXABLE PAY		89.00	DEDUCTIONS		24.00
ERS	0.00	NON-TAXABLE PAY		119.00	NET PAY		184.00
N.I.		TOTAL PAY		208.00			

No tax or National Insurance deducted

A £24 'administration fee' deducted every week by this payroll company (over 10% of the wages)

Additional problems for migrant workers

Around 70 per cent of workers supplied by work agencies to meat and poultry processing firms are migrant workers **(8)**. The majority of workers we interviewed were living with one or more members of their family.

We found that the problems and vulnerability migrant workers face as agency workers are substantially increased by their migrant status.

Lack of understanding of employment documentation

Many agencies do not make sure that workers whose first language is not English understand the documents they give to them. And only one in eight translate key employment documents. We found that workers who did not have a copy of their employment documents, or did not understand it, were confused about their rights and also what rights, such as deductions from wages, they had signed away to the agency.

Despite the fact that over one-third of the migrant workers we interviewed did not understand the contents of the documentation their agency had given them, they felt under pressure to sign up to it. Some had asked family, friends or local advice agencies to translate it for them afterwards, but none had refused to sign it beforehand.

Some never received a copy of the documents, in breach of the Gangmasters Licensing Authority (GLA) licensing standards, leaving them unsure as to what they had signed up to and with no means of checking.

Different treatment based on nationality

Seven out of ten interviewees said they thought they were treated differently in factories or by agencies because of their race or nationality. A number of workers said that line managers favoured workers of their own nationality in terms of work allocation, work rotation, access to personal protective equipment (PPE) and recruitment to permanent positions. This perceived favouritism damaged relations between different nationalities.

The most common complaint was unfair allocation of work. Interviewees told us that some nationalities were consistently given work which was harder, heavier or more unpleasant.

One-third of interviewees described verbal abuse in the workplace, often as an everyday occurrence. Migrant workers commonly described their experiences of verbal abuse as not being treated as a human being, but as a 'animal' or 'object'. Some interviewees said that factory managers and agencies knew that migrant workers would put up with poor treatment as they had limited choices.

One voluntary sector organisation described a ‘pervading culture of racial abuse’ in some processing firms. And a number of interviewees saw the verbal abuse they received as racially motivated.

“This manager is coming and [shouting] ‘you f***ing shit, you f***ing shit Polish’. They use the coarse [language] like this. We’re cutting small pieces off the meat, and if it’s some fat on this, managers come and swear [at] people.”

(Polish female in meat processing factory, North West England)

Segregation by nationality

One of the challenges for processing firms is to manage a highly diverse workforce where many migrant workers have limited English skills. A key approach appears to be the segregation of shifts or production lines by nationality.

Interviewees said that:

- managers preferred particular nationalities for certain shifts as they regarded these workers as ‘more reliable’ or ‘hardworking’
- some firms attempted to manage communication challenges or to avoid tensions by segregating shifts so that all workers spoke the same language, and
- some supervisors refused to have certain nationalities working for them on grounds of race or colour.

“There was a [English] manager, and he just didn’t like black people and if there were some black people [sent from the agency], they were able to stay just one, two days and everybody knew that after two days, you wouldn’t see a black guy again... he [would] approach the black guy and ask him for his name. And when he got his name in writing... the guy disappeared.”

(Polish female working in poultry processing factory, East of England)

Segregation on the grounds of nationality can amount to unlawful discrimination, and is also damaging to integration and interaction between different nationalities both in and outside the workplace.

Insufficient support with language skills

Most workers told us their firm had not offered them support to learn English (or Welsh, for workers in Wales). Less than one-third of agencies offered advice on accessing English lessons. Many migrant workers found English lessons themselves as they saw this as the key to finding better work and being able to interact more effectively with British colleagues. Lack of fluency in English was consistently linked to poor treatment, and inability to access information and complaints procedures.

Vulnerability to criminal exploitation

At its most extreme, a lack of knowledge of rights and barriers to complaining can lead to criminal exploitation of migrant workers. In one instance a criminal gang charged migrant agency workers £250 for a placement at a local poultry firm. Agency workers were then subjected to demands for increasing amounts of money and to severe beatings if they were not able to keep up with escalating payments. Hundreds of workers were affected and suffered in silence.

The police inspector who led this investigation said that similar exploitation of migrant agency workers had also been found in 12 other police forces across England and Wales.

Worcester News

Gang are guilty of plot against group of Polish workers

A RUTHLESS gang led by a thug nicknamed "Little Frog" have been convicted of plotting a terrifying extortion racket against Polish workers in Hereford.

A jury at Worcester Crown Court convicted four men of conspiring to commit blackmail at the end of a six-week trial.

Cash demands of up to £400 were made to victims in return for fixing up jobs at the Sun Valley poultry firm and other companies.

Threats were issued to enforce payment of the so-called "tax" and violence dished out to some of those who refused.

Two men who upset the gang ended up in hospital with a broken jaw and a fractured eye socket.

Others fled from their Hereford homes in panic, some returning to Poland early and ditching five-



GUILTY: Michal Zubrzycki.

What causes agency workers to be vulnerable to poor treatment?

We found that vulnerability is increased by the interaction of a number of factors including: being an agency worker, limited English skills, pregnancy, lack of employment status and unfair tax status.

Workers failing to make complaints

Workers are afraid of complaining, even in the limited number of cases where they have access to complaints procedures and understand their rights.

One-third of workers said they were afraid of complaining about poor treatment in the workplace or by their agency. These were mainly agency workers, fearful that they would lose their current job, or that future work would be withheld as ‘punishment’ for raising a complaint. Some workers told us about instances where this had occurred. They also thought that if they did complain they might lose the chance to achieve their goal of transferring to direct employment.

“If someone employed by an agency [says] ... he doesn’t like something with his job, they say, ‘Okay, you can go home, we’ve got 100 different people for your place.’ ... It is better to not say anything and just work, because after [making a

complaint] I won’t get a job. They [the agency] don’t call.”

(Polish female interviewee working in poultry processing factory, East of England)

Only around half the workers we interviewed said they knew who to go to if they had a problem in the workplace.

Most agency workers endure unlawful or undignified treatment on the basis that they feel powerless to achieve the result that they want, and do not think the problem will be resolved without them suffering penalties. In the minority of cases where workers had complained they were dissatisfied at the response, as nothing appeared to improve.

Workers were much more likely to raise concerns in firms that provided a risk-free environment for doing so, but we found that this sort of environment is rare. This is despite the fact that the firms who operated in this manner told us that listening to concerns from workers helped them operate more efficiently and solve problems before they disrupted production.

The three-way relationship between the agency worker, agency and processing

firm makes it difficult for complaints to surface, and where complaints are unresolved, presents additional difficulties to agency workers trying to enforce their rights.

Lack of awareness of any problems by firms

Employers are legally responsible for making sure discrimination or harassment, on grounds of nationality or race, does not occur. But it appears that processing firms are not taking steps to prevent or to remedy this because they do not even acknowledge the existence of problems. Nearly all firms said they were unaware of the main concerns consistently raised by agency workers and did not even suspect they occurred in their factories – harassment, discrimination, poor treatment of pregnant workers, tensions between different nationalities, physical assaults, and workers being victimised for making a complaint.

Most firms had received no formal complaints from workers in the past 12 months about these issues. They mainly thought this was because there were no problems or, in a minority of cases, that although there might be problems, workers didn't think these were serious enough to complain about. But workers told us they were deeply affected by their experience of discrimination, harassment and tensions, and it also damaged integration and cohesion in the workplace.

The strength of our evidence indicates that there is no room for complacency in any workplace that includes a high proportion of low-paid, migrant workers.

A further problem is that processing firms and agencies are unsure who is responsible for dealing with complaints from agency workers. They were almost evenly split as to whether the agency or the firm had the main responsibility for dealing with them.

Lack of employment rights

Many agency workers endure poor treatment in the hope of gaining direct employment under a contract of employment, and the rights associated with it.

Over half the workers supplied to processing firms are engaged under a contract for services. This is not a contract of employment and means that they do not have the rights that are exclusive to employees. These include:

- the right not be unfairly dismissed or unfairly selected for redundancy
- the right not to be dismissed or disadvantaged for exercising their right to health and safety
- unpaid leave for family emergencies, and other paid or unpaid time off work in certain situations, and
- statutory redundancy pay.

Unfair tax position

Despite having no employment contract, agency workers pay PAYE and have Class 1 National Insurance contributions deducted from their wages. We are concerned that these very low-paid workers are doubly disadvantaged, paying all the tax of an employee and receiving none of the benefits, thus increasing their vulnerability to any loss of income.

Firms using agency workers to avoid employment obligations

Around a quarter of firms told us that one of the reasons they use agency workers is because this does not entail the obligations that come with direct employment. Firms using agency workers to avoid meeting employment obligations are breaching the Ethical Trading Initiative (ETI) code, which states that: ‘Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting’.

About six out of ten firms use agency staff all year round. A number of workers told us they had worked continuously for a number of years as temporary agency staff in the same factory in the hope of direct employment.

Processing firms told us the most important reasons for using agency workers were:

- to meet the needs of their customers better, and
- to manage fluctuations in demand.

Cost savings are not the deciding factor for the majority – indeed only around one-third of firms cited cost savings as an important factor in recruiting and using staff supplied through agencies.

Firms told us that their ability to offer permanent employment is affected by unpredictable fluctuations at short notice in supermarkets orders.

“Your agency are there just, because the supermarkets are so, you know, one week they’ll say they want X amount of thousand cases, and the next week that will drop off,....If the supermarkets’ ordering system was a bit better, you could say right for the next 10 weeks I want that amount of staff, we could recruit them.”

(HR Manager, poultry processing firm)

It is clear that agency labour plays an important role in managing short-term fluctuations in demand. But the fact that most agency workers work in the same jobs, the same number of hours as directly employed staff, and are often used all year round, suggests that they are not being used just to cover peaks and troughs.

Managers in good practice firms said that it was not ethical to keep a member of staff working on an agency basis when they weren’t covering fluctuations in demand.

Lack of awareness of existing rights

Lack of English language skills often means that workers do not understand their employment status or the rights they have. None of the migrant agency workers we interviewed had any idea whether they were working under a contract for services or as an employee of their agency. Over one-third of migrant workers could not understand the documentation they had been given because it was only provided in English. Others had not been given any documentation by their agency.

Lack of English language skills

Lack of English language skills meant that many workers:

- did not understand instructions given by managers, including on health and safety issues
- were constrained in their choice of agency and unable to progress at work, and
- suffered more verbal abuse in the workplace.

Culture of abuse towards agency workers in some firms

A significant proportion of the unacceptable and discriminatory practice in the workplace stems from treatment by line managers, but it is difficult to conceive that managers at a higher level are not aware of incidents. In any event, under the Race Relations Act, employers are legally required to take reasonable steps to provide a harassment-free environment, regardless of their knowledge of specific circumstances.

Some workers observed that line managers were themselves under pressure and saw verbal abuse as an everyday part of managing and motivating staff to meet production targets.

However, all workers agreed that agency staff were much more likely to experience this type of abuse. In fact, interviewees who had moved from agency work to direct employment commented on the reduction in abuse directed at them.

A number of migrant workers linked verbal abuse with a manager's frustration at their inability to speak fluent English and immediately understand instructions. Instead of finding ways to communicate with workers, line managers often resorted to shouting and verbal abuse.

None of the workers submitting evidence to the inquiry had experience of managers challenging abusive or discriminatory treatment of workers. Some highlighted the lack of training for line managers as a factor.

In the good practice factories we visited, managers agreed that shouting and swearing at production workers, to make them work faster or harder, was not only unacceptable, but also ineffective in motivating them. They advocated well-trained managers leading by example in factories with a clear ethos of respect, in which shouting and abuse was not tolerated.

The impact of poor practices

As the Department for Business, Innovation & Skills (BIS) advised us, failures to meet workplace obligations can:

- Contribute to a ‘race to the bottom’, if businesses flout regulations in what is a low-skill, low-margin sector
- Reduce business incentives to invest in technology and training, with potentially adverse effects on productivity and quality
- Have an adverse effect on the health, safety and economic wellbeing of workers, and
- Create community tensions.

Food hygiene

The evidence to our inquiry showed both a lack of adequate training for some agency staff and practices which disregarded food hygiene.

Workers took the view that the constant pressure to increase line speeds and the rate of work had an adverse impact on compliance with hygiene standards.

“Constantly forcing people to rush. For example [if we] try to wash or to wear something [protective clothing], because this is a hygienic process, [working with food], managers constantly pressure ‘Move, move! Why are doing so slowly? I will dismiss you.’”

(Polish male working in meat processing factory, Yorkshire and Humber)

The Meat Hygiene Service (MHS) confirmed that inadequate training and disregard for hygiene can result in:

- contamination of the product
- for the factory – inadequate cleaning and disinfection standards
- for the worker – health and safety risks, and
- for the consumer – depending upon the level of contamination, from food poisoning to serious illness and death.

The MHS stressed the importance of processing firms ensuring that training was understood by all staff, including those whose first language is not English.

The impact of poor practices on workplace inclusion

Over half of workers reported tensions between different nationalities and limited integration in the workplace. Indicators of poor inclusion in the workplace included:

- verbal abuse related to nationality
- arguments, sometimes resulting in fist fights, between workers of different nationalities
- exclusion and isolation of particular nationalities, and
- segregation (both by shift, and self-segregation during rest periods).

However, most migrant workers we interviewed were positive about their experience of life in England and Wales and their interaction with members of the local community, describing relationships as being more positive in the community than in the workplace.

“When we moved, the neighbour, ... an English person, they even helped us [sort out problems] with the electricity... my son plays with the kids in the street and everybody gets along together nicely, there’s no problem.”

(Portuguese female working in poultry processing factory, East of England)

Factors which are adversely affecting inclusion

The workplace tensions appeared to be influenced by a number of factors, including:

- **Failure to address harassment and discrimination:** Working in an environment where harassment and discrimination were commonplace, and went unchallenged, deepened divisions.
- **Lack of language skills:** A lack of proficiency in English for some workers, combined with insufficient access to English language training, is reducing integration and cohesion in the workplace.
- **Pay differences:** Some directly employed workers resent agency workers because the lower pay they receive is viewed as depressing wages. Agency workers also told us of being on the receiving end of this resentment.

- **Using agency workers to do overtime:** Permanent workers see the use of agency workers to do overtime and ‘premium shifts’ more cheaply to be reducing their own opportunity for overtime. Businesses with 500 or more workers are three times more likely to use agency workers to do overtime, compared to businesses with less than 500 workers. Agency workers are also more likely to do overtime in businesses that supply supermarkets.

“There’s now a lot of resentment from English against the foreigners coming in as well, because of the current climate with the credit crunch... and thinking that they’re taking their work. But the agency and the management of the site... they’re not doing anything... I think it [could] be a time bomb ready to go off to be honest.”

(British male working in meat processing factory, North West England)

- **Segregation by nationality:** Reports of segregated workplaces included evidence submitted by the Polish-Welsh Mutual Association which stated that Welsh and Polish workers are typically segregated on processing lines. This practice, and the consequent lack of interaction between different nationalities, increased the scope for perceptions that the other nationality was being treated more favourably.

Good practice by agencies and processing firms

Good practice in promoting inclusion

We found examples of firms who managed to promote positive relationships between nationalities in the workplace. They had a similar range of nationalities working for them as firms experiencing tensions, which clearly shows that hostility between nationalities in the workplace is not inherent but can be avoided through targeted action.

This good practice included:

- **Company ethos:** Company policies setting out the firm's commitment to dignity at work, linked to clear expectations of behaviour. These were communicated to all workers at induction, and consistently enforced, and were seen as important in promoting inclusion in the workplace.
- **The role of managers:** Workers highlighted the role of line managers in promoting interaction and cohesion in the workplace. They mentioned the importance of creating inclusive teams where workers of all nationalities felt part of an organisational whole.

Promoting cohesion between nationalities in the workplace

Firms have various ways of dealing with language barriers in the workplace. Some employ interpreters. Others provide

English language lessons. This all helps to build skills and confidence and develop positive communication.

Other positive steps taken by firms included:

- Promoting interaction between workers of different nationalities – even setting up factory sports teams, where migrant and British workers played alongside each other, such as at Dalehead Foods.



Factory football team at Dalehead Foods

- Dealing quickly with incidents caused by tensions between nationalities.
- Providing information to help migrant workers integrate into the workplace and community – such as translating information about charity fundraising events into several languages to encourage participation.

Managing agency workers well makes good sense for business

Agencies and firms which promote good practice told us of the business benefits – such as attracting, retaining and being in a position to supply workers who are well-motivated, loyal and increasingly skilled. They become employers of choice, who are able to protect the reputation of their own brand products by eliminating exploitation.

One firm that was frequently mentioned as an employer of choice for agency workers was Bernard Matthews. This was because of the respect for, and lack of differentiation between, agency staff and directly employed workers, and the steps taken to promote good relations between different nationalities. Some agencies have similarly developed a positive reputation as supportive of migrant workers, with word-of-mouth recommendations being passed to others.

Examples of good practice

Good practice work agencies and meat processing firms took steps to address the common problems agency and migrant workers face in several areas:

Pay and conditions

- By paying agency and directly employed workers the same for carrying out similar work.

- By ensuring that workers were paid for their travelling time if they arrived at work, but were not needed.
- Some processing firms carried out detailed checks on agencies before using them, to ensure high standards.

Making sure workers can raise any issues

- By providing a confidential hotline for workers with issues of concern.
- Taking steps to make sure workers understand their employment documentation and that it is accessible.

Engaging workers on contracts of employment

- Some agencies offer contracts of employment to their workers. These not only bring significant advantages in terms of security and employment rights in the workplace, but also benefits outside the workplace, enabling workers to secure better rooms from landlords and mobile phone contracts.

Support for migrant workers

- Most work agencies provide a range of support to migrant workers, including advice on opening a bank account (82

per cent) and help in obtaining their National Insurance number (82 per cent). Around half of agencies provide information about the local community and offer advice on registering with a GP.

- Some agencies provide English lessons or participate with local colleges. Others employ recruitment consultants with language skills for the benefit of migrant workers. Larger recruitment companies are more likely to offer a range of support.

Ethos of dignity and respect in the workplace

We found evidence of some firms that:

- train managers to positively motivate their workers, resolve conflicts and manage diversity
- create a positive ethos where the rights of all workers were respected and poor practice dealt with quickly and transparently
- allocate a 'buddy' to new workers to help them integrate with the workforce and learn skills.

Ensuring health and safety

Firms use various methods to make sure migrant workers understand health and safety information. This includes providing translated training documents, even using picture cards supported with verbal instructions in other languages.

It can be done...

The wide variation in practice between companies, and sometimes across different sites within the same company, shows that the challenges of overcoming common problems can be, and are, met by some firms and at some sites. But firms must first be willing to recognise the issues and take targeted action.

We found that this willingness sometimes stems from a company's own ethos of dignity and respect, and sometimes from pressure from the supermarkets they supply. Regardless of what had motivated them to take good practice steps, firms told us about the business benefits, not least that of a well-motivated, skilled and stable workforce.

Why the current system and planned initiatives are not sufficient to prevent abuse

It is clear that the current system is not working adequately to prevent unlawful and unethical treatment of agency workers by agencies, or by the firms they are placed with.

This is not because the legal, licensing or ethical standards for agencies and firms are generally too low. Indeed many of the problems would be eradicated if the Gangmasters Licensing Authority (GLA) licensing standards and equality and other legislation were properly complied with by agencies and processing firms.

The prevention of the abuse of workers in this sector is dependent on a combination of essential factors:

- Abuses coming to light through workers raising concerns with the agency or workplace, and if they are not resolved, with a regulator.
- Agency workers having legal protection in the workplace from discrimination on the grounds of their race, gender, disability, age, sexual orientation, race or religion regardless of their employment status.
- Effective, adequately resourced regulators – particularly the GLA – to ensure consistently enforced standards for agencies.

- A fair, competitive environment so those traders who comply with and maintain standards can operate without disadvantage.
- Supermarkets taking greater responsibility for improving poor practice in their supply chains.
- Agencies, firms and supermarkets maintaining standards and reporting any breaches to the regulators.
- Union protection for workers.

Abuses are not coming to light

Abuses of workers, and the poor standards that allow unethical companies to undercut their competitors, are not coming to light. This is principally because of the barriers that prevent workers from complaining, either internally or to a regulatory body.

Complaints will only surface if the insecurity of employment that deters agency workers from complaining is addressed. Workers need protection from losing their job, both through legislation, and by processing firms making a commitment to give them a permanent contract where this is practical.

Current government initiatives – such as raising awareness of rights and a

confidential helpline – cannot address the whole problem of complaints failing to surface, since lack of awareness of rights is only part of the cause. And given the proportion of workers that are afraid of making complaints, any system which places the principal onus on vulnerable workers to raise issues will face problems.

Although further protection for agency workers will come into force next year, this will not address agency workers' insecurity of employment, particularly the majority who do not have an employment contract with their agency. Neither the existing nor forthcoming legislation addresses this lack of employment protection.

When the Agency Workers Regulations are implemented in October 2011, agency staff will have the right to the same pay, holidays and other basic working conditions as directly employed staff after 12 weeks in a given job. But they will still have no right to have their job made permanent after that period, or even after a year in the same job.

Some good practice firms give agency workers a permanent contract after they have done three or six months work. But others continuously use the same agency workers for months or years, rather than to cover peaks and troughs. As our evidence shows, workers become far less vulnerable, and much more confident to raise concerns, once they have a permanent contract.

The government cites the flexibility of agency work as an advantage for both employers and workers and the reason for not changing the employment status of agency workers. However, our inquiry found that agency work does not provide

flexibility for low-skilled, low-paid agency workers; the converse is the case. They feel obliged to work any hours requested of them regardless of other arrangements, fatigue, holidays or illness. The Commission supports the need for flexibility in the workforce, but not at the expense of equality, dignity and respect.

Legal protection from discrimination in the workplace

We are also concerned about the lack of legal clarity about the situations in which agency workers are protected from discrimination and the gaps in their legal protection. For example, the Court of Appeal judgment in *Muschett v HM Prison Service* (9) suggests that, in typical agency worker arrangements, the worker is not legally protected from dismissal or disadvantageous treatment on a protected ground, such as race or pregnancy. The legislative gap in the protection of some agency workers needs to be closed and the legal situation for all agency workers needs to be clarified.

An effective, adequately resourced regulator to ensure consistently maintained standards for agencies

The scope for businesses to gain perceived economic advantage based on discrimination, exploitation and illegality needs to be removed.

The principal regulator of agencies in this sector is the GLA. The GLA was set up in 2005, as a direct response to the tragedy of the cocklepickers in Morecambe Bay, to curb the exploitation of workers in

the agricultural, horticultural, shellfish gathering and associated processing and packing industries (the ‘regulated’ sectors).

Almost two-thirds (64 per cent) of agencies thought that the GLA had helped to improve the standards in work agencies and labour suppliers. However, good practice agencies, firms and supermarkets told us they would like to see more enforcement activity by the GLA. Almost two-fifths (38 per cent) of agencies thought that there wasn’t enough enforcement activity, while only just over one in five (22 per cent) thought there was enough or too much.

It was widely recognised that the GLA’s ability to eliminate labour problems from the meat processing sector is hampered by a lack of resources.

“I think they [GLA] have had a fairly positive influence, but the reality is there are not enough of them.”

(HR manager at a poultry processing firm)

It is maximising the use of its resources by developing a voluntary agreement with supermarkets and suppliers – the Supermarket and Suppliers Protocol – which will help to ensure that all parties in the food supply chain participate in upholding the GLA licensing standards and reporting breaches. Both processing firms and agencies told us they welcomed the Protocol on the grounds that it would establish ‘common ground rules for all’, and expose those organisations that sought to exploit agency workers.

We therefore urge all supermarkets and suppliers to sign up to this agreement.

A fair, competitive environment in which consistent standards are enforced

A key theme to emerge was the frustration of processing firms operating within the law and promoting good practice about being undercut, in a very competitive market, by less scrupulous companies which did not maintain the same labour standards.

Agencies frequently expressed frustration at the ability of competitors to undercut them by acting unethically and unlawfully. They were also extremely frustrated with a perceived lack of action from regulatory bodies to prevent these practices, which they considered to be seriously undermining fair competition and creating disincentives to act in a lawful and ethical manner.

The major business concern among the agencies and processing firms was that they were not competing on a level playing field.

- Some faced a stark choice between trading as ethically as they wished and obtaining contracts.
- Some complained of competitors employing a wide range of unethical and/or unlawful practices to keep their wage and tax bills down.

Scope for undercutting

The difficulty in maintaining minimum standards is increased by the legitimacy of tax allowance schemes which are frequently abused. Businesses strongly objected to the use by some agencies of

travel and subsistence schemes which permit the deduction of expenses that bear no relation to the travel or subsistence required, and are not required to be justified by HM Revenue and Customs.

These schemes allow unethical agencies to undercut more ethical rivals by supplying labour at below the guideline minimum rates published by the GLA. The GLA indicative rate is defined as:

...the Minimum feasible rate that a work agency would be likely to charge to meet legal obligations relating to employment of workers (not including management fees or profit).

From 1 October 2009, the indicative hourly charge rate for supplying workers over the age of 22 at the national minimum wage is £7.51 an hour.

There may be exceptional circumstances in which work agencies will be able to fulfil their legal obligation to workers and still charge below it, but the indicative rate provides the most transparent indication that agencies may be depriving workers of their entitlements. Two thirds of agencies said that they had been undercut by competitors supplying labour at less than the GLA Indicative rate in the past year.

A number of agencies do not think that current margins allow for compliance with labour laws, and they attribute this to supermarkets driving their prices, and therefore their margins, down. Some thought that the downward price pressure exerted by supermarkets and the way they went about ordering products from suppliers brought about the conditions which supported unethical traders.

Supermarkets taking greater responsibility for change

A number of agencies and processing firms highlighted what they saw as the significant power of the supermarkets on practices in the meat and poultry processing industry and the agencies that supply them with labour.

1. The supermarkets are, in reality, more powerful than the government and their mountain of legislation.
2. It's an opportunity for supermarkets to use their power and influence on their food manufacturing suppliers for the good of agency workers, that is, to encourage best practice.
3. The supermarket as the 'client' is king, and can really force producers to use only reputable agencies. It will prevent suppliers using agencies that attempt to flout both GLA and AWD (Agency Workers Directive) rules.
4. Only the supermarkets have the leverage to force compliance.

Agencies responding to survey

The role of supermarkets

Our findings show that supermarkets have an important part to play as:

- 80 per cent of processed meat is supplied to supermarkets, and
- the main reason for using agency staff is to meet supermarket demand.

Agencies and processing firms told us they would like increased action from supermarkets to help level the playing field. The main ways in which supermarkets can bring about improvements are:

- Supporting the GLA under the Supermarket and Suppliers Protocol.
- Setting standards for their suppliers.
- Ethical auditing of their supply chains.
- Working co-operatively with suppliers on production demands.
- Dissemination of positive practice.

Variance in standards set by supermarkets

Some supermarkets set higher standards for their suppliers than others.

Most but not all supermarkets have signed up to the Ethical Trading Initiative (ETI) base code, which contains minimum voluntary labour standards. Some supermarkets simply require minimum compliance with the law and ethical trading standards, such as no physical or mental mistreatment of workers.

But others insist on more. Even where there is no legal imperative, some supermarkets are challenging suppliers to operate fairly towards workers and maintain their dignity.

“In particular we expect suppliers to ... respect the wellbeing of their employees by treating employees fairly, honestly and with respect for their basic human rights.”

Waitrose

Examples of practices which are not unlawful but detract from dignity include:

- ‘hotbooting’ – the practice of one worker having to step into the boots of the worker leaving the previous shift, and
- requiring workers to wait for extended periods for permission to use the toilet.

The assumption that requiring higher standards from suppliers will significantly affect the bottom line of supermarkets, and lead to the consumer paying more for meat products, is incorrect. For example ASDA has calculated that encouraging suppliers to pay agency workers in this sector the same as permanent staff doing similar work from their first day will increase their purchasing costs by a relatively small fraction of the overall turnover.

The importance of ethical auditing by supermarkets

It is important that these standards translate into real improvements for agency workers on the production lines. Supermarkets have the power and ability to do more to carefully audit the practices of their suppliers. If they find evidence of illegal or unethical behaviour in a processing firm, or any agencies supplying that firm, they can insist on improvements. The more product they buy from a supplier, the more leverage they have.

We found that the current system of ethical auditing by supermarkets is not uncovering the problems in the agency supply chain, despite almost exclusive reliance upon these audits as the tool for monitoring the supply chain. Ethical audits are not giving a true snapshot of the range and extent of problems facing

agency workers. There are several reasons for this:

- The current risk assessment is based on worldwide labour conditions, such as in India and China, and needs recalibrating for the UK.
- There is no standard audit methodology for auditing under the ETI base code.
- The reliance on self-audits completed by meat processing firms as the primary means of flagging up issues of concern and for supermarkets to assess whether a firm's standards pose a risk.

ASDA, for example, stopped using self auditing around 6 years ago on the basis that 'self audits are not worth the paper they are written on'.

- External audits, although likely to be more reliable than self-audits, are not always conducted by auditors who are sufficiently skilled in identifying issues of discrimination and harassment.

Other factors within supermarket's capacity

- There is a need for retailers to work more closely with their suppliers to help them establish greater predictability in their labour demand.

"[Firms] commonly expressed the view that their retail customers do not fully appreciate how market dynamics drive low pay, short notice overtime and the use of agency workers within their businesses. Price, lead times and product promotions were all cited as factors that can undermine a supplier's ability to meet ethical employment standards."

ETI written evidence

- Although supermarkets are positively disseminating good practice to their suppliers through conferences and other means, this does not appear to be reaching managers in charge of processing lines. But supermarkets are starting to address this, for example, Marks & Spencer are trialling a supervisor training package in conjunction with the ETI.

The role of processing firms in upholding standards

The high proportion of agency workers who told us they had experienced poor and often unlawful treatment by agencies indicates there is insufficient scrutiny of agencies by processing firms before using their labour. Firms also fail to monitor agencies on an ongoing basis.

Nearly all processing firms said they gathered some information about work agencies before using their workers. However, one in seven firms do not find out if the agency they are using is GLA registered. Using an unlicensed agency is illegal and carries the risk of a criminal prosecution and a fine. It is a concern that these firms appear to be ignoring their legal responsibilities.

Although most processing firms do establish the rates of pay and terms and conditions, around one-fifth use agency workers without first finding out what terms and conditions the agency provides to its workers.

Good practice firms told us of the detailed ongoing auditing systems they had set up to make sure agencies were of a high standard and met legal requirements. The vast majority of meat processing firms use between one and four different agencies, with a third relying on only one agency. So it would not be onerous for all firms to introduce systematic processes to make sure agencies comply with the law and operate ethically, and to monitor this on an ongoing basis.

Union protection for workers

In workplaces where unions are recognised, or have a strong presence, we found that they provide a significant degree of protection for workers.

Data from our survey of meat processing firms indicates that firms with union recognition agreements implement practices that could be expected to positively address some of the issues raised. For example, firms with union recognition agreements are more likely to take the following measures than those without:

- To consider the quality of work agencies and the agencies' treatment of workers as being an important factor in choosing an agency.
- To translate key documentation, such as employment contracts and complaints procedures.
- To recognise the potential existence of issues that the firm should address, such as limited interaction between workers of different nationalities and harassment.



- To receive formal complaints on a range of issues, including workers being shouted or sworn at. This indicates that workers are aware of, and more prepared to use, complaints procedures in these workplaces.

Agency workers are generally not covered by collective agreements. Therefore Unite the Union is seeking to negotiate minimum standards for them with a number of employers and has successfully negotiated an agreement with Bernard Matthews. These minimum standards would remove many of the problems and differentials in treatment faced by agency workers.

However, many agency and migrant workers said they were unaware of the presence of any union, or that that the union could help them. Many suggested that unions could do more to reach out to them. But others observed a hostile attitude to the role of trade unions in their workplace. Some interviewees highlighted instances where the hostility of firms to union activity resulted in workers being unwilling to act as union representatives for fear of retribution.

The way forward

What needs to be done

We are making recommendations to the key bodies in the industry – supermarkets, work agencies, processing firms, and their national representative bodies – to encourage a systemic change in behaviour. Our recommendations are also aimed at regulatory agencies, the government, and trade unions.

The recommendations are designed to ensure a level playing field for businesses and to protect vulnerable workers from the problems identified in our findings. Their emphasis is to reduce the onus on vulnerable individuals to challenge the agency or meat processing firm when they are discriminated against or treated unfairly.

Our recommendations address the need to:

- Reduce the causes of vulnerability.
- Hold organisations to account.
- Promote equality, human rights and good relations.

Recommendations to reduce the causes of vulnerability

To reduce job insecurity

As our findings showed, a key source of vulnerability is the insecurity caused by lack of employment protection and rights. We recommend that:

1. Work agencies offer contracts of employment to workers engaged by them where possible.
2. Processing firms regularly review their use of agency staff to ensure that they offer agency workers direct employment when being used on an ongoing basis, rather than to deal with short-term fluctuations.
3. Processing firms do not use agency staff to avoid the obligations which come with a regular employment relationship, in compliance with the Ethical Trading Initiative (ETI) base code.
4. The government reconsiders the extent of employment protection and rights that agency workers engaged on contracts for services require in order to reduce their vulnerability to losing their job if they raise any concern.

To protect agency workers from discrimination in the workplace

5. All agency workers should have the same degree of legal protection as permanent employees from discrimination on any of the protected grounds. This should be the case regardless of whether:

- they have a contract of employment with the agency or are engaged under a contract for services
- the work agency or the end user is responsible for the discrimination.

6. We recommend that:

All processing firms take steps to ensure that the culture in their workplace is one that actively tackles harassment and discrimination and promotes an ethos where discrimination is viewed by all as being unacceptable, including the following actions:

- implementing an equal opportunities policy,
- providing diversity and equality awareness training to staff,
- providing specific training and guidance for line managers, including how to manage pregnant workers and workers of different nationalities
- ensuring that all staff have access to a confidential complaints and grievance procedure.

To address lack of understanding of employment rights and documentation

In our view it is essential that all workers have a clear understanding of their terms and conditions of work. The International Labour Organisation (ILO) recognises the importance of migrant workers being provided with written contracts of employment in language that they easily understand, as a means of preventing forced labour **(10)**.

We recommend that:

7. The Gangmasters Licensing Authority (GLA) includes, as a licensing standard, a requirement for agencies to translate key employment documents into a language the worker easily understands or to take alternative steps to ensure that the worker understands the contents of the documents.
8. The government explores methods of making standardised information available online that can be downloaded by companies, in the main languages spoken by migrant workers, to minimise costs to individual companies.
9. The Department for Business, Innovation & Skills (BIS) consider the requirement for standardised information on pay slips, so that workers understand any deductions.

In relation to agency workers' difficulties in understanding and taking their holiday entitlement, we recommend that:

10. Pay slips issued by agencies include details of the amount of accrued holiday entitlement.
11. BIS give a greater focus to raising workers' awareness of their rights to holiday pay.

Helping vulnerable workers to raise issues of concern

Some processing firms and supermarkets provide confidential hotlines for workers. We recommend that processing firms and agencies:

12. Provide workers with a confidential and well-publicised process for raising issues of concern in a language they understand. This should be done as part of an integrated approach to providing an environment in which workers feel confident to raise issues informally and formally.
13. Display or distribute information and contact details of the Pay and Work Rights Helpline and GLA to workers.

As the three-way relationship between the agency worker, agency and processing firm causes uncertainty as to who is responsible for resolving problems, we recommend that:

14. BIS issue guidance to clarify the circumstances in which the agency has primary responsibility for dealing with a worker's problem, and those in which the processing firm has primary responsibility.

Given the reluctance of workers to complain for fear of suffering penalties:

15. The Commission use its strategic litigation powers to highlight the unlawful victimisation of agency workers for making complaints about discrimination.

Promoting integration and more effective working and reducing vulnerability through English language provision

We recommend that:

16. Processing firms and agencies provide workers with access to ESOL classes, where needed, at times and locations that best facilitate participation and learning.
17. Processing firms assess migrant workers' knowledge of English and literacy in order to develop and deliver appropriate workplace communication, including training packages and signage.

Forthcoming improvements as a result of the Agency Workers Directive

The Agency Workers Regulations 2010 need to provide practical, rather than theoretical, protection for agency workers. So we recommend that:

18. The government ensure that the primary responsibility for checking that the worker is receiving parity after 12 weeks lies with the agency, rather than the onus being on each agency worker. In addition that agency workers understand and can access their rights.

To enable agency and migrant workers to gain the benefits of union activities

We recommend that:

19. Trade unions should build on the work they are already doing in recruiting and supporting migrant workers with wider well-resourced organising campaigns aimed at vulnerable workers, especially in sectors where precarious, low paid employment is common.

Recommendations to hold organisations to account

Ensuring adequate regulation and enforcement

We recommend that:

20. The government ensures that the GLA is funded at an appropriate level to deliver its remit and deal with the widespread breaches of licensing standards revealed by this inquiry. As a minimum the recent increases in staffing should be maintained.

Upholding the GLA indicative rate

We recommend:

21. The GLA provide guidance to work agencies clarifying that, if they are asked by a processing firm to provide staff at less than the GLA indicative rate, or are aware of other agencies doing so, they should inform the GLA.
22. The Recruitment and Employment Confederation (REC) and the Association of Labour Providers (ALP) reinforce this guidance to their membership.

Ending abuse of tax-free allowances

To increase transparency about workers pay, and remove grey areas that are open to abuse, we recommend that:

23. HM Revenue & Customs review the need for non-transparent tax allowance schemes which allow unethical agencies to supply labour at very low rates, and undercut more ethical rivals.
24. Enforcement work in respect of umbrella companies who abuse tax free allowances for workers is prioritised and appropriately resourced, with publicity of enforcement activity so as to raise awareness of this issue.

Forced labour

We recommend that:

25. The GLA be given formal authority and appropriate resources to investigate the new offence of forced labour when the legislation comes into force.
26. The government produce guidance for work agencies and employers on forced labour, including clarifying the circumstances where the actions of recruitment consultants, including forced overtime, can amount to forced labour.

Health and safety

We recommend that:

27. The Health and Safety Executive (HSE) address the issues raised by our inquiry through targeted compliance and enforcement action.
28. Processing firms take steps to safeguard the health and safety of agency workers, including:
 - always providing work agencies with a health and safety risk assessment before sourcing their workers
 - working with agencies to make sure agency workers get the training and equipment they need to carry out their work safely
 - ensuring health and safety training is clearly understood by all participants, including those with limited English language skills.
29. Processing firms take steps to safeguard the health and safety of pregnant workers, including:
 - carrying out individual risk assessments for pregnant staff, including agency staff, and providing suitable conditions for pregnant women to continue work, where possible.

Supermarkets

Retailers that require higher standards from their suppliers are concerned not to be undercut by retailers who do not apply similar standards.

We recommend that:

30. Those supermarkets who are not currently members of the ETI sign up to the ETI base code in order to provide a basis for consistency of standards, and
31. All supermarkets encourage suppliers in their supply chain to adhere to the GLA Supermarket and Suppliers Protocol, including passing on any serious breaches of GLA licensing standards, revealed by ethical audits, to the GLA.
32. To enable supermarket auditing systems to drill down the supply chain more effectively, we recommend that audits are:
 - made appropriate to the risks in the UK
 - not reliant on a system of self-assessment
 - carried out by skilled auditors with the experience and investigatory skills necessary to identify issues highlighted in this report, and
 - able to overcome the factors which are preventing agency workers giving an accurate picture of the conditions in which they work.
33. We also encourage supermarkets to work more closely with suppliers to develop sustainable approaches to ordering which support the increased use of regular employment relationships.

Recommendations to promote equality, human rights and good relations

Recruitment

To guard against potential discrimination in recruitment, we recommend that:

34. Agencies adopt a comprehensive equal opportunities policy which is communicated to clients and people seeking work through the agency, and is understood by all employees of the agency. The policy should make clear who to complain to if the policy is breached.

To ensure fair, transparent and non-discriminatory recruitment to permanent employment, we recommend that:

35. Processing firms implement equal and transparent systems for recruiting staff, in particular the criteria and processes used in moving agency workers to direct employment. These should be communicated to agency workers and included in contracts between processing firms and agencies. Managers should receive training in their operation.
36. Processing firms monitor the outcomes of their recruitment practices to ensure that particular groups, including British workers, are not disadvantaged.

A greater reliance on Jobcentre Plus for recruitment into this sector would increase the range of options for agency workers seeking permanent work and enable processing firms to reach a wider range of potential workers. We recommend that:

37. Jobcentre Plus consider how they can best meet the needs of meat processing firms looking for staff, with a view to increasing the supply of workers through Jobcentre Plus.

Discrimination and coercion

Work agencies and processing firms should:

38. Provide training to recruitment consultants and managers on their duty not to discriminate against, harass or coerce agency workers
39. Treat acts of discrimination, victimisation and coercion by their staff as a disciplinary offence.

Work agencies should:

40. Make sure all recruitment consultants and managers understand that coercion of agency workers is contrary to the GLA's licensing standards and could result in the agency losing its licence.

Promotion of cohesion in the workplace

We recommend that:

41. Processing firms and work agencies, supported by the government and supermarkets, take steps to promote cohesion in the workplace in this sector. Providing support to improve workers' English language skills is a key step in this.

As differences in pay rates between agency and directly employed workers can generate hostility between nationalities and undermine good relations in the workplace, we recommend that:

42. Processing firms consider introducing pay parity between agency workers and permanent staff carrying out like work from day one, including enhancements paid for overtime, weekend and night work.

Training

As part of an integrated approach to equality, cohesion and dignity at work, we recommend that:

43. Processing firms provide supervisors and managers, particularly first line managers, with appropriate training to enable them to operate in a way which promotes equality and cohesion and respects the dignity of workers.
44. Supermarkets support processing firms in their supply chain with training programmes specifically aimed at supervisors and line managers, and build on current ETI initiatives which promote equitable management practices.

Ethical Trading Initiative (ETI) and future work

So that this sector can agree consistent standards with a view to providing a level playing field, we recommend that:

45. The government work with the ETI to set up and lead a representative industry task force to produce standardised recruitment and employment practices for the meat processing industry.
46. This task force includes trade associations and other representative bodies, supermarkets, regulatory bodies, including the GLA and the Commission, selected work agencies and processing firms, the TUC, the Chartered Institute of Personnel and Development (CIPD) and relevant trade unions.

The issues on which consistent standards would benefit the industry to cover the principle issues on which practices differ, including:

- pay parity, and when overtime rates are applicable
 - the period of service after which a company should positively consider making a worker permanent, and
 - the development of a standard audit methodology based on an investigatory approach for auditing under the ETI base code.
47. Key bodies in the sector, including the supermarkets, should increase the sharing of best practice in areas of concern highlighted by this inquiry.

Reviewing the implementation of this report's recommendations

48. Twelve months after the launch of this report, we recommend that the Commission:

- reviews the extent to which relevant bodies have effectively implemented the report's recommendations, and
- takes enforcement action as appropriate.

Licensing and regulation of agencies in other sectors

49. Although outside the scope of this inquiry, we believe that there is a case for broadening the GLA's remit to include other sectors where low-paid agency workers are at risk of exploitation, and we encourage the government to positively consider this.



References

1. Food and Drink Federation <https://www.fdf.org.uk/statsataglance.aspx>
2. Improve, Meat Production, Processing & Preserving, Labour market Information profile 2008.
3. Source: Hybu Cig Cymru - Meat Promotion Wales
http://www.hccmpw.org.uk/news_and_events/newsstory.aspx?k=newsstory-A222B25D
4. Improve, 2009, Meat Production, Processing and Preserving Labour Market Information Profile 2009/2010 http://www.improve-skills.co.uk/downloads/research_lmi/Sub_Sector/Meat-2009-template.pdf
5. Red Meat Industry Forum, A Guide To The red meat supply chain,
<http://www.redmeatindustryforum.org.uk/supplychain/>
6. The REC Annual Industry Turnover & Key Volumes Survey 2007/08.
7. ECCR (The Ecumenical Council for Corporate Responsibility) Vulnerable Migrant Workers: The Responsibility of Business (May 2009).

Oxfam Briefing Paper 31 July 2009, Turning the Tide - How best to protect workers employed by gangmasters, five years after Morecambe Bay.

Agency labour in the UK poultry sector: A research report for the Ethical Trading Initiative, Ergon Associates and Working Lives Research Institute (May 2007).

Hard Work, Hidden Lives, TUC Commission on Vulnerable Employment (May 2008).
8. We have used the definition of 'migrant worker' adopted in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national'.
9. Court of Appeal 2/2/10, Case No: A2/2008/2457.
10. A Handbook for Employers & Business, Special Action Programme to Combat Forced Labour, International Labour Organization 2008.

Contact us

England

Equality and Human Rights Commission Helpline

FREEPOST RRL-LGHUX-CTR

Arndale House, The Arndale Centre, Manchester M4 3AQ

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

Scotland

Equality and Human Rights Commission Helpline

FREEPOST RSAB-YJEJ-EXUJ

The Optima Building, 58 Robertson Street, Glasgow G2 8DU

Telephone: 0845 604 55 10

Textphone: 0845 604 5520

Fax: 0845 604 5530

Wales

Equality and Human Rights Commission Helpline

FREEPOST RRLR-UEYB-UYZL

3rd Floor, 3 Callaghan Square, Cardiff CF10 5BT

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

Helpline opening times

Monday to Friday: 8am–6pm

Calls from BT landlines are charged at local rates, but calls from mobiles and other providers may vary.

Calls may be monitored for training and quality purposes.

Interpreting service available through Language Line, when you call our helplines.

If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs. All publications are also available to download and order in a variety of formats from our website:

www.equalityhumanrights.com

© Equality and Human Rights Commission
March 2010
ISBN 978 1 84206 259 3

Artwork by Epigram
www.epigram.co.uk

www.equalityhumanrights.com