

BERR

Department for Business
Enterprise & Regulatory Reform

**VULNERABLE WORKER
ENFORCEMENT FORUM –
FINAL REPORT AND
GOVERNMENT CONCLUSIONS**

AUGUST 2008

Contents

| | |
|--|-----------|
| Ministerial foreword | 3 |
| Introduction | 4 |
| Executive summary | 5 |
| Chapter 1 – The enforcement framework | 9 |
| Chapter 2 – Vulnerable workers’ perspective | 13 |
| Chapter 3 – Employers’ perspective | 22 |
| Chapter 4 – Third party perspective | 28 |
| Chapter 5 – Government enforcement bodies’ perspective | 33 |
| Chapter 6 – Employment tribunals | 38 |
| Chapter 7 – Regulation of labour providers and agencies | 42 |
| Annexes | |
| Annex 1 – Forum members and other participants | 45 |
| Annex 2 – Summary of issues covered in the Forum | 47 |
| Annex 3 – BERR research on vulnerable workers | 48 |
| Annex 4 – Awareness-raising and publicity by the enforcement bodies | 53 |
| Annex 5 – Comparison of key standards enforced by EAS and GLA | 58 |

Ministerial Foreword



Since 1997 this government has created a fair framework of employment rights including the right to a minimum wage, a right to 24 days paid leave – being increased to 28 days from next April – and the right not to be forced to work more than 48 hours a week.

The picture is better for vulnerable workers than it was a decade ago, but evidence has shown that there are still dark corners of the labour market where more needs to be done to ensure that workers have access to the rights that Parliament intended. It is only by ensuring that employment rights can be exercised and properly enforced that we can both give protection to the most vulnerable, and ensure a level playing field for reputable businesses.

The Vulnerable Worker Enforcement Forum met for the first time in June 2007 to start looking at the nature and scale of the abuse of worker rights, to examine the effectiveness of the existing enforcement framework and identify improvements that could be made.

I thank all of those that contributed to the Forum – unions, business, Citizens Advice, the enforcement bodies, and many others, in bringing evidence and suggestions to the fore. Although there was not always consensus in every area, we have been able to form a picture of the issues facing vulnerable workers, the enforcement challenges and where the priorities are for action.

This report sets out the government's response to issues raised by the Forum. It sets out a programme of action aimed at improving awareness of basic employment rights, facilitating and encouraging the reporting of abuses, and taking steps to join up the workplace enforcement bodies and enhance their profile and deterrent effect.

There should be no hiding place for employers who exploit vulnerable workers and are not prepared to obey the law.

Government will continue to gather and look at evidence about abuses of employment rights to ensure that we are doing all we can to deliver on our promise of protecting vulnerable workers and supporting good employers.

Pat McFadden

Minister of State for Employment Relations and Postal Affairs

Introduction

The Forum was launched in June 2007 to consider evidence on the nature and extent of abuse of worker rights, examine the effectiveness of the existing enforcement framework, and identify possible improvements.

Membership of the Forum comprised the TUC and other unions, government enforcement bodies, Citizens Advice and business representatives. The TUC and union members were able to draw on the work of the TUC Commission on Vulnerable Employment to inform their contributions and highlight particular enforcement issues. In addition to the permanent members, experts in a variety of areas were invited to specific meetings to contribute to the discussion of particular agenda items. A full list of Forum members, and other participants is set out in Annex 1.

This report starts with an overview of the current enforcement framework to set the context. Separate chapters then set out the Forum's consideration of enforcement issues from the perspective of the vulnerable worker, third parties (including intermediaries) who advise workers, the employer, and the enforcement bodies themselves. The report concludes with chapters on the regulation of labour providers and agencies, and on Employment Tribunals.

The Forum has focused on the enforcement of the existing framework of rights, but discussion and consultation has taken place outside the Forum on the underlying framework of workers rights. Over the course of the last year, government has taken a number of significant steps to strengthen the underlying framework including:

- Revisions to the Employment Agency Conduct Regulations to give agency workers a right to withdraw from services provided – such as transport – without suffering detriment.
- Government commitment to implement the Agency Workers Directive following agreement between the CBI and TUC on how fairer treatment for agency workers in the UK should be promoted including agreement that, after 12 weeks in a given job, there will be an entitlement to equal treatment.
- Measures in this session's Employment Bill to give the Employment Agency Standards Inspectorate stronger powers of investigation and access to stronger penalties, and a strengthening of the penalties for non-compliance with the National Minimum Wage.

For the purposes of this report, a vulnerable worker is defined as someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse. Both factors need to be present. A worker may be susceptible to vulnerability, but that is only significant if an employer exploits that vulnerability.

Government conclusions on the issues raised by the Forum and the actions that it intends to take are set out at the end of each chapter.

Executive Summary

Last June government set up a Vulnerable Worker Enforcement Forum to look at the nature of employment rights abuses, assess the effectiveness of the current enforcement arrangements, and identify possible improvements. The Forum comprises the TUC and other unions, business groups, Citizens Advice and the workplace enforcement bodies.

Key enforcement issues identified by the Forum are:

- Low awareness of rights and how to enforce them amongst vulnerable workers.
- Vulnerable worker reluctance to report problems or, in some cases, lack of knowledge of how to do so.
- A confusing enforcement picture with different government agencies enforcing different rights.
- The low profile of some of the enforcement bodies.

The key elements of the government's response to these issues and other enforcement issues raised in the Forum are set out in this Executive Summary.

Raising awareness of basic employment rights

Vulnerable workers need to have an awareness of their employment rights. They also need to know what to do when they suspect that these rights are being breached.

- To address these concerns, government (with its delivery partners) will – starting this year – run a significant, sustained campaign to raise awareness of basic employment rights and to encourage the reporting of abuses.
- Key elements of the campaign will be the promotion of a single enforcement helpline, an enhanced basic rights section on www.direct.gov, significantly more publicity for the Employment Agency Standards Inspectorate, publicity for the new national minimum wage penalties and “fair arrears” provisions (being legislated on through the current Employment Bill), and more awareness-raising work with migrant workers – both here in the UK and in those countries from which most workers come. The campaign will also seek to address worker fears of reporting abuses.

Streamlining vulnerable worker access to the enforcement bodies

Government takes a direct role in the enforcement of a number of basic employment rights and related legislation, but vulnerable worker access to these enforcement options is complicated because five separate bodies are involved, each with their own helpline.

- Government will streamline access by establishing a single telephone gateway to the enforcement bodies through which vulnerable workers will be able to report abuses and access information and advice about the rights enforced by government. Operators will also be trained to identify abuses needing investigation by more than one enforcement agency. Our objective is to transfer the burden of navigating the system of enforcement from the vulnerable worker to the system itself.

Closer working between the enforcement bodies

Further steps are needed to ensure closer working between the enforcement bodies so that the worst employers can be targeted, awareness-raising work made more cohesive, and business plans aligned. To achieve this, government will:

- Establish a Fair Employment Enforcement Board chaired by the Employment Relations Minister which will bring together the enforcement bodies and a small number of independent members to drive effective co-ordination and collaboration. The CBI, TUC, Citizens Advice and others will be invited to nominate suitably qualified individuals for consideration as independent members of the Board. The work of the Board will include oversight of the development of the new telephone gateway, and ensuring that arrangements are in place for effective collaboration on multi-issue investigations.
- Take action – as soon as legislative time permits – to tackle the legal information-sharing barriers that, for some of the enforcement bodies involved, prevent inspectors passing on relevant information to each other.

Improved advice and guidance for business

A small minority of businesses are fully aware that they are breaking the law. The enforcement bodies need to target and crack down on these employers. This is in the interests of the majority of businesses who play by the rules and obey the law.

Others want to comply, but need help and guidance to meet their obligations. To meet their needs, government will:

- Converge all the government's employment law guidance onto the businesslink.gov website with input from stakeholders on effective content and layout, and promote usage of the site, particularly amongst small businesses.
- Provide a single telephone gateway for employers who need advice about the national minimum wage (NMW), working time and other compliance matters.

Enforcement and compliance is not just for government

The task of enforcing the law and raising levels of compliance with workplace rights is not the job of government alone. Unions, advice bodies, business groups, local authority inspectors and others come into contact with vulnerable workers as well as potentially non-compliant businesses on a regular basis. They have a vital part to play.

- We will work with the TUC, unions, CBI and other business groups to encourage them to promote awareness of employment rights, report potential abuses, and use their various communication channels to raise the profile of the enforcement bodies, including publicising examples of prosecutions and other successful enforcement action.
- To encourage more reporting, the enforcement bodies will provide aggregated feedback – on request – to Citizens Advice, unions, and other third party complainants about the value and outcomes of intelligence provided, in a way consistent with confidentiality rules. Greater clarity will be provided about the circumstances in which an adviser can be kept informed of the progress of individual cases.
- We will undertake significantly more face to face work with advice bodies, community groups and local authorities to raise awareness of the NMW, employment agency standards and other basic rights, and build contacts for intelligence and complaints about non-compliant employers. We have started work along these lines with workplace inspectors in the London Borough of Newham following interest from the Mayor of Newham, Sir Robin Wales.
- A third round of the Union Modernisation Fund will be launched, aimed at testing new ideas for improving the support that unions and others can give vulnerable workers at a local level, building on the work of BERR's Vulnerable Worker pilots. We will begin this work as soon as possible.

Licensing

There has been extensive discussion in the Forum, though no agreement, on whether the Gangmaster Licensing Authority's licensing regime should be extended to employment agencies operating in sectors other than agriculture and food processing. Agencies operating in these wider sectors are already subject to regulations enforced by the Employment Agency Standards Inspectorate (EAS). The government does not currently intend to extend licensing but to prioritise effective enforcement of the existing law. It will do this by taking steps to strengthen the EAS and ensure that it develops a significantly higher profile amongst agency workers and agencies themselves, building on the stronger investigative and penalty powers being legislated for through the current Employment Bill.

- The number of employment agency inspectors will be doubled by the end of July 2008.
- There will be a campaign – integrated as part of the wider campaign on basic rights – to promote awareness of the EAS and its powers amongst both agency workers and agencies themselves.
- The GLA and the EAS will work closely together to share information about non-compliant or suspect businesses operating across their respective sectors, and in circumstances where there is evidence that a labour provider may be moving out of a licensed sector into a sector regulated by the EAS.

- Both the GLA and the EAS will undergo Hampton Implementation Reviews within the next year which will provide a fuller opportunity to look at their regulatory effectiveness, including whether the GLA and EAS need access to administrative sanctions such as “comply or stop now” orders, or spot fines which can be applied with immediate effect.

Research

The future development of policy on vulnerable workers must be based on evidence.

- BERR will continue its programme of research on vulnerable worker issues to help identify future trends requiring consideration and to provide the evidence base for further development of policy. The Fair Treatment at Work survey to be undertaken later this year, for example, will cover worker awareness of employment rights, the problems they encounter, and the barriers they face in taking action to assert their rights.
- The BERR-funded vulnerable worker pilots in Birmingham and east London have a further nine months to run. They are generating evidence on the nature and extent of abuse of rights and testing new ways of supporting vulnerable workers and employers at a local level.
- Government will also be taking steps to improve the evidence base about the enforcement of Employment Tribunal awards. Research to be undertaken by the Ministry of Justice later this year will help to clarify how many claimants do not receive their awards, and the contributing factors as to why they do not receive them. This research will be completed by the end of November.

Chapter 1 – The Enforcement Framework

The legal framework

1.1 All workers in the UK benefit from a range of basic workplace rights and protections. Employment rights that apply to all workers include the right to a national minimum wage, a paid holiday entitlement of 24 days a year (increasing to 28 days in April 2009), a right not to have to work more than 48 hours a week on average without a worker’s consent in writing, and a right to rest breaks. There are protections against unauthorised deductions being made from wages and protections against discrimination on the grounds of sex, race, disability, sexual orientation, religion or belief, or age. Workers must also be provided with a safe and healthy working environment. Table 1 shows the key employment rights that have been introduced over the last decade.

Table 1: Key employment rights that apply to all workers introduced since 1997

- National Minimum Wage
- Free choice to work longer, but a right not to work more than 48 hours on average a week
- Compulsory rest periods
- 24 days paid leave (rising to 28 from April 2009)
- Right to no discrimination on grounds of religion, belief, sexual orientation or age
- Protection for public interest disclosure (whistleblowers)

1.2 The Forum’s discussion has focused mainly on the rights which apply to all workers, because these are the ones that are most relevant for vulnerable workers typically in short term and precarious employment.

Enforcement of rights

1.3 The key rights available to workers are often for the individual to assert, ideally engaging in discussion with their employer to try to resolve the issue but, if necessary, by making a claim at employment tribunal. The employment tribunal is the route for workers seeking redress for abuse of basic employment rights such as holiday pay, sick pay, unfair dismissal, or discrimination.

- 1.4** Whilst most rights are for the individual to take forward, government takes a direct role in enforcing the following key rights and related legislation:
- The national minimum wage (and the equivalent for the agricultural sector)
 - The right not to have to work more than 48 hours a week (on average)
 - Health and safety legislation
 - Rules governing the conduct of employment agencies
 - Rules governing the conduct of gangmasters operating in the agriculture, forestry, horticulture, shellfish gathering, food processing and packaging sectors

Government enforcement bodies

- 1.5** Enforcement of this subset of rights and related protections is the responsibility of the five enforcement bodies set out in Table 2.

Table 2: Government enforcement bodies

| Enforcement body | Rights and legislation enforced |
|---|---|
| HM Revenue and Customs | National Minimum Wage (on behalf of BERR) |
| Department for Food and Rural Affairs (Defra) | Agricultural Minimum Wage |
| Employment Agency Standards Inspectorate (part of BERR) | Employment agency standards |
| Gangmasters Licensing Authority – an NDPB ¹ sponsored by Defra | Gangmaster licensing standards |
| Health and Safety Executive – an NDPB sponsored by DWP | Health and safety and working time ² |

Approach to enforcement

- 1.6** The enforcement bodies have a two pronged strategy for securing compliance with the law. First, there is an emphasis on ensuring that both workers and employers are aware of the law and where to seek further advice.
- 1.7** Each of the enforcement bodies currently carry out their own publicity and awareness raising of the rights that they enforce. See Annex 4 for more detail. In addition, all the enforcement bodies have helplines which offer advice and information to workers and employers, and through which complaints about

¹ Non-departmental public body.

² Enforcement shared with local authorities and specialist regulators for some sectors.

non-compliance can be made. Most of these provide access to translation services so that they are accessible to migrant workers, and all of them accept anonymous calls.

- 1.8** Information and advice is also available on-line and complaints can be made via e-mail (generally using a pro forma complaints form), or through the post.

Table 3: Helplines provided by the enforcement bodies (figures for 2007/08)

| Helpline | Number | Annual calls to helpline |
|---|---------------|---------------------------------|
| National Minimum Wage helpline | 0845 6000 678 | 46,849 |
| Agricultural Minimum Wage helpline | 0845 0000 134 | c. 5,000 |
| Employment Agency Standards helpline | 0845 955 5105 | c. 10,000 |
| Gangmasters Licensing Authority | 0845 602 5050 | 13,000 |
| Health and Safety Info Line (Working Time only) | 0845 345 0055 | 3,263 |

- 1.9** The second aspect of ensuring compliance is targeted inspection activity, and the imposition of appropriate penalties for non-compliance such as prosecutions, fines, restitution, prohibitions, and – in the case of the GLA – the withdrawal of licenses, or the attachment of conditions to a licence specifying what needs to be corrected.
- 1.10** All the enforcement bodies encourage complaints from workers through the helplines, by e-mail or through the post. All such complaints are followed up. Complaints can also be received, and are encouraged, from third parties. HM Revenue and Customs, for example, has an on-line complaints form designed specifically for third party complaints. These are followed up where the intelligence seems to be soundly based.
- 1.11** In addition, most of the enforcement bodies undertake pro-active inspections based on an assessment of risk, and may target some sectors or regions in particular. This is in line with principles established in the Hampton review ('Reducing administrative burdens: effective inspection and enforcement', Philip Hampton, March 2005) which highlighted the importance of risk-based enforcement activity, rather than random inspection, in ensuring that resources are focused on the worst offenders.
- 1.12** HMRC, for example, have undertaken targeted enforcement of the hairdressing and care sectors for compliance with the national minimum wage, following recommendations from the Low Pay Commission that these sectors may contain particularly high rates of non-compliance. For proactive enforcement of health and safety, HSE examine accident reports where they suspect under-reporting, particularly by the worst employers. The EAS has undertaken

targeted inspection of employment agency sectors and geographic areas based on patterns of complaints to the helpline. The GLA conducts targeted operations based on types of work and geographical areas where the evidence for exploitation appears greatest.

Table 4: Number of complaints received and number of investigations undertaken (figures for 2007/08)

| Enforcement issue | No. of complaints | No. of investigations |
|---|--------------------------|------------------------------|
| National Minimum Wage (HMRC) | 3,231 | 4,109 ³ |
| Agricultural Minimum Wage (Defra) | 90 | 72 ⁴ |
| Complaints about conduct of employment agencies (EAS) | 1,244 | 1,494 |
| Complaints about working time (HSE) | 49 | 88 ⁵ |

1.13 The GLA’s regulatory model is different, being based around a licensing system. In 2007/08 it undertook 437 licence application inspections; 238 risk-based compliance inspections of already licensed businesses; and 127 investigations into unlicensed activity.

1.14 Information about the number of prosecutions and other enforcement action taken as a result of the investigations identified in the table is set out in Chapter 3.

Other sources of advice

1.15 Free advice on employment matters is available from a number of government and non-government sources. The Acas national number, for example, provides telephone advice on all aspects of employment law, and about the employment tribunal process. Comprehensive online advice is available for workers and for business from www.direct.gov.uk and www.businesslink.gov.uk. Citizens Advice Bureaux can provide face to face advice.

3 Investigations by HMRC (and EAS) are undertaken as a result of pro-active risk assessment as well as in response to specific complaints. The NMW figure relates to investigations closed during 2007/08. Some of these would have been from complaints received in 2006/07

4 AMW figures are for 2006/07. Later figures have not yet been compiled.

5 HSE undertakes working time investigations only in response to complaints. However, where working time issues are uncovered as part of a wider investigation, these will be looked at.

Chapter 2 – Vulnerable Workers’ Perspective

2.1 The Forum has discussed the nature and extent of employment rights abuses being encountered by vulnerable workers, including migrants. It has looked at the barriers to workers taking action to assert or to enforce those rights, including a lack of awareness of rights. The Forum has also looked at migrant worker vulnerability and the involvement of advisers and other third parties in advising workers and reporting suspicions of abuse.

Employment rights abuses

2.2 An early part of the Forum’s work involved seeking to establish the nature of the employment rights abuses being experienced by vulnerable workers. Citizens Advice had evidence to draw on from the caseloads of individual bureaux. The TUC and unions had evidence derived from union branch officials, and fieldwork undertaken by the Commission on Vulnerable Employment. Early experience from the BERR-funded vulnerable worker pilots was also providing evidence of the types of problems being experienced.

Table 5: Breaches of employment rights highlighted by Forum members

| Nature of abuse |
|--|
| <ul style="list-style-type: none">● No written terms of engagement● Workers being paid below the minimum wage and not being paid for all the hours worked● Unauthorised deductions being made from wages● Holiday pay not being paid● Wages and holiday pay owed not being provided after leaving a job● Inadequate rest breaks being given● Excessive hours● Workers not being provided with safety equipment● The provision of sub-standard “tied” accommodation |

2.3 Work commissioned from Acas by the Forum secretariat, analysed the nature of calls made to the Acas national helpline by workers who made use of the Language Line (translation) facility, as a lack of English skills is an aspect of

vulnerability. The results are set out in table 6 which also compares the nature of calls made through Language Line with the generality of worker calls to Acas.

Table 6: Analysis of calls made by workers to the Acas helpline using the Language Line service

| Subject matter of worker call | % of Language Line calls | All worker calls to helpline |
|--|---------------------------------|-------------------------------------|
| Holidays and working time | 29% | 12% |
| Wages and NMW | 26% | 8% |
| Discipline, dismissal and grievance | 17% | 23% |
| Contracts | 9% | 17% |
| Maternity, paternity and adoption | 8% | 8% |
| Diversity and discrimination | 5% | 4% |
| Absence, sickness and stress | 3% | 5% |
| Redundancies, lay offs, business transfers | 1% | 15% |
| Family friendly policies | 0% | 3% |
| Others | 2% | 5% |
| Total | 100% | 100% |

2.4 Overall – in comparison to the generality of calls to the Acas helpline – the table shows that there is a much stronger concern with basic rights. Callers appear to be:

- Three times more likely to seek advice about holiday entitlements and working time.
- Three times more likely to seek advice about wage and NMW issues.
- Half as interested in contractual matters.
- Less concerned with discipline and grievance issues.

Vulnerable worker awareness of rights

2.5 An awareness amongst vulnerable workers that there are employment rights and that information about them can be accessed from a number of sources is an essential prequel to any action to enforce them. Forum members, however,

have pointed to low awareness of rights amongst many vulnerable workers. There is corroboration for this in research findings. BERR's *Employment Rights at Work – Survey of Employees 2005*, for example, found that 34% of all employees reported not being very well informed about rights or not well informed at all. Perceived lack of awareness was higher than this for certain groups of workers sometimes regarded as more vulnerable.

Table 7: Percentage of workers regarding themselves not very well informed, or not well informed at all about rights

| Group | % |
|---|-----|
| All workers | 34% |
| Young workers | 48% |
| Low paid earning under £15,000 | 44% |
| Part time workers | 40% |
| Workers in small workplaces (1 – 9 employees) | 40% |

- 2.6** Actual levels of awareness tested by asking specific awareness and knowledge questions showed that these groups (and some others) did in fact have low levels of awareness.
- 2.7** Citizens Advice client research undertaken for BERR this year found that one in four perceived employment right breaches were identified by bureau advisers without the client knowing that a right may have been breached, although this varied by employment right.
- 2.8** Preventative work with groups of people on the verge of entering potentially vulnerable employment is also important. The Forum heard from Marketing Birmingham, (project managers for one of the vulnerable worker pilots being funded by BERR), about work being undertaken to raise awareness of employment rights amongst groups about to enter the workplace. Training was being delivered by Young Enterprise and Connexions to Year 10 pupils in schools with high proportions of early leavers, who would benefit most immediately from the training. This was being delivered in an imaginative way using actors and role play, and by integrating employment scenarios into Young Enterprise activities. Other employment rights training was being delivered to unemployed people on Welfare to Work programmes. More information about the vulnerable worker pilots is set out in Table 10.

Vulnerable worker reluctance to report problems

- 2.9** The Forum heard that some vulnerable workers were unwilling to report problems and were equally reluctant to allow third parties to complain on their behalf. For the enforcement bodies it is a significant challenge to persuade vulnerable workers to come forward with complaints. Even where contact is

made, it is sometimes difficult to persuade the worker to take the complaint further. This is particularly the case where the worker is still with the abusive employer because of fears of intimidation, discrimination, or losing their jobs.

- 2.10** There is a greater willingness to make a complaint once a worker has left employment. NMW enforcement teams estimate that between 50 – 60% of minimum wage complaints come from workers who have left their employment. Employment Agency Standards inspectors estimate that a similar percentage of complaints about employment agencies come from workers who no longer relied on the abusive agency for finding work.
- 2.11** The Forum heard that vulnerable workers were concerned about confidentiality being maintained when a complaint was made, particularly where it concerned a worker employed in a small business. The enforcement bodies could guarantee not to reveal the identity of a complainant without their consent, and investigations could be undertaken on an anonymous basis. However, there were sometimes circumstances where successful enforcement action (such as the recovery of underpaid minimum wage) relied on an individual being prepared to testify. In the area of minimum wage enforcement, for example, the written records of the employer showing pay and hours worked might suggest compliance. Establishing a discrepancy between the written records and the hours actually worked, sometimes required evidence from the worker concerned.
- 2.12** Nearly 5,000 complaints are made to one or other of the enforcement bodies (see table 4). The Forum, however, was concerned about under-reporting. Hard evidence about under-reporting is difficult to obtain, but the fact that risk-assessed NMW investigations (ie not those triggered as a result of a complaint) uncover non-compliance in one in five cases points to under-reporting.
- 2.13** Information about non-compliance from workers themselves is generally the most likely to lead to successful enforcement action, so effective enforcement needs workers to be prepared to come forward. In the case of the National Minimum Wage, for example, a finding of non-compliance is made in approximately 50% of cases where an investigation is triggered as a result of a complaint from a worker. Risk-based inspection is needed to provide a deterrent to abusive employers confident that their workers will not complain, but the average incidence of non-compliance where an investigation is triggered following a risk assessment is lower at 20%.

Confusion about where to complain

- 2.14** Fear of the consequences of making a complaint is not the only barrier to reporting abuses. Forum members reported confusion amongst vulnerable workers about the role and the powers of the different government enforcement bodies, and about how complaints could be made. Forum members believe that the multiplicity of workplace enforcement bodies, each

with their own helplines and complaint forms, presents a confusing picture to the vulnerable worker and may discourage complaints. Even experienced intermediaries such as union officials and CAB advisers can struggle.

- 2.15** Difficulties can be exacerbated in circumstances where workers have complaints raising enforcement issues that needed to be followed up by more than one enforcement body. Scenarios arising could include:
- A worker calling the NMW helpline. In addition to making an NMW complaint, it transpires that the caller obtains work through an employment agency, and appears to be working excessive hours against his will.
 - A worker calling the EAS helpline to complain about the conduct of an employment agency. It also transpires that the caller is probably not being paid the NMW, and is working excessive hours against his will.
 - A worker calling the Agricultural Minimum Wage helpline. The call raises minimum wage concerns, but it also transpires that the caller works for a gangmaster, and is worried about health and safety practices on the farm where he works.
 - A worker calling the HSE helpline. It appears that excessive hours are being worked, but there are also suspicions that the individual is not being paid the NMW for the hours worked.
- 2.16** In these circumstances, the caller is currently given advice on which other enforcement body to contact, but generally no attempt is made to contact the other enforcement body on the worker's behalf. Responsibility for "navigating" the different enforcement bodies in the current system rests with the worker, with the risk that the worker will not pursue the wider complaint.
- 2.17** The existence of different enforcement bodies and different helplines with a relatively narrow area of expertise, and limited duties, also increases the risk that complaints involving multiple abuses (eg. about health and safety and the NMW) which should be of concern to more than one agency are not being picked up.

Migrant workers

- 2.18** The Forum devoted a part of one of its meetings to discuss the experience of migrant – particularly Polish – workers, and had the benefit of the expertise of Dr Jan Mokrzycki, Chairman of the Federation of Poles in Great Britain. The Forum heard that migrant workers were most vulnerable to abuse in the first six months after their arrival. Poor language skills and a lack of awareness of rights to which they were entitled were key factors in migrant vulnerability.
- 2.19** The Forum heard about government work to address migrant worker issues although employers too could have an important part to play in helping migrant workers integrate, and it could be in their interests to do so. More detail on the employer's perspective is set out in Chapter 3.

- 2.20** Government makes information about employment rights available to migrants in a number of ways. There is work with foreign governments such as Poland and Portugal to provide information to workers before they leave for the UK. Information on employment rights is also sent to workers applying to the Worker Registration Scheme shortly after starting work in the UK. This year's NMW awareness-raising work incorporated a migrant worker campaign targeting Polish, Lithuanian and Slovakian workers, including outreach work, bi-lingual posters, press articles and online activity. Most of the enforcement helplines provide language line facilities. More generally, the Department for Communities and Local Government is co-ordinating central and local government work to help migrant workers adjust quickly to living and working in the UK. A lot of advice material for migrants is available.
- 2.21** The Forum heard that a key challenge was finding the most effective channels for communicating these messages.

Overseas domestic workers

- 2.22** There have long been concerns amongst unions, advice bodies and others that overseas domestic workers who accompany their employer to the UK may be the target of employer abuse and exploitation. The government, however, is committed to ensuring that future arrangements concerning overseas domestic workers minimise any risk of abuse or exploitation. Following a recent consultation, the Home Office announced in June that the current safeguards will be preserved and then reviewed as appropriate after the first two years' operation of the reformed immigration system, by which time the government will have fully tested its anti-trafficking strategy.

Informal economy

- 2.23** The Forum heard that there were temptations for both employers and workers to collude to keep a worker in the informal economy. For both there are advantages in avoiding income tax and national insurance; and for the worker there is the possibility of fraudulently maintaining access to state benefits. In some cases, however, workers end up working in the informal economy because of coercion by employers and economic pressures, rather than through choice. Workers employed in the informal economy are at a high risk of not receiving basic rights such as the national minimum wage, paid holiday and statutory sick pay; and the existence of an informal economy also undercuts reputable businesses.
- 2.24** Unions represented on the Forum also pointed to bogus self-employment as being a problem, particularly in the construction sector. Workers in this position do not usually receive basic employment rights.
- 2.25** Despite the temptations, however, studies consistently show the UK to have a small informal economy compared to other countries. A Special Eurobarometer

Survey, conducted across all EU states in 2007 found that the incidence of undeclared activities in the UK was the third lowest in the EU. The UK was also found to have the second lowest incidence of 'cash-in-hand' payment, and the fourth highest rate of self-perceived risk of being detected if working without declaring income.

- 2.26** Tackling the informal economy is a multi-faceted problem of particular interest to the tax and benefit authorities. It goes beyond the terms of reference of the Forum.

Government conclusions

Vulnerable workers (and those who are on the verge of entering potentially vulnerable employment) need to have an awareness of their employment rights to know when they are being abused. They need to know what to do when they suspect that these rights are being breached and they need to be encouraged to complain about their employer where they have just cause.

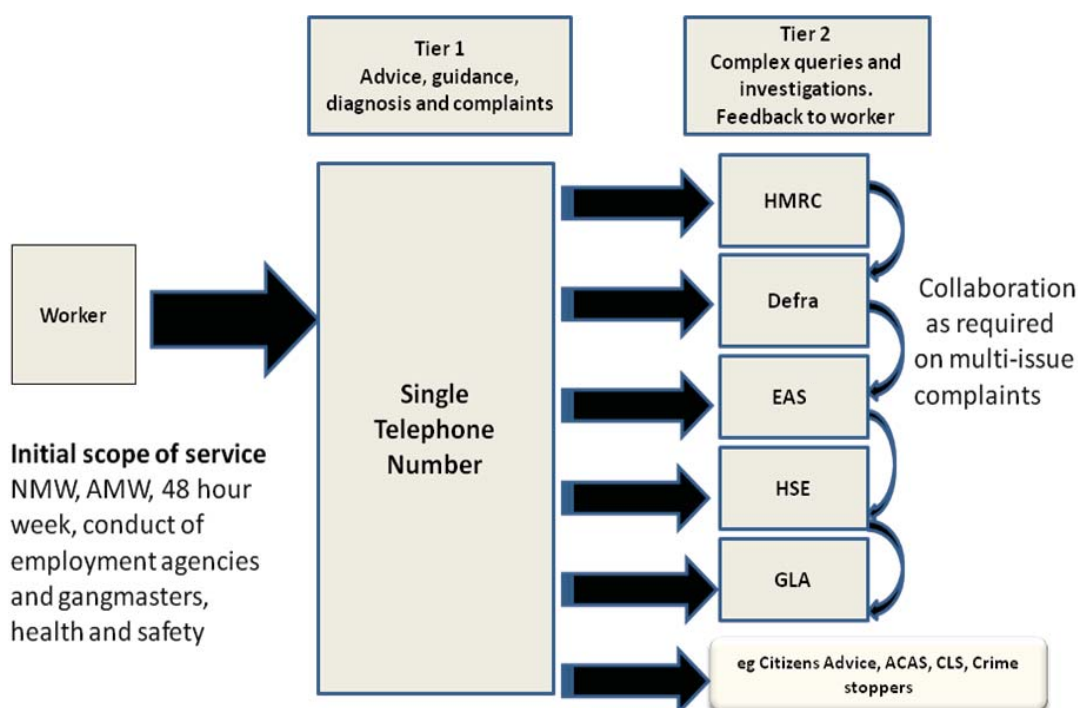
To address these issues, government will:

- Run a significant, sustained campaign with delivery partners to raise awareness of basic employment rights and encourage the reporting of abuses. The campaign will start this year.
- Key elements of the campaign will be the promotion of a single enforcement helpline, an enhanced basic rights section on www.direct.gov, significantly more publicity for the Employment Agency Standards Inspectorate, publicity for the new national minimum wage penalties and "fair arrears" provisions (being legislated on through the current Employment Bill), and more awareness-raising work with migrant workers – both here in the UK and in those countries from which most workers come.
- The campaign will also seek to address worker fears of reporting abuses by stressing the confidentiality of the complaints process, and existing whistleblower protections. It will draw on experience and evaluation of the NMW campaign run over the last year.
- Look at the case for building on the work undertaken by the Vulnerable Worker pilot in Birmingham which has been providing employment rights awareness training to year 10 pupils in schools in Birmingham with high proportions of early leavers.
- Look at the possibilities for incorporating basic employment rights training in 'Welfare to work' programmes, building on trials undertaken as part of BERR's vulnerable worker pilots.

Government takes a direct role in the enforcement of a number of basic employment rights and related legislation, but vulnerable worker access to these enforcement options is complicated because five separate bodies are involved, each with their own helpline. Government will simplify and streamline access to these bodies by:

- Establishing a single telephone gateway to the enforcement bodies through which vulnerable workers will be able to report abuses and access information and advice about the rights enforced by government. Operators will also be trained to identify abuses needing investigation by more than one enforcement agency. Our objective is to transfer the burden of navigating the system of enforcement from the vulnerable worker to the system itself (see Figure 1).
- Opening hours will be levelled up to match or exceed the best of the current helplines, and callers will have access to translation facilities where needed.
- The new service will also identify abuses that may need investigation by more than one enforcement agency without the vulnerable worker having to navigate through the system.
- Work on the design and delivery options for the telephone gateway is already in train, and government expects to have the new service operational next year.

Figure 1: Illustration of telephone gateway model



The future development of policy on vulnerable workers needs to be based on evidence:

- BERR will continue its programme of research on vulnerable worker issues to help identify future trends requiring consideration, and to provide the evidence base for further development of policy. An example is the Fair Treatment at Work survey which will cover workers' awareness of employment rights, the problems they encounter, and the barriers they face in taking action to assert their rights.

- The BERR-funded vulnerable worker pilots in Birmingham and east London have a further 9 months to run. They are generating evidence on the nature and extent of abuse of rights, and testing new ways of supporting vulnerable workers and employers at a local level.
- Regular opportunities will be found to discuss BERR's research findings and those of other researchers active in the field.

Chapter 3 – Employers' Perspective

- 3.1** Employers and employer groups represented on the Forum have stressed the interest that all reputable employers have in effective enforcement targeted on the highest risk employers and those that persistently and deliberately flout the law. It is not in the interests of reputable employers to be subject to unfair competition from non-compliant employers. Employers have also stressed the need for effective enforcement of the existing legal framework.
- 3.2** Employers tend to fall into one of three categories: those who are largely compliant; those who want to comply but perhaps, through lack of knowledge, find themselves in breach of regulations; and those who wilfully ignore the law and hope to get away with it. Discussion in the Forum from the employers' perspective has focused on providing support and guidance for the employers who want to comply, and the steps needed to change the behaviour of the wilfully non-compliant.

Improving employer access to employment law advice and guidance

- 3.3** The Forum has heard an account of the steps being taken by BERR to help businesses comply, and to reduce the cost of compliance. BERR's Employment Law Guidance Programme is a major programme of work stretching over 3 years, aimed at improving the quality and uptake of advice on employment regulation. As part of this programme BERR has run a campaign to promote usage – particularly small business usage – of the Employing People part of businesslink.gov.
- 3.4** Work on the Employing People campaign started in January 2008 with a direct marketing campaign aimed at raising business awareness of the free, easy to use tools and information on a wide range of employment questions that is available on the government's www.businesslink.gov.uk website. The campaign targeted around 530,000 small-medium sized businesses who are unlikely to have in-house HR expertise. Emails were sent to around 130,000 businesses and around 404,000 businesses (generally the smallest with 2 – 15 employees) were sent a hard copy direct mail. About 55% of those targeted businesses have been trading for more than two years; 20% for less than 2 years; and 25% unknown.
- 3.5** The campaign is focused on particular sectors. Most of the target businesses are trading in the business services, wholesale and retail, and hotel and catering sectors – sectors that are higher risk in terms of employment law

compliance. The breakdown of the sectors that were targeted by the direct marketing is as follows: wholesale and retail – 26%; hotel and catering -18%; business services – 25%; and other – 31%.

3.6 The website that is being promoted is designed to give businesses simple, practical advice and guidance on the full range of employment issues, from taking on staff through to dismissals and redundancies. Interactive features of the site include:

- An employing people checklist.
- Downloadable written statements of employment particulars.
- A new redundancy tool, which enables employers to produce redundancy statements for the first time.
- An interactive tool to calculate how much holiday staff are entitled to.
- An interactive tool to help with managing new and expectant mothers in the workplace.
- The facility to sign up for email alerts about new and changing regulations.

3.7 It has been estimated that the downloadable written statements of employment available on the site could enable businesses to produce each statement in around 30 minutes. If half of the companies that are currently purchasing external advice switched to this tool or equivalent, the saving to business could be as much as £160m. If a third of affected businesses used the new redundancy statements tool, the saving to business could be as much as £5m.

Visibility and deterrent effect of the enforcement bodies

3.8 An important aspect of raising levels of compliance with basic workplace rights is ensuring that the enforcement bodies have visibility with employers – particularly with those most tempted to cut corners. These employers must be aware of the penalties for non-compliance, the penalties themselves should be sufficient to represent a deterrent, and there must be a realistic risk of inspection for the non-compliant. The Forum has discussed whether the enforcement bodies currently represent a sufficiently visible and credible threat to these employers.

Enforcement activity

3.9 The enforcement bodies inspect a significant number of employers each year, both in response to complaints from workers and third parties, and following risk assessment work. Some of this results in enforcement action being taken against employers (Table 4 shows the number of investigations undertaken). Much of this involves compliance notices being issued which, provided they

are acted upon, result in no further action being taken. For example, last year, EAS Inspectorate sent 512 corrective letters to employment agencies.

- 3.10** In addition, a number of successful prosecutions, prohibitions and licence revocations are secured each year. In the past year, HMRC have secured fines totalling over £3,500 in criminal prosecutions; the EAS has prohibited five individuals from running agencies and brought two successful prosecutions; and since its inception the GLA has revoked 61 licences – 7 with immediate effect – and there has been one successful prosecution. The enforcement bodies take steps to secure publicity and media interest for this successful enforcement activity, and the scale of activity is reported each year in the annual reports of the bodies involved.

Awareness-raising activity

- 3.11** The enforcement bodies take awareness-raising and enforcement action in specific geographic areas, or directed at specific, “higher risk” sectors. BERR, for example, has an annual NMW awareness-raising campaign directed at both employers and workers – generally around the date of the increase in the NMW rate. In addition, BERR and HMRC identify a different low pay sector each year for targeted awareness-raising with employers and subsequent enforcement action.
- 3.12** The Employment Agency Standards Inspectorate has undertaken a programme of intensive inspections of employment agencies in particular towns and against a particular agency sector in a region. The Gangmasters Licensing Authority and the HSE have been involved in publicised joint operations targeted on particular areas. The GLA has made sustained and successful efforts to secure media stories about the agency and its enforcement activity. These activities all help to raise the profile of the enforcement bodies, and increase the deterrent effect.

Employment Bill – stronger powers and more resources

- 3.13** The Forum has been meeting during the development and Parliamentary passage of the current session’s Employment Bill, and as decisions have been taken to increase the resources available to some of the enforcement bodies. The Forum has heard that:
- The number of employment agency standards inspectors is being doubled.
 - Subject to passage of the Bill, EAS will have stronger investigative powers including the right to seize documents and view information held in financial institutions to facilitate prosecutions, and uncover evidence of systemic abuses of employment agency rights.
 - The EAS will also secure powers to take cases to Crown Courts where unlimited penalties are available.

- The Bill will strengthen NMW enforcement by introducing an automatic fine (up to a maximum of £5,000) for non-compliance with minimum wage regulations, and the introduction of “fair arrears” so that underpayment of the minimum wage is repaid at the current rate.

Potential weaknesses

- 3.14** Notwithstanding the scale of the enforcement effort, the efforts to raise employer awareness, and the penalties available, some Forum members have expressed views that the enforcement arrangements lack visibility, and do not pose a sufficient threat to deter the worst employers. Perceived weaknesses cited have included:
- A lack of awareness on the part of employers of the enforcement action that was and could be taken.
 - A lack of visibility for inspectors at local and regional level.
 - The infrequency of successful prosecutions and, where they were secured, difficulties in generating media interest.
 - Concerns that the worst employers operated on the basis that there was no serious risk of inspection and that the penalties, where they were imposed, were not high enough to change behaviour.
 - The failure of the system to enforce the payment of employment tribunal awards.
- 3.15** A report to the Forum from the vulnerable worker pilot in Birmingham where Acas has been working with restaurant businesses on employment law compliance issues supported the argument that unscrupulous employers generally need to perceive a credible threat of being caught to take compliance seriously. It also demonstrated that word of mouth could be powerful in close-knit communities, and that a visit from an enforcement officer to one business could have a multiplying deterrent effect.
- 3.16** There was agreement in the Forum that more effort should be made to generate greater publicity for successful prosecutions to demonstrate the consequences to rogue employers if they break the law. Several of the intermediaries, including CBI and the unions, showed support for this initiative and would be willing to include information on the government’s enforcement activities in their regional press and communications with members to convey a stronger enforcement message. Chapter 4 has more detail on how government could work with intermediaries on this.
- 3.17** In addition, the Forum heard that it would be helpful to the enforcement bodies if business were more ready to report suspicions of abuse by other employers, although there was a recognition that this could be difficult in sectors where there were a small number of businesses operating, or in particular environments where this was seen to be counter-cultural. Businesses that

did complain about other businesses were also concerned that they did not receive feedback on their complaints, although there was recognition that the enforcement bodies have to respect confidentiality rules with regards to individual cases. They also need to consider the best use of resources as they want to ensure that not too much attention is diverted from investigating the case. More detail on this is set out in Chapter 4.

Migrant workers

- 3.18** The Forum has discussed the experience of migrant workers. Poor language skills and a lack of awareness of basic rights were key factors in migrant vulnerability. The Forum heard that employers could have an important part to play in helping migrant workers integrate, and that supporting them with relevant training, particularly in English language skills could increase productivity and staff motivation and autonomy.
- 3.19** Dr Jan Mokrzycki (Chairman of the Federation of Poles in Great Britain), who gave evidence to the Forum, expressed strong support for the English for Speakers of Other Languages (ESOL) scheme. He believed that a large proportion of the problems experienced by workers from the A8 countries arose as a result of poor English. He made the following key points in relation to migrant workers and their skills:
- He was concerned that some migrant workers said they did not attend ESOL classes because they clashed with their working hours.
 - He emphasised that the ability of migrant workers to speak English in the workplace was not only important for safety reasons, but also for business productivity.
 - He claimed that up to 72% of migrant workers were working in jobs below their qualification levels, and that improving their language abilities would mean that employers could benefit more from their skills.
- 3.20** It was noted in the Forum that a good practice guide on this subject had been published in December 2007 by the Department for Innovation, Universities and Skills (DIUS), in partnership with the TUC and CBI. Entitled 'English Language at Work', it highlighted through case studies the bottom-line business benefits and wider social and economic advantages employers have realised through investing in ESOL for their staff.
- 3.21** In addition, new ESOL for Work qualifications were launched in October 2007, which are less expensive, shorter, and more work-focused than traditional ESOL qualifications, giving learners practical English skills in essential workplace matters, such as health and safety and customer service. Early evidence from those employers involved in ESOL for Work has shown that there are some innovative solutions being used, delivering the qualifications around shifts, providing online facilities and independent learning resources to try and make it as accessible as possible to all workers. DIUS is also leading the development of sector-specific ESOL resources, tailored to

the requirements of those at work in key sectors including agriculture, construction, health and social care, and catering, and their employers. Trialling of these flexible resources with employers is underway, with development and evaluation to continue during 2008.

- 3.22** In terms of funding, spending on ESOL has trebled since 2001. Migration, however, brings clear economic benefits and there is a need for employers to share responsibility for the integration of employees with ESOL needs. Where individuals can afford to pay, or where employers are benefiting from ESOL courses as a means of filling recruitment needs, the government believes it is reasonable to ask them to make a contribution to the cost of learning.
- 3.23** BERR, with assistance from business and union representatives from the Forum, have also been involved in looking at improving communications with employers on migrant workers, to ensure they are aware of what their needs are, as well as the business benefits of investing in training.

Government conclusions

A minority of businesses are fully aware that they are breaking the law. The enforcement bodies need to target and crack down on these employers. Others want to comply, but need help and guidance to meet their obligations. Action to improve advice and guidance for employers and the accessibility to this advice is a priority for government. There is also work to be done to increase the visibility and deterrent effect of the enforcement bodies so that disreputable employers take notice, and modify behaviour.

To facilitate compliance Government will:

- Converge all the government's employment law guidance onto the businesslink.gov website with input from stakeholders on effective content and layout.
- As part of BERR's Employment Law Guidance Programme, promote usage – particularly small business usage – of the employing people part of the site and the money-saving tools that are available there.
- Provide a single telephone gateway for employers who need advice about NMW, working time and other compliance matters.

Chapter 4 – Third Party Perspective

- 4.1** Vulnerable workers come into contact with many other groups that are there to give them help and advice besides the government. This is demonstrated by the variety of groups that were members of the Forum, or who attended particular meetings.

Working with intermediaries

- 4.2** Unions, advice bodies, community groups and others who come into regular contact with vulnerable workers have an important role to play in raising awareness of rights, and reporting information and intelligence about potential abuses to the enforcement bodies. They often have good local knowledge about the worst employers in an area which would be useful to enforcement bodies in their approach to identifying targets for inspection. Reputable employers and business groups may also sometimes have suspicions about other businesses that are cutting corners.
- 4.3** We want to work in partnership with these groups to access local knowledge about bad employers and share experiences, expertise, networks, and communications channels.

Encouraging third parties to report abuses

- 4.4** The Forum has heard concerns that advice bodies and other intermediaries are sometimes not reporting employment rights abuses that they come across to the enforcement bodies. The reasons for under-reporting are varied.
- 4.5** The enforcement bodies highlighted the approach of some intermediaries who went first to the media with allegations of infringements of employment rights, rather than to the relevant enforcement body. This could lead to unnecessary delay in starting an investigation and, at worst, provide the non-compliant employer with time to put its records in order before the inspector calls.
- 4.6** In some cases, the failure to report was due to a client being unwilling for the advice body to take the matter any further. In other cases it was due to a straightforward lack of awareness of the enforcement bodies' functions, and how problems can be reported. Sometimes, awareness was not the problem, but a perceived lack of feedback. Intermediaries, such as CBI, TUC, and Citizens Advice said that they would be encouraged to report more abuses on behalf of workers or about rival employers if they were able to get more feedback from the enforcement bodies about the outcome of complaints.

Citizens Advice said that bureaux advisers would welcome more direct contact with the enforcement bodies to build the links which would encourage advisers to pass on local knowledge about the worst employers and feel that it was worthwhile to do so.

- 4.7** The enforcement bodies highlighted that there needed to be a balance struck between keeping third parties updated on progress of cases and getting on with investigating the case. There was a concern that concentrating too much on feedback distracted from the actual job of enforcement. Furthermore, most of the enforcement bodies had to respect the confidentiality of the party involved in the case. Once a case had reached an Employment Tribunal or prosecution, the information is in the public domain and can then be disclosed to the third party.
- 4.8** All the enforcement bodies, however, seek to acknowledge complaints received from third parties. In addition, where a worker provides the enforcement body with written authorisation to discuss their case with a third party such as a named union or CAB adviser, that adviser can be kept informed of the progress of the case.

Improving feedback

- 4.9** Collating information on several complaints or pieces of intelligence received from an intermediary and providing aggregated feedback to them can be a solution to the problem of not being able to provide feedback on individual cases.
- 4.10** As a result of the Forum's interest, HMRC have agreed to provide feedback to the TUC on cases brought to its attention by unions. This feedback will aggregate the outcome for a number of cases to preserve the confidentiality of individual employers. For each 10 completed enquiries initiated by union referrals, HMRC will provide the TUC with details of the number of employers found to be non-compliant, the number of workers due arrears and the amount of arrears. Similar arrangements are being made for Citizens Advice.

Improving awareness of the enforcement bodies

- 4.11** In the Forum the TUC said that it would continue to raise awareness amongst union officials and workplace representatives of the importance of making complaints to government enforcement bodies, including by issuing refresher guidance. The government, for its part, has worked with TUC, CAB and other intermediaries to produce a straightforward guidance note with contact points to improve intermediaries' understanding of the enforcement regime and where to report complaints on behalf of someone they may have been advising.

Publicity

- 4.12** From a presentation to the Forum made by BERR about last year's National Minimum Wage publicity campaign, it was observed that there were good opportunities to use intermediaries for publicity and awareness-raising. The NMW publicity material, in particular presentation slides and leaflets, could be sent through intermediaries' channels, such as through newsletters or at events. For example, it was suggested that the presentation slides could be used by trade associations at industry events to increase employer awareness.
- 4.12** The CBI emphasised the importance of regular statistics about enforcement activity to demonstrate to the employer community that action was being taken against non-compliance, and that law breakers faced a serious risk of being caught. It was agreed that more effort should be made to publicise prosecution successes in order to act as a deterrent to other abusive employers. Trade association newsletters could also be used to help improve the visibility of workplace enforcement.
- 4.13** Over the last year Ministers have carried out a variety of different media-related activities to raise the profile of workplace enforcement and the support available to vulnerable workers. They have placed signed articles in a range of ethnic and sector-specific media, including Polish, Lithuanian and Asian journals and websites, and media relating to the hotel, catering and cleaning industries. They have been interviewed for CBI publications aimed at employers, and for the NUS magazine to target young people. They have also been interviewed on regional and ethnic radio stations across the country. Ministers are keen to continue working with media outlets of all types to communicate the message about the rights people are entitled to and where to go if those rights are breached.

Working with local authorities

- 4.14** Local authorities can be a valuable source of intelligence. Due to their local knowledge they often know who the worst employers are in their area.
- 4.15** The Mayor of Newham, Sir Robin Wales, believes that this is the case in his Borough, and is keen to ensure that the knowledge of his council's workplace inspectors is harnessed. BERR has followed this up, working with the London Borough of Newham to establish and test arrangements for encouraging council inspectors to report suspicions of non-compliance with employment-related regulations to the relevant enforcement bodies.
- 4.16** The first stage of this process was a briefing session for around 30 local trading standards, environmental health and licensing inspectors given by members of HMRC's National Minimum Wage enforcement team and the Employment Agency Standards Inspectorate. These were agreed to be the most appropriate workplace enforcement areas for Newham given the characteristics of businesses in the borough. The briefing covered national

minimum wage and employment agency legislation, how the enforcement bodies operated, how complaints were handled, and how to make contact with the agencies where non-compliance was suspected. Initial feedback reported that the inspectors' knowledge of these areas of enforcement had increased.

- 4.17** There was agreement from the session to proceed with a 12 month trial to test whether a local authority partnership can generate useful intelligence about bad employers which can add value to the enforcement effort. The trial will include:
- Continued work to build up inspectors' awareness of government-enforced rights and when and how to report abuses.
 - The identification of designated contact points in both HMRC and the EAS for council inspectors who want to discuss or report suspected non-compliance.
 - Tagging and tracking every complaint from Newham to establish how much intelligence comes from this source, and to ensure that feedback on its value can be provided.
 - Feedback will be provided on an "aggregated" basis because the enforcement bodies are unable to disclose personal details of a case.
 - Consideration will be given to HMRC and EAS inspectors accompanying council officials on some visits to develop a better understanding of the nature of council inspections, and what information might be of most potential value.
 - Interim progress reviews, and an informal evaluation of this work after 12 months.

Government conclusions

The task of enforcing the law and raising levels of compliance with workplace rights cannot be the job of government alone. Unions, advice bodies, business groups, local authority inspectors and others come into contact with vulnerable workers as well as potentially non-compliant businesses on a regular basis. They have a vital part to play.

- We will work with the TUC, unions, CBI and other business groups to encourage them to promote awareness of employment rights, report potential abuses of workplace rights, and use their various communication channels to raise the profile of the enforcement bodies, including publicising examples of prosecutions and other successful enforcement action to encourage further reporting and raise the deterrent effect.

- We will undertake significantly more face to face work with advice bodies, community groups and local authorities to raise awareness of the NMW, employment agency standards and other basic rights, and build contacts for intelligence and complaints about non-compliant employers. We have started work along these lines with workplace inspectors (for trading standards, environmental health and licensing) in the London Borough of Newham following interest from the Mayor, Sir Robin Wales.
- To encourage more reporting, the enforcement bodies will provide aggregated feedback – on request – to Citizens Advice, union and other third party complainants about the value and outcomes of intelligence they have provided. In addition, HMRC will take steps, where needed, to ensure that intermediaries are aware that where a worker provides HMRC with written authorisation to discuss their case with a named third party, that person can be kept informed of the progress of the case.
- A new “guidance note” for advisers and intermediaries (including trade associations) about the enforcement arrangements and how to report abuses is being made available, and will be kept up to date as the system is streamlined and improved following the launch of the single telephone gateway.
- A third round of the Union Modernisation Fund will be launched, aimed at testing new ideas for improving the support that unions and others can give vulnerable workers at a local level, building on the work of BERR’s Vulnerable Worker pilots. We will begin this work as soon as possible.

Chapter 5 – Government Enforcement Bodies’ Perspective

Collaboration between the enforcement bodies

- 5.1** The Forum has highlighted the need for closer collaboration between the five workplace enforcement bodies in order to achieve more effective enforcement.
- 5.2** The development and maintenance of close links between the enforcement bodies represented on the Forum is important to effective enforcement in a number of key respects.
- They all receive complaints of abuses from vulnerable workers. Some are wrongly directed, and need to be referred on; others may raise issues for more than one body. Accurate referral and handling arrangements are needed to ensure that complaints are not lost.
 - They all inspect workplaces, and come across information and intelligence about potentially non-compliant, high risk employers. There is scope for the enforcement bodies to act as “eyes and ears” for each other, passing on suspicions of wider non-compliance to assist targeted enforcement work, and identify cases where joint or co-ordinated investigations are appropriate.
 - They all have to address similar enforcement-related issues, including the use of risk assessment techniques, prioritisation, and how best to communicate enforcement and compliance messages to similar groups of employers and workers. There is scope for added value in sharing best practice, consulting on forward work programmes, and collaborating on publicity and targeted enforcement work.
- 5.3** Steps have been taken since the Forum was established to improve collaboration, but there is still progress to be made.

Barriers to sharing information about non-compliance

- 5.4** The ability to exchange intelligence about potentially non-compliant employers could make an important contribution to targeted and effective enforcement. The Forum has heard, however, that legal barriers exist between some of the enforcement bodies which can hamper the exchange of information obtained once an inspector’s powers of investigation have been used, unless

the information is deemed to be relevant for an actual or potential criminal investigation. Examples of these information-sharing restrictions are in s9(4) of the Employment Agencies Act 1973, and s15(5) of the National Minimum Wage Act 1998.

- 5.5** These barriers place constraints on the extent to which inspectors can be “eyes and ears” for other regulators and pass on suspicions of non-compliance. The exceptions are between GLA and the other bodies where there are satisfactory two-way gateways, and between HMRC and Defra on national and agricultural minimum wage where there is a specific bilateral gateway provided for in the relevant legislation.
- 5.6** The enforcement bodies represented on the Forum have agreed that the legal barriers represent a substantive – not just theoretical – problem and need to be addressed. Information sharing barriers have been something which has been a consistent observation of the Forum, and where there has been clear consensus to act to make improvements.
- 5.7** BERR has been in contact with other government departments on this issue and there is cross-government support from the departments involved for taking action to address the barriers concerned. BERR has also established links with wider government initiatives looking at the general issue of data sharing across government to ensure that any opportunities to make improvements are identified.

Single points of contact in the enforcement agencies

- 5.8** Named single points of contact have been identified in each of the workplace enforcement bodies to receive and pass on information to each other (eg. where a complaint raises issues of interest to more than one enforcement body, or where a complainant made contact first with the wrong agency and needs to be re-directed). There has been agreement from the enforcement bodies and from other members of the Forum that the single points of contact concept is worthwhile, and work has been undertaken to develop their role. They now have established terms of reference and a coordinator in BERR and have met to discuss how they can work better together.

Improved signposting of calls

- 5.9** The single points of contact have been involved in helping the five enforcement bodies’ helplines signpost calls more accurately and effectively to improve the service to callers.
- 5.10** A desk aid has been developed and distributed to the helpline operators to help them understand the type of calls the other enforcement bodies would be interested in. This will enable them to signpost callers more effectively to the other enforcement bodies or other sources of advice. The desk aid will

also enable helpline operators to provide callers with basic information about the other enforcement bodies, such as the key rights that they enforce, their opening times, and language translation facilities. It is intended to provide an improved and consistent service to callers in the short term before the single telephone gateway is in place. Acas are also keen to use the desk aid for their helpline operators.

Further work

- 5.11** Once the new telephone gateway is in place it will remove the need for the single points of contact to pass on information at the point that a complaint is made if it has relevance to another body. The 'tier 1' service provided by the single helpline will take on this function. It will be equipped to provide a full diagnostic of a caller's complaint and, where necessary, will pass on the details to the relevant enforcement body or bodies for further investigation.
- 5.12** There will, however, be a need for the enforcement bodies to join up 'behind the scenes' once the complaints are referred to the second 'tier' for investigation, and there will continue to be a need to communicate if cases unearth issues of relevance to another enforcement body. This happens to a certain degree already, but improvements could be made and the best means of making improvements – including the development of appropriate protocols – will be considered with the enforcement bodies in the context of the telephone gateway project.
- 5.13** It has been suggested in the Forum that the unions should identify single points of contact of their own to establish links with the enforcement bodies. We would encourage them to do so.

New governance structure

- 5.14** Given the clear steer from the Forum that further steps are needed to improve collaboration between the enforcement bodies, the government proposes to put in place a new governance structure to ensure that the proposals in this report are taken forward effectively and with vigour.

Fair Employment Enforcement Board

- 5.15** The government believes that as the Forum comes to a close and with the publication of this report, there is a need to maintain the momentum behind the improvements that have been suggested in the Forum and those that are set out in this report. It therefore intends to bring together the enforcement bodies at senior level as part of a Fair Employment Enforcement Board. The group will be chaired by the Employment Relations Minister, meet 3-4 times a year and ensure continued progress towards effective joint working.

- 5.16** This Board will be strengthened with the addition of a small number of independent members acting in an “expert” rather than representative capacity.

Best practice group

- 5.17** As well as a Fair Employment Enforcement Board, the government believes that there will be a need to support this with more collaboration at working level between the enforcement bodies building on the work of the ‘single points of contact’ network that has already been established. To achieve this, a best practice group will be established. This will develop closer working between enforcement bodies with more exchange of intelligence about potentially non-compliant employers, and collaboration on forward work programmes. Where necessary, cross-cutting teams will be established to take forward specific projects such as the single enforcement helpline.
- 5.18** The work programme of the best practice group will develop over time, but is likely to include:
- Sharing information on sectoral priorities and forward work programmes.
 - Sharing risk assessment techniques.
 - Developing solutions for better joining up ‘behind the scenes’ between enforcement agencies in the context of the telephone gateway.
 - Pooling, commissioning and discussing research on enforcement issues.
 - It will report to the Fair Employment Enforcement Board.

Government conclusions

Further steps are needed to ensure closer working between the enforcement bodies so that the worst employers can be targeted, awareness-raising work made more cohesive and business plans aligned. To achieve this, Government will:

- Establish a Fair Employment Enforcement Board bringing together the enforcement bodies at senior level under the chairmanship of the Employment Relations Minister. This group will be strengthened with the addition of small number of independent members acting in an “expert” rather than representative capacity.
- The Board will ensure continued progress towards effective joint working, overseeing, for example, the development of the single telephone gateway, reviewing forward work programmes and communication strategies, and ensuring that effective collaboration takes place on investigations involving more than one enforcement body. It will oversee the work of an operational-level enforcement ‘best practice’ group.

- Invite the CBI, TUC, Citizens Advice and others to nominate suitably experienced individuals for consideration as independent members of the Board.
- Take action – as soon as legislative time permits – to tackle the legal information-sharing barriers that, for some of the enforcement bodies involved, prevent inspectors passing on relevant information to each other.

Chapter 6 – Employment Tribunals

6.1 The enforcement bodies represented on the Forum take a direct role in the enforcement of a sub-set of basic workplace rights. The Forum has devoted most of its time to discussing enforcement of this subset of rights. Other employment rights are for the individual to enforce, if necessary through an application to an Employment Tribunal. Forum members have stressed the importance of ensuring that the Tribunal system is accessible for all workers including the vulnerable.

Accessibility of the Tribunal system for vulnerable workers

6.2 Citizens Advice told the Forum that the Tribunal system had limitations as a route to redress for vulnerable workers, and that few low paid, low skill workers were prepared to consider a Tribunal case. The reasons were varied. Firstly, the process required a worker to confront the employer to raise a grievance which many were reluctant to do. Secondly, the legalistic nature of the process was intimidating, particularly for poor English speakers. The character of Employment Tribunals had become increasingly legalistic and formal over the years. Thirdly, Citizens Advice said that the time and effort involved was often seen as disproportionate to the end result, which might be a relatively small amount, for example in relation to unpaid holiday pay or unauthorised deductions. It was often seen as easier simply to change employer and move on.

6.3 Citizens Advice said that there was limited support available to the vulnerable worker. Legal aid was not available for representation at Tribunal, Citizens Advice Bureaux had limited resources, and a union would not generally intervene unless a worker had been a member for three months. Unions have different policies on the representation of members.

6.4 Citizens Advice suggested that a wider range of basic employment rights should be enforced by a government agency using the National Minimum Wage model. They argued that this would help solve worker reluctance to take up Tribunal cases, and would ensure government involvement in recovering unpaid awards.

6.5 Union members on the Forum said that a weakness in the Tribunal system was the individual nature of tribunal cases which meant that every worker with a claim of abuse had to take their own case, even when there was evidence of systemic workplace problems.

Non-payment of Tribunal awards

- 6.6** A further issue raised by Citizens Advice concerned the deliberate non-payment of tribunal awards by some rogue employers. The absence of tribunal powers to enforce awards meant that the worst employers sometimes ignored rulings and could get away with it. The costs and complexity of the court enforcement system could deter claimants from taking further action. Hard statistical data was not available, but – based on the experiences of CAB advisers – Citizens Advice suggested that up to 10% of awards remained unpaid. There was also some evidence that it was smaller awards that were the most problematic.

Government conclusions

Most employment rights are for the individual worker to assert, in discussion with their employer, but if necessary, by making a claim at an Employment Tribunal. Only a minority are enforced directly by government. It is vital therefore, that the Tribunal system, is accessible and relevant to all workers, including vulnerable workers.

- The system for resolving disputes has recently been the subject of Michael Gibbons' independent review. Legislative and non-legislative measures are being put in place so that the new regime can be launched next year. Several of the reforms will have benefits for vulnerable workers.
- From April next year, workers (and employers) will have access to an enhanced Acas helpline providing impartial advice on all employment rights, and about all the options for dispute resolution. Where appropriate, there will be access to professional Acas conciliators, including a more proactive pre-claim conciliation service designed to nip problems in the bud.
- The fixed period for conciliation by Acas before disputes can be heard by a Tribunal is being abolished. The fixed period is currently seven weeks for the more straightforward jurisdictions which are generally of most interest to vulnerable workers (including unauthorised deductions and holiday pay). One advantage of this will be an ability for Tribunals to shorten the usual period for determining straightforward monetary disputes by 30% from 9 weeks to about 6/7 weeks providing speedier redress for workers with basic claims.

Table 8: Employment Tribunal jurisdictions currently subject to 7 week fixed conciliation period with particular relevance for vulnerable workers

- Breach of contract
- Failure of employer to pay or unauthorised deductions from wages have been made
- Complaint by a worker that an employer has failed to allow them to take or to pay them for statutory annual leave entitlement
- Failure to pay remuneration whilst suspended for medical reasons
- Failure to pay a redundancy payment
- Failure to provide a guarantee payment

- In addition, BERR is about to consult on the possibility of procedures which will allow claims to be determined without a hearing where both parties consent. These disputes may take longer to resolve than a standard case, but a new process could be of potential value for workers intimidated by the legal process, and the need to give evidence in person.

Government is concerned about Citizens Advice evidence about non-payment of Tribunal awards. Workers who have been through the Employment Tribunal process need confidence that they will be able to enforce their awards.

- The position for those needing to enforce awards is expected to improve when a rule change comes into force. Provisions in the Tribunals Courts and Enforcement Act 2007 make provision for a number of changes in the way Employment Tribunal judgements are enforced. Section 27 and section 142 allow for sums awarded by First Tier or Upper Tribunal to be recoverable as if payable under an order of county court or the High Court. In practice this means that if an award remains unpaid after 42 days, claimants can go straight to enforcement in the county court or High Court by a simplified route.
- The Act also provides for unpaid awards to be included on the Register of Judgments and Orders. This is likely to make it more difficult for respondents who have defaulted on payments of awards to obtain credit since the Register is widely consulted by banks, building societies and credit companies. Implementation of these provisions is scheduled for April 2009.
- Government will also take steps to improve the evidence base about the enforcement of Employment Tribunal awards, following initial work by Citizens Advice. Research to be undertaken by the Ministry of Justice will help to clarify how many claimants do not receive their awards, and the contributing factors as to why they do not receive them. This research will start in September, with a report available by the end of November. In addition, BERR's 2008 Survey of Employment Tribunal Applications to be undertaken later this year, with findings available in early 2009, will include questions relating to the payment of Tribunal awards, making an additional contribution to the evidence base and future decisions about whether any further steps are needed to help ensure that awards are paid.

Government is not persuaded of the case for further direct government involvement in the enforcement of employment rights.

- Further direct government involvement in enforcing rights would risk unbalancing the UK model for dispute resolution where the emphasis is on individuals taking action to assert their rights, and tilt the system towards more intrusive labour-inspectorate models common in other EU states. The answer is ensuring that the dispute resolution system is geared as much as possible to resolving disputes in the workplace, with consistent advice from experts where appropriate on the dispute resolution options. Where formal action is unavoidable, the Tribunal system must be streamlined and accessible.
- The Government is taking steps to do this by, for example, making an enhanced Acas helpline available with advisers trained to provide vulnerable workers with impartial advice on the options available to them for resolving workplace disputes, including the Tribunal options. The hours of the helpline will increase so that a service is available on Saturdays, making it easier for vulnerable workers to call for advice outside their place of work.

Chapter 7 – Regulation of Labour Providers and Agencies

7.1 The regulation of labour providers was a source of debate for the duration of the Forum. Labour providers are at present regulated by either the Gangmaster Licensing Authority (GLA) or the Employment Agencies Standards Inspectorate (EAS) depending on the sector concerned. There was disagreement in the Forum on the strength of the case for extending the GLA's licensing system to other sectors.

Current system

- 7.2** At present labour providers operating in agriculture, horticulture, shellfish gathering, food packaging and food processing are subject to a licensing requirement administered by the GLA. The GLA was set up in the wake of the Morecambe Bay tragedy and has been operational since 2005. Labour providers in all other sectors are regulated by the EAS.
- 7.3** To acquire a GLA licence, gangmasters must be compliant with the standards set out in the Gangmasters (Licensing Conditions) Rules 2006 which cover the proper treatment of workers and include: workers not being threatened or abused; payment of the national or agricultural minimum wage; proper deductions; compliance with health and safety regulations; and other key workplace regulations. To ensure a strong degree of consistency across differently regulated sectors, the standards are based closely on the regulations governing the conduct of employment agencies which are enforced by the EAS.
- 7.4** Gangmasters risk having their licence revoked, or having specific remedial conditions attached to their licences if they do not meet the required standards. It is also an offence to use the services of an unlicensed gangmaster or to act as an unlicensed gangmaster. The law applies to labour providers who supply workers to the UK irrespective of where they are based.
- 7.5** EAS enforces employment agency legislation. The Conduct of Employment Agencies and Employment Businesses Regulations require agencies, inter alia, to ensure that workers are paid in full and on time. Agencies are also not allowed to charge fees for providing work-finding services except for a narrow exception in the modelling and entertainment industries. The legislation also places restrictions on arrangements for agencies to charge transfer fees when

agency workers are subsequently employed directly by the hirer they were placed with by the agency.

- 7.6** EAS responds to all relevant complaints, and also carries out targeted, risk-based pro-active inspections which currently account for about a third of all inspections. Pro-active inspection is set to rise following the increase in EAS resources. Inspectors operate on a regional basis.
- 7.7** The EAS can apply to a Tribunal to seek to ban unsuitable persons from running an employment agency for up to ten years. An agency breaking the law can also be fined up to £5,000 and there is legislation before Parliament to increase this penalty to the possibility of an unlimited fine.
- 7.8** A fuller comparison of the standards that the GLA and EAS enforce and their respective powers is set out at Annex 5.

Forum discussions

- 7.9** The Forum recognised the need for temporary workers and flexibility in a modern economy, but that the nature of temporary work meant that labour providers had to be regulated appropriately. There was also agreement that the GLA had started to raise standards in the sectors where compliance with employment rights had previously been notoriously poor. The Forum, however, heard contrasting points of view from union and business and Citizens Advice representatives on the case for extending GLA-style licensing.
- 7.10** Some representatives on the Forum supported an extension of GLA-style licensing to all labour providers, particularly in the sectors where they believed that there were a higher proportion of vulnerable workers. The sectors of most concern were construction, hospitality and cleaning services. Some were not convinced that the EAS was equipped in terms of legal powers or resources to prevent abuses in unlicensed sectors. They said EAS was limited in its ability to take immediate action to prevent an agency trading. There were also concerns about non-compliant labour providers moving out of the licensed sectors into the EAS-regulated sectors.
- 7.11** Other members were unconvinced of the need for an extension of licensing. They said most of the benefits of the licensing model were already present in the EAS model without the additional costs and bureaucracy. The priority was effective enforcement of the existing law which could be achieved by increasing the powers, resources and profile of the Inspectorate. The evidence for displacement was also disputed.

Government conclusions

There has been extensive discussion in the Forum, though no agreement, on whether the Gangmaster Licensing Authority's licensing regime should be extended to employment agencies operating in sectors other than agriculture and food processing. Agencies operating in these wider sectors are already subject to regulations enforced by the Employment Agency Standards Inspectorate (EAS). The government does not currently intend to extend licensing but to prioritise effective enforcement of the existing law. It will do this by taking steps to strengthen the EAS and ensure that it develops a significantly higher profile amongst agency workers and agencies themselves, building on the stronger investigative and penalty powers being legislated for through the current Employment Bill.

- The number of employment agency inspectors will be doubled by the end of July 2008.
- There will be a campaign – integrated as part of the wider campaign on basic rights – to promote awareness of the EAS and its powers amongst both agency workers and agencies themselves.
- The GLA and the EAS will work closely together to share information about non-compliant or suspect businesses operating across their respective sectors, and in circumstances where there is evidence that a labour provider may be moving out of a licensed sector into a sector regulated by the EAS.
- Both the GLA and the EAS will undergo Hampton Implementation Reviews within the next year which will provide a fuller opportunity to look at their regulatory effectiveness, including whether the GLA and EAS need access to administrative sanctions such as “comply or stop now” orders, or spot fines which can be applied with immediate effect.
- BERR, Treasury and HMRC will work closely to ensure that construction workers operate under the correct employment status.

Annex 1 – Forum members and other participants

Forum members:

| | |
|-------------------------|-----------------------------------|
| Pat McFadden (Chairman) | Richard Dunstan (Citizens Advice) |
| Hannah Reed (TUC) | Paul Whitehouse (GLA) |
| Jack Dromey (Unite) | Jane Whewell (EAS) |
| Iain McNicol (GMB) | Ben Rimmington (EAS) |
| Jim Kennedy (UCATT) | Guy Hooper (HMRC) |
| Fiona Wilson (USDAW) | Elizabeth Hodgkinson (HSE) |
| Susan Anderson (CBI) | Jenny Eastabrook (HSE) |
| Tom Hadley (REC) | Matthew Hilton (BERR) |
| Scott Johnson (WF Watt) | John Woodcock (Special Adviser) |

Other participants:

| | |
|---|---|
| Stephen Timms MP | Jitinder Kohli (BRE) |
| Jan Mokrzycki (Federation of Poles of GB) | Stephen Ratcliffe (Construction Confederation) |
| Mike Reed (DCLG) | Gerry Lean (Construction Confederation) |
| Hannah Tooze (BIA) | Malcolm Boswell (Acas) |
| Mike MacMillan (Home Office) | Phil Pluck (Acas) |
| Omer Ahmed (Unite) | Grant Fitzner (EMAR) |
| Pauline Doyle (Unite) | Steven Taylor (EMAR) |
| Simon Nunn (Unite) | Martin Couchman (British Hospitality Association) |
| Barckley Sumner (UCATT) | Robin Wythes (HMRC) |
| Ivor Marsh (Marketing Birmingham) | Louise Brearey (HSE) |
| Bob Blyth (TUC) | Simon Bartley (Summit Skills) |
| Katja Hall (CBI) | Liz Bridges (Construction Confederation) |
| Ian Livsey (GLA) | Shelley Atkinson Frost (Construction Confederation) |
| David Nix (GLA) | Brian Adams (CSCS) |
| John Thorpe (EAS) | Martin Hart (Pentland Homes) |
| Anne Fairweather (REC) | David Cochrane (Sir Robert McAlpine) |
| Tim Soane (BERR) | |
| Nicola Dissem (BERR) | |
| Peter Stephens (BERR) | |

Secretariat

| | |
|---------------------|--|
| Chris Thresh (BERR) | |
| Emma Smith (BERR) | |
| Simon Clode (BERR) | |

Annex 2 – Issues covered by the Forum

Meetings have discussed a wide range of enforcement-related issues, including:

- The scale and nature of abuses of workplace rights.
- Strengths and weaknesses in the current enforcement regime, and areas of success for the enforcement bodies.
- Support for vulnerable workers and their employers at local level, including early results from the BERR-funded vulnerable worker pilots.
- Government plans for increasing the resources available for enforcement and to legislate to strengthen the powers of the enforcement bodies.
- Government work to publicise and raise awareness of the National Minimum Wage and other basic employment rights.
- Steps being taken by the enforcement bodies to improve collaboration and joint working.
- Vulnerable worker issues in the construction industry including the case for licensing labour providers in the sector.
- Particular issues faced by vulnerable migrant workers.
- BERR plans for research into vulnerable worker issues.
- A more general discussion of the licensing of labour-providers.

ANNEX 3 – Improving the evidence base on worker vulnerability – BERR’s Research Programme

1. The development of policy on vulnerable workers needs to be based on evidence. BERR will continue its programme of research on vulnerable worker issues to help identify future trends requiring government consideration, and to provide the evidence base for any further development of policy. This Annex provides an update on BERR’s main research projects on vulnerable worker issues: the Citizens Advice client research; the 2008 Fair Treatment at Work Survey; the 2008 Survey of Employment Tribunal Applications; and the Evaluation of the Vulnerable Worker Pilots.

Citizens Advice client research

2. BERR has worked collaboratively with Citizens Advice on a research project to provide evidence on employment problems experienced by bureau clients. The research approach involved two phases. Initially, face-to-face interviews were carried out with over 300 clients presenting with employment problems at 18 bureaux across the country. Preliminary findings from this stage were published in January 2008. Subsequently, two discussion groups have been held with bureau advisers, and follow-up interviews have been conducted by an independent research agency with over 160 clients who took part in the initial phase. The key findings from the research are set out in Table 9. It should be borne in mind that the sample of clients who took part is not necessarily representative of all vulnerable workers, many of whom may not seek help or assistance from Citizens Advice Bureaux. The sample size is also relatively small. A full research report is being prepared and will be published later this summer.

Fair Treatment at Work Survey

3. The 2008 Fair Treatment at Work Survey will provide BERR with a much firmer evidence base on a range of issues relating to worker vulnerability. Questions from the 2005 Employment Rights at Work survey, on awareness and knowledge of employment rights, and on dispute resolution have been incorporated along with questions on unfair treatment, discrimination, bullying and harassment. In addition, particular attention has been given to collecting relevant demographic, job and employment information which will assist with

assessing the relative vulnerability of different groups in the labour market. The survey will be conducted with a random sample of 4000 workers, between September and December 2008 and findings will be available by the end of spring 2009.

Survey of Employment Tribunal Applications

4. The 2008 Survey of Employment Tribunal Applications will provide additional information on a range of other issues relating to the worker vulnerability, including providing estimates of the non-payment of Employment Tribunal awards. Fieldwork starts in July 2008 and findings will be available by early 2009.

Vulnerable Worker Pilots

5. The Government is also funding two pilot partnerships to identify practical ways of improving the advice and support available to vulnerable workers and their employers at local level. An independent process evaluation is being undertaken by an independent research agency, which will examine how the partnerships worked 'on the ground', identify lessons learned from the pilots and develop the evidence base on worker vulnerability and employer non-compliance. An interim evaluation report, based on the first year of the pilot's work, will be published later this summer; and a final evaluation report will be available in summer 2009.
6. The pilots were commissioned in 2007, and run for two years. One pilot is based in London (City and Docklands) and focuses on the cleaning and building services sector. This is led by the TUC. The other is based in Birmingham and focuses on the hospitality sector. This pilot is led by Marketing Birmingham. The pilots build on the services that unions, Acas, advice bodies, community groups, enforcement bodies and others already provide as well as trying out novel approaches to improving support.
7. Overall objectives for the pilots are to develop and test techniques to:
 - Help vulnerable workers secure their full entitlement to employment rights
 - Help employers to comply with and understand the law
 - Introduce vulnerable workers to opportunities for developing new skills
 - Develop a coordinated approach to taking action against employers who fail to comply with legislation
8. They are also intended to generate evidence to inform Government policy on vulnerable workers on a national basis. More information about the pilots is set out in table 10.

Table 9: Selected findings from BERR/Citizens Advice client research

Employment rights problems

- The five most common suspected or definite perceived breaches of employment rights reported were: unfair dismissal (reported by 32% of all clients); use of statutory procedures (21%); holiday pay (20%); illegal deductions from pay (19%); and breach of contract (16%).
- 25% of clients had not been provided with a written statement or contract setting out their terms and conditions of employment.

Client awareness of a perceived breach of rights

- Approximately one in four perceived employment right breaches were identified by bureau advisers without the client knowing that a right may have been breached. Perceived disability discrimination was most likely not to have been recognised by the client (64% did not know) followed by supply of a written statement of particulars (44% did not know).

Action taken to resolve problems

- Prior to the initial consultation, action taken by clients tended to be informal rather than formal, usually involving contact or attempted contact with the employer. The effectiveness of complaining, discussing and attending a meeting was generally consistent: clients reported these actions made matters better in one fifth of cases, made no difference in three fifths of cases and made matters worse in just over one in ten cases.

Outcomes

- 56% of clients taking part at the initial phase had left their employer. This rose to 75% at the follow-up stage. 82% of these left as a direct result of the problem and almost two out of five (38%) had not found alternative work.

Perceived attitudes of employers

- At the follow up stage, 54% of clients whose rights were perceived to have been breached reported that their employer knew they were breaching their rights. Of these, 78% of clients reported that they thought their employer didn't expect to be challenged.

Client characteristics

- The most common client occupations were: cleaners; sales and retail assistants; care assistants; general office assistants; chefs and cooks; bar staff, hairdressers and barbers; heavy goods vehicle drivers; retail and wholesale managers; and sales representatives. However, only four occupations occurred in numbers much greater than would be expected: cleaners; hairdresser and barbers; chefs and cooks; and bar staff.
- 15% of clients reported being born outside the UK and arriving here after 2000, compared to an estimated 6% in the wider labour market. The most common countries workers had migrated from were Poland and Portugal.

Employer and job characteristics

- Clients were much more likely to work in smaller workplaces. 59% worked in workplaces with 1 to 24 workers, compared to 35% across the wider labour market.
- The vast majority of workers (95%) were employed on a permanent basis, in line with the wider labour market. 2 to 3% were agency workers or reported being paid by an agency.

Table 10: Vulnerable worker pilots

Background

BERR is funding two vulnerable worker pilots aimed at identifying practical ways of improving the advice and support available to vulnerable workers and their employers at local level, and improving the evidence base on vulnerable worker issues. The pilots were launched in June 2007 and run for two years.

Birmingham

Marketing Birmingham is leading one of the pilots focused on the hospitality sector. It is made up of four individual but interlinked campaigns.

- Work in schools to raise awareness of employment rights with Year 10 pupils – particularly in schools with high proportions of early leavers.
- Work in universities to raise awareness of employment rights amongst first year university students, and to provide them with support where they are already in employment and not receiving their full employment rights.
- A community campaign to raise awareness of employment rights and provide advice and support to vulnerable workers. This is being delivered through drop in centres and advice surgeries and also involves employment rights training for people on welfare to work schemes.
- An employer campaign delivered by Acas designed to raise levels of employment law compliance amongst small hospitality businesses. Employers are being offered an audit of employment law compliance leading to an action plan.

Several organisations are involved including ACAS, the Midlands TUC, Connexions, Young Enterprise, Birmingham University Jobzone, Aston University's Students Guild, the Birmingham College of Food, Pertemps, Working Links and the Birmingham Hotel and Catering Academy.

City of London and Tower Hamlets

The TUC is leading a pilot in the City of London and Tower Hamlets focused on the cleaning and wider building services sector (security, reception etc). The pilot aims to co-ordinate current work to support vulnerable workers, build capacity to extend and improve current activities, and encourage the development of good practice employment policies.

Pilot work includes.

- Advice and casework services delivered through 3 outreach bases: Tower Hamlets Law Centre, Island Advice Centre, the Legal Advice Centre.
- Offers of employment rights training to advice providers and other community organisations, and to welfare to work providers.
- Group sessions with workers who share the experience of having an employment rights issue
- Bespoke employment rights training aimed at supervisors in the building services sector
- Employment rights training to ESOL learners

Annex 4 – Awareness-raising and publicity activity undertaken by the enforcement bodies

National Minimum Wage (BERR/HMRC)

1. A sustained, high profile NMW awareness-raising programme was run in the financial year 2007-08. The programme was made up of five co-ordinated campaigns.

Main NMW awareness campaign

2. The sustained awareness campaign ran from October 2007 to March 2008. It mainly took a regional approach in order to reach target audiences more effectively, but with some national elements. Radio and posters carried the message that everyone should receive NMW for each hour they work. The advertisements linked the concepts of time and money – the radio adverts used a ticking sound created by dropping coins and the posters used an hourglass containing coins (see figure 2).
 - **Radio advertising** – The radio advert (voiced by Sanjeev Baskar) ran nationally for one week at the end of October 2007 and then regionally for two weeks.
 - **Community messaging** – This involved regional radio activity in which the radio station delivered a piece on the national minimum wage using language appropriate to its audience. It ran for one week in November 2007 and in January 2008.
 - **Posters** – An outdoor poster campaign ran in January 2008. Posters were sited in areas selected to reach target audiences using sites such as bus stops. A4 size posters were also distributed to job centres, Citizens Advice Bureaux and HMRC enquiry centres.

Figure 2: National Minimum Wage poster campaign



Outreach campaign

3. The NMW “outreach campaign” ran for 9 weeks from early January 2008. The National Minimum Wage bus (see figure 3) visited more than 60 locations and reached around 700,000 workers directly, plus more through the supportive coverage it received and would be expected to receive through word of mouth. The outreach team handed out more than 130,000 leaflets and spoke to almost 90,000 people.
4. The NMW bus team engaged people in discussion about NMW. Those who needed more information could go on board the bus to use the internet to find out more through direct.gov or to use the TUC’s NMW calculator. They could also call the NMW helpline for immediate advice or to make a complaint. HMRC’s NMW compliance officers were also on board at some stops to provide advice.

Figure 3: National Minimum Wage 'Outreach bus'



Migrant worker campaign

5. The NMW migrant worker campaign targeted Polish, Lithuanian and Slovakian workers. It incorporated elements from other campaigns, including outreach work in locations where it was expected to find the migrant community, bi-lingual posters, press articles and online activity. Literature was produced in Polish, Lithuanian and Slovakian, including pages on direct.gov in these languages.

Online campaign

6. An online campaign targeted at young workers ran on Bebo, MSN and MySpace for one month in November/December 2007 and for a second month in January/February 2008.

Employment Agency Standards Inspectorate

7. EAS inspectors currently engage with stakeholders by speaking at or participating in industry events in their regions. EAS also offers to hold events for trade associations. These are popular when changes in legislation are planned. This is an important communication route for raising awareness of agency regulation, and for increasing compliance. An EAS inspector also takes part in the Vulnerable Worker Pilot in London as a member of the employment standards sub-group.

8. To target agency workers who want to know more about their rights and where to complain, the EAS has a website which includes guidance on employment agency legislation, together with an online complaints form and Frequently Asked Questions for both agency workers and those running agencies. EAS is developing further guidance which will be made available online and in leaflet form to be distributed through key channels and intermediaries.
9. EAS is currently reviewing its communications and publicity work to ensure its future plans are aligned with the changes to the Inspectorate bringing stronger enforcement powers and a doubling in the number of inspectors. This review will include developing networks of key stakeholders (including trusted third parties) in the areas where individual inspectors operate. This work will be integrated as part of the government's plans for a sustained employment rights awareness-raising campaign.

Gangmasters Licensing Authority

10. The GLA has an ongoing 'name and shame' campaign issuing press releases for every refused or revoked licence. It issues press releases following operations, and also issues ad hoc press releases to publicise good news stories.
11. The GLA regularly issues worker leaflets in 15 languages through Citizens Advice Bureaux, community groups and through its inspectors. Licensed gangmasters receive periodic newsletters, and newsletters are available to workers. Regular updates are also made to the GLA website.
12. In addition, the GLA has attended Jobcentre Plus/EURES jobfairs events in Poland, Slovakia and Romania to raise awareness of UK employment rights. Radio advertisements have been run in English, Polish and Portuguese and articles have been placed with newspapers and magazines. Rural surgeries for workers have been run in rural Citizens Advice Bureaux in Boston and Spalding.

Defra (Agricultural Minimum Wage)

13. Defra distributes approximately 40,000 copies of the Agricultural Wages Order each year to agricultural workers, their employers, and to stakeholder and other organisations including Unite the Union (formerly the Transport and General Workers' Union), the National Farmers' Union and the Citizen's Advice Bureau.
14. The Agricultural Wages Board advertises the proposed new rates of pay and any changes to other terms and conditions each year as part of its consultation process and Defra also provides information about the Agricultural Minimum Wage for workers and employers on its website.

Health and Safety Executive

- 15.** HSE's communications are largely focused on educating employers. Its approach is generally to focus each year on particular sectors such as construction and agriculture, and on particular hazards which contribute significantly to injury and ill health at work, such as campaigns on back injuries, falls/slips, dermatitis or transport at work.
- 16.** HSE regional offices have modest communications budgets to support locally run initiatives. They would have scope to run campaigns on working time (the 48 hour week) but would be unlikely to regard this as a high priority.

Annex 5 – Comparison of key standards enforced by EAS and GLA

| Standards | EAS | GLA |
|--|------------------|-------------------|
| Workers must not be charged fees for finding work. | Yes ⁷ | Yes |
| Workers cannot be required to use other services or goods provided by the agency as a condition for finding work. | Yes | Yes |
| Workers can not be prevented from giving notice to terminate the contract. Employment must be freely chosen. | Yes | Yes |
| Workers must not be required to disclose the identity of a future employer. | Yes | Yes |
| In addition to health and safety legislation workers will not be harmed if they are made to carry out the work. | Yes | Yes |
| Any accommodation provided must conform to current legislation. | No ⁸ | Yes |
| The labour provider will make sure that workers have the relevant qualifications to carry out agreed tasks. | Yes | Yes |
| Workers must be paid the correct wage, either NMW or AMW, deductions must be properly authorised, proper payroll records must be kept. | No ⁹ | Yes |
| The worker will have a written statement of particulars. | Yes | Yes |
| Accurate records of hours worked must be kept and the requirements of the Working Time regulations met. | No ¹⁰ | Yes |
| The legality of workers to work in the UK must be checked. | No ¹¹ | Yes |
| Enforcement powers | | |
| Powers of entry | Yes | Yes ¹² |
| Powers of arrest | No | Yes |
| Powers to revoke | No | Yes |
| Powers to prosecute | Yes | Yes |
| Custodial sentences available | No | Yes |
| Powers to prohibit individuals | Yes | No |

7 With some limited exceptions in the entertainment and modelling sectors.

8 Not expressly stated as a standard, but this is a legal obligation enforced by local authorities.

9 Although specifics relating to the NMW are not stated, agency employees must be paid for all the hours they work and agencies are under obligation to keep record.

10 Enforced by the HSE.

11 Home Office enforce the right to work in the UK but agencies must check the identity of workers.

12 By consent – can seek a warrant if consent is refused.

In addition, there are some additional standards tailored to the circumstances of specific sectors, and which are not, therefore, directly comparable. EAS, for example, has special standards designed for the modelling and entertainment sectors, and where workers are to be placed with vulnerable children or adults. The GLA has specific licence conditions for shellfish gathering.

