

"It's not how they should treat people"
Migrants and the workplace in Northern Ireland

Agnieszka Martynowicz

March 2014



STRONGER TOGETHER



CONGRESS

Irish Congress of Trade Unions
Northern Ireland Committee

Foreword

A century ago, Jim Larkin observed of his adopted Ireland that "Intolerance has been the curse of our country." He urged the trade union movement of his day that "It is for us to preach the gospel of tolerance and comradeship for all women and men."

Responding to the new challenges brought about by increased migration since 2004, the Irish Congress of Trade Unions commissioned research into experiences of migrant workers in Northern Ireland. The report "Migrant Workers and their Families in Northern Ireland: A Trade Union Response" by Dr Robbie McVeigh published in 2006 emphasised the unique responsibility and privilege that trade unions have in terms of organising and representing migrant workers who can be among the most vulnerable and exploited workers in Northern Ireland.

One of the recommendations of the research was the establishment of a unit for migrant workers' rights to assist vulnerable workers and ensure their equal access to protection. The Migrant Workers Support Unit supported by the Department of Employment and Learning was established in 2007 and continues since then.

This report is a testimony to the work of this Unit, which since its inception assisted hundreds of workers from all corners of the globe who are indebted for this support. Although undoubtedly some have positive experiences to share, many have been treated as second-class citizens being denied rights and dignity at work.

It is deeply disturbing that despite the passage of time migrant workers continue to suffer from exploitation and differential treatment. Issues such as lack of written contracts, "zero-hour" contracts and difficult working conditions continue to plague the lives of many. Discrimination persists and due to our weak employment rights enforcement system and additional barriers faced by foreign workers only few decide to pursue legal redress when mistreated.

Let us not forget that in the difficult economic climate, as we are now experiencing immigrants become easy scapegoats. All major political parties in Britain pledge to limit immigration. In contrast, there are no such limitations on the freedom of capital across Europe. People who resented the presence of migrant workers in the country now find a ready 'justification' for their prejudice: there aren't enough jobs for 'local' people. "I am not racist but..." becomes the acceptable motto and a breeding ground for racism and racist attacks.

That is why the trade union movement in the tradition of solidarity must continue to be in the forefront of ensuring that the rights of migrant workers are recognized and protected and that racism is challenged in all its manifestations. History and common sense tell us that when workers are divided by political opinion, race or religion exploitation flourishes. It is only when working people unite in the pursuit of common interests that a better and fairer society can be achieved.

Peter Bunting, ICTU Assistant General Secretary

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Executive Summary

In recent years, Northern Ireland experienced an unprecedented level of inward migration. The 2011 Census shows that around 4.5% of the Northern Ireland population was born outside of the UK or Ireland, an increase of 2.5% on the 2001 Census figures (Northern Ireland Neighbourhood Information Service, 2012; 2002).

Research undertaken in the last decade shows that there are many reasons why people choose to live in Northern Ireland; these include wanting to learn or improve their English, to take up employment, to spend some time living abroad or to study (Bell, et.al, 2009, pp62-63). Nevertheless it is recognised that much of the recent migration has been driven by the recruitment of migrant workers from outside the UK or Ireland to fill jobs in both the public and private sectors (Bell, Jarman and Lefebvre, 2004; McVeigh, 2006; Bell, et.al, 2009).

This report is a result of a study undertaken at the end of 2012, in partnership with the Northern Ireland Committee of Trade Unions (NIC ICTU; ICTU). In 2007, NIC ICTU established its Migrant Worker Support Unit and Employment Rights Centre, providing advice on workers' rights to employees and employers, as well as representing employees at meetings with employers and providing support in cases before Industrial Tribunals. The research analysed 158 case files relating to face-to-face consultations which took place between November 2010 and November 2012 and information from the summaries of 467 phone consultations provided by ICTU between December 2010 and December 2012. Follow-up interviews and focus groups were organised with 21 clients, and 5 interviews were held with ICTU staff, Trade Union officials and advice workers.

The results of the study show that migrant workers remain a group that is hard to reach and which continues to face very particular issues which make them vulnerable to exploitation and differential treatment. Their experience in the workplace is often characterised by the lack of written contracts, the prevalence of 'casual' or 'zero-hour' contracts, long working hours, and difficulties with pay and in accessing in-work entitlements such as leave. They continue to experience racism and discrimination which can have devastating consequences for workers, for their relationship with employers and colleagues, their experience of work, career progression and professional development and their relationship with the wider community. The knowledge of employment rights among migrant workers continues to be limited and access to protection is not always easy. The onset of recession and the economic downturn increase the vulnerability of many workers, unwilling to challenge inappropriate working practices for fear of losing employment.

Based on the findings of the study, the report makes the following recommendations:

1. There is a continuous need to provide targeted services supporting migrant workers in the workplace. These should, like the ICTU's Migrant Workers Unit, provide advice and representation to ensure that workers can avail of their right to be accompanied where necessary. The Department for Employment and Learning, which provided on-going funding and support for the project, should consider extending the funding to include resources for Tribunal representation by the ICTU to those workers who are not members of individual Trade Unions.
2. There is a continuous need to challenge racism and racist discrimination in the workplace. This includes challenging indirect discrimination and should extend beyond the provision of training and development of workplace policies. Employers should create opportunities for integration of migrant workers with local workforce. State bodies (such as Department for Employment and Learning and Invest NI) which fund business start-ups or provide any funding for business development should ensure that businesses availing of such funding commit to challenging racism and that this is made a condition for the provision of funding.
3. The Department for Employment and Learning and other bodies, such as the Equality Commission for Northern Ireland, should support research into positive practices in employing migrant workers, with a focus on examples of best practice in providing equal access to rights and to workplace integration. These examples should then be used in the provision of advice and training to employers whose practices fall short of such positive practice.
4. The experience of the Trade Unions and migrant workers alike indicate that membership of a union provides migrant workers with an important source of information about employment rights as well as providing a safety net in cases where those rights are breached. There is a continuous need to raise awareness of the Trade Unions amongst migrant workers and for the Trade Unions to actively recruit and organise migrant workers.
5. An establishment of a single inspection and employment rights enforcement body should be considered as a matter of urgency.

Introduction

In recent years, Northern Ireland has witnessed an unprecedented level of inward migration, facilitated in the main (but by no means exclusively) by the expansion of European Union (the EU) in 2004 and again in 2007. Prior to 2004, many migrant workers from within and outside of the EU have been recruited to fill jobs in health and social care, as well as in food processing (Bell, Jarman and Lefebvre, 2004). The 2011 Census figures show that around 4.5% of the Northern Ireland population was born outside of the UK and Ireland, an increase of 2.5% on the 2001 Census figures (Northern Ireland Neighbourhood Information Service, 2012; 2002). While many people welcomed the new residents from the start, "there has also been an increase in racist harassment and violence and voices have been raised about the pressures on housing, employment and service provision" (Martynowicz and Jarman, 2009, p6). Many public service bodies have gone through an intensive period of adjustment to meet the needs of the new residents in access to healthcare, education and housing (ibid; Holder, 2007).

It is not possible to establish for certain how many of the 4.5% (or a little over 81,000) of people born outside of the UK and Ireland came here with a primary aim of seeking and taking up employment. Previous research indicates that there are many reasons why people choose to live in Northern Ireland, including wanting to learn or improve their English, to take up employment, to spend some time living abroad or to study (Bell, et, al., 2009, pp62-63). Nevertheless, it is recognised that much of the recent migration into Northern Ireland has been driven by the recruitment of workers from outside the UK and Ireland to fill jobs in both the public and private sectors (Bell, Jarman and Lefebvre, 2004; McVeigh, 2006; Bell, et.al, 2009; Oxford Economics, 2009; Rogers, 2011).

With increased migration, there has been significant focus on the situation of migrant workers in Northern Ireland in recent years. Research and evaluations had been commissioned and published by both the voluntary and community sectors (including by the Trade Unions and organisations such as STEP/ ANIMATE in Dungannon) and statutory bodies (including by the Department for Employment and Learning (DEL) and by the Equality Commission for Northern Ireland (ECNI). Trade Unions and other voluntary and community organisations led on the provision of information and support to newly arrived residents, providing much needed assistance in access to employment rights, to education, to health and social care and to protection from harassment and discrimination. The need for co-ordinated planning led to the establishment of the DEL-coordinated Migrant Workers Thematic Sub-group of the Racial Equality Forum in June 2006 (DEL, 2009).

There are many challenges to the use of the term 'migrant worker'. For the purposes of an inter-departmental *Migrant Workers Strategy for Northern Ireland*, the DEL Migrant Workers Thematic Sub-group agreed to use the following definition:

"A migrant worker is someone from outside the UK and Ireland who is here to seek or take up work"
(DEL, 2009, p5).

As stated earlier, research indicates that many migrants who take up work in Northern Ireland treat employment as only one, and often not primary, of the reasons for relocating here. While the DEL definition does not imply temporariness but focuses on employment, in some respects, 'migrant workers' are often understood as somehow a homogenous group of people with a transient status. In 2006, McVeigh challenged that perception stating that:

"Whatever the stereotype of a migrant worker, the reality is that Migrant Workers are women and men, Black and white, from a range of minority ethnic backgrounds, and from Europe, Asia, Africa and other parts of the world. There are Migrant Workers who are very well paid and Migrant Workers who experience profoundly exploitative wages and working conditions. Migrant Workers also have different residence statuses – from an absolute right to remain in the country to the marginal and ambiguous position of undocumented or unauthorised workers. In this context it becomes necessary to be cautious about the use of the term migrant worker because it covers such multiplicity of identities" (p39).

While some migrant workers reside in Northern Ireland only temporarily (either because of their status under

immigration law or because they choose to move on to another country or return to the country of origin), a considerable number make Northern Ireland their long-term or permanent home. In 2009, 16% of survey respondents stated that they planned to stay in Northern Ireland permanently with a further 16% stating that they wished to stay for five or more years (Bell, et.al, 2009, p10). While more research is needed to establish permanent or long-term settlement patterns, there is much anecdotal evidence to suggest that many of those who arrived in Northern Ireland in the last decade or more have permanently settled here, have children who hold British or Irish citizenship (or a dual one with their parents' country of origin), have bought homes or have settled into rented accommodation, integrated into their local communities. While taking up employment or seeking work may have been their initial reason to relocate to Northern Ireland, their day-to-day lives may no longer be driven by the same considerations. This report is therefore necessarily set within the context of the passage of time, especially between 2004 and 2007 (the dates of the most recent expansion of the EU) and 2013 and the interviews held for the purpose of this study were undertaken mainly with the longer-term residents.

'Migrants' often share many of the advantages of living in Northern Ireland with members of the 'local' communities as well as sharing many of the disadvantages, including in the workplace. This presents certain challenges, in particular to organisations such as the Trade Unions in continuing to focus on 'migrant workers' as a group. This research attempts to look at some of those issues and to consider whether the added vulnerabilities in the workplace identified in earlier research (see, for example: Bell, Jarman and Lefebvre, 2004;

Betts and Hamilton, 2006; Concordia, 2006; Bell, et.al, 2009) continue to impact on the situation of 'migrant workers' today.

This report

The idea for this short research project was put forward by the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC ICTU) at the end of 2012. In 2007, NIC ICTU established its Migrant Worker Support Unit which was made possible thanks to the funding and continuous support provided by the Department for Employment and Learning and additional funding provided by the Belfast City Council. The Unit established an Employment Rights Centre which provides advice on workers' rights to clients, as well as providing representation at meetings with employers and support in cases before Industrial Tribunals. Since 2007, the Unit has also provided training to migrant workers, Trade Union representatives and employers.

The aim of this research was to collect information and analyse the experiences of migrant workers who brought their cases to the attention of the ICTU's Migrant Workers Unit. The first phase of the study analysed 158 case files held by the Unit for the period between November 2010 and November 2012 relating to face-to-face consultations with 175 individuals.¹ As well as this, the research used information available from the summaries of 467 phone consultations provided by the Unit between December 2010 and December 2012.

The analysis of case files of face-to-face consultations was anonymous and noted the details of:

- a. the date of the complaint/request for advice;
- b. the gender of the client;
- c. the nationality of the client;
- d. broad outline of the circumstances of the case/ the issue about which advice was sought;
- e. broad outline of the action taken by the ICTU/advice given;
- f. details of the solution reached/case outcome where available;
- g. the details of the employment sector and
- h. whether any referrals have been made to Trade Unions or other advice organisations.

The 175 clients whose files were reviewed came from 21 different countries; 90 were men and 85 were women. The Unit's clients sought advice on a wide variety of issues, including disciplinary processes (19% of clients), dismissal (16%), non-payment of wages (9%), redundancy terms and payments (7%). Seven percent of clients also sought advice relating to race discrimination in the workplace although this number only relates to clients in whose case it was possible to take action on those grounds (see chapter 2 on race discrimination).

The initial analysis of case files relating to face-to-face consultations revealed that certain sectors of employment yield a considerable number of complaints from migrant workers. These were: contract cleaning (21%); restaurants and catering (11%) and hospitality services (hotels,

¹ The term 'face-to-face consultation' is used here to distinguish those from advice provided over the phone. In many cases where the clients met with the staff of the Migrant Workers Unit, cases required multiple meetings, including with employers, and significant amount of correspondence.

11%). It is acknowledged that with high concentrations of migrant workers in those sectors, a proportionately higher percentage of the workforce seeks assistance of specialised advice projects. This is also connected to the inherent vulnerability of workers in low skilled jobs in unregulated sectors, where most positions do not require knowledge of English. It is important to stress, however, that many cases brought to the attention of ICTU's Migrant Workers Unit come from manufacturing companies (small and medium-sized), as well as from agency staff (7% of cases came from manufacturers, with a further 6% from agency staff) and that no sector of employment was immune to complaints, regardless of business size.

In the second phase of the study, interviews were held with a number of the Unit's former clients to follow-up on some of the issues raised by the case analysis. The interviewees were selected mainly from employment sectors identified as yielding most complaints. The arrangements for focus groups were made with the assistance of the Unit's staff (3 of those were held; those were attended by 13 individuals). The researcher also had an opportunity to observe an advice session organised by a Trade Union with its members and to ask questions of members of the group during and after the session (5 individuals). Six individual interviews with former clients were also conducted by phone. Additional information was also sought from the ICTU's Migrant Worker Support Unit staff (2 interviewees), advice workers in other organisations (1 interviewee) and representatives of individual Trade Unions (2 interviewees). A literature review was also conducted to set the findings of this study within the wider context of available research.

As this research focused on the cases brought to the attention of the ICTU, it necessarily concentrates on those areas which raised most concerns in relation to the breaches of employment rights and other challenges faced by migrant workers. Where available and appropriate, the report gives examples of good practices, although it is recognised that the nature of this research means these are under-represented. Having said that, it is important to stress that after nearly 20 years of migrant workers settling in Northern Ireland, they continue to experience differential treatment, discrimination in the workplace and struggle to challenge inappropriate working practices and difficult working conditions.

The analysis of case files and interview material revealed a number of thematic areas which are discussed in detail in the next chapters. These are: race discrimination in the workplace; difficulties with contracts and pay; difficult working conditions; differential use of disciplinary processes and barriers to career progression and professional development. In the last chapter, the report also briefly discusses awareness of employment rights and the role of Trade Unions. The report begins, however, with a brief outline of evidence from previous research on the situation of migrant workers in Northern Ireland, undertaken in the last decade or so.

1. Migrant Workers in Northern Ireland

As stated in the Introduction, the 2011 Census figures show that around 4.5% of the Northern Ireland population was born outside of the UK and Ireland, an increase of 2.5% on the 2001 Census figures (Northern Ireland Neighbourhood Information Service, 2012; 2002). While it is not possible to establish for certain how many of the little over 81,000 of people born outside of the UK and Ireland came here with a primary aim of seeking and taking up employment, it is recognised that much of the recent migration into Northern Ireland has been driven by the recruitment of workers from outside the UK and Ireland to fill jobs in both the public and private sectors (Bell, Jarman and Lefebvre, 2004; McVeigh, 2006; Bell, et.al, 2009; Oxford Economics, 2009; Rogers, 2011). The number of migrant workers in particular sectors of the economy in Northern Ireland has been consistently high over the last 10 to 15 years. Those sectors are health and social care, hotels and restaurants, wholesale and retail and manufacturing (Bell, Jarman and Lefebvre, 2004, p31; Oxford Economics, 2009, p3; Bell, et.al., 2009, p76).

Evidence from previous research indicates that the professional profile of migrant workers did, however, change in the last decade, particularly since the expansion

of the EU in 2004, with more workers now employed in lower skilled jobs. Research undertaken for the Office of the First and Deputy First Minister (OFMDFM) in 2004 indicated that 49% of migrant workers were employed in managerial, professional and associate jobs with 22% employed in sales, as machine operatives and in other elementary categories (Bell, Jarman and Lefebvre, 2004, p32). By 2009, these proportions reversed, with 31% of migrant workers employed in elementary occupations and a further 23% employed as process, plant and machine operatives (Bell, et.al., 2009, p5). There is strong evidence to suggest that availability of migrant workforce for lower-skilled jobs has impacted positively on business retention rates in Northern Ireland, with a third of employers surveyed by Oxford Economics in 2009 stating that employing migrant workers has helped businesses (particularly in food processing) to survive (p3) and 78% of surveyed employers stating that employing migrant workers helped to maintain adequate staffing levels (p40). Only nine percent of the employers surveyed stated that the decision to employ migrant workers was based on reduced cost (ibid).

The economic impact of migration in Northern Ireland has been notoriously difficult to assess. However, a 2009 study by Oxford Economics concluded that:

“[...] migrant workers in Northern Ireland have made a **significant positive contribution** to the NI economy, filling labour shortages during a ‘golden era’ period for the economy (when unemployment was at a historic low and the majority of non-employed natives were not applying to work in the jobs migrants were taking) and bringing a strong work ethic welcomed by their employers” (p2) (emphasis original).

The increased number of migrant workers in Northern Ireland was necessarily connected to their greater visibility in local communities. While it was recognised that migrant workers “have made a positive contribution to the economy and society, there are indications that some public attitudes towards migrant workers were negative, for example as indicated by the incidence of racially-motivated attacks, some of which were directed at migrant workers” (Hood, 2011, p161). Results of the Omnibus Surveys collected annually between 2007 and 2010 indicate little overall change in public attitudes towards migrant workers. Consistently since 2007, slightly over 30% of respondents state that they are prejudiced, to a different extent, towards migrant workers (ibid, p162). While around half of all respondents consistently strongly agreed or agreed that migrant workers are generally good for the economy, between 44% (in 2008) and 48% (in 2010) felt that migrant workers take jobs away from people who were born in Northern Ireland (ibid). However, around three-quarters of respondents to the Omnibus Surveys between 2007 and 2010 also agreed consistently that migrant workers mostly take up jobs that local workers don't want (ibid).

The impact of recession

So far, there is limited research evidence on the impact of recession on the situation of migrant workers. A recent report by the Chartered Institute of Personnel and Development (CIPD, 2013) shows that in the ten years between 2002 and 2012, migrant workers were consistently hired to fill low-skilled jobs in the UK, including in retail, catering and hospitality. Overall employment rates for non-UK-born workers remained high across the UK, at a rate of 68% (as compared to 72% for UK-born workers)(CIPD, 2013, p3). Employment of migrant workers continued to grow,

albeit at a slower pace, since 2012 at a rate of 5% increase for non-UK-born workers as compared to 1.5% for UK-born workers (CIPD, 2013, p4).

In Northern Ireland, the most recent available analysis published by DEL in 2011 indicated that while the number of new migrant workers decreased significantly since 2009, there has been no corresponding increase in the numbers leaving the jurisdiction (Rogers, 2011). The analysis showed that “many of those who have arrived seem to be staying (and, by and large, staying in work)” (Rogers, 2011, p160). There is some evidence to suggest, however, that agency workers in particular have been negatively impacted by the economic downturn, with many having their working hours cut and employers introducing bans on overtime since 2008 (ECNI, 2010). The recent and planned cuts to public services also increased concerns that migrant workers in sectors such as health and social care are potentially more vulnerable to job losses in the next few years. In 2009, UNISON published a study indicating that 47% of migrant workers in health and social care and education jobs felt that their jobs were under threat due to the economic downturn (UNISON, 2009, p11).

While unquestionably there has been much good practice in employing migrant workers in Northern Ireland, research undertaken in the last decade – and reviewed in detail in the thematic sections of this report - also indicates that migrant workers face many challenges in the workplace. These range from being subjected to racism and racial discrimination to disregard for employment rights and barriers in access to rights and support. The sections which follow describe some of those challenges.

2. Discrimination

Research available to date in Northern Ireland indicates that migrant workers experience significant levels of racial harassment and discrimination in the workplace. In 2004, 22% of respondents to the survey undertaken by Bell, Jarman and Lefebvre reported having experienced some kind of harassment or discrimination at work (p66). Examples of experiences recalled by the workers included "being made to justify their reasons for coming to Northern Ireland during interviews for jobs, being denied small 'privileges' which were granted to Northern Irish employees - e.g. toilet breaks outside authorised breaks, being referred to as 'criminal asylum seekers' by colleagues, and being excluded from staff social events" (p66). In 2005, Holder and Lanao reported on differential use of discipline in the workplace, with migrant workers issued with disciplinary proceedings more readily for minor infringements. In the 2009 study undertaken for the Department for Employment and Learning (Bell, et.al, 2009), 40% of respondents to the survey reported being a victim of discrimination, with 43% of those respondents indicating they have been discriminated against by a colleague, 24% by a manager and 18% by their employer more generally. In the same year, two-thirds of respondents to a study undertaken by UNISON stated

that they felt there had been an increase in racist comments and attitudes since the beginning of the economic downturn in general although 50% stated that they did not experience such increase in the workplace (UNISON, 2009, p18). However, 54% of all respondents reported being subjected to racism at work, indicating that the problem pre-dates recession (ibid). Experiences of racism included feeling judged and disciplined more frequently than local workers; experiences of being humiliated in front of colleagues and patients and being treated differently/less favourably than local colleagues (p19).

In 2010, the Equality Commission reported that 31% of participants in their study of the situation of agency workers in Northern Ireland stated that they had experienced discrimination, both because of their nationality and their status as agency workers (ECNI, 2010, p76). Those interviewed reported being "shouted at by supervisors, verbally abused, and treated differently when taking breaks or being given more demanding work targets than employees. Participants said that there were differences between nationalities in the allocation of work by supervisors and that certain nationalities were given better working hours than others" (p77). Participants in the study reported that discrimination was not limited to being treated differently by local workers/managers/employers but also by migrant worker agency staff who, at times, were seen as giving preferential treatment to those coming from the same country of origin (ibid). In the same study, almost half of direct employees surveyed reported being discriminated against by their employer or prospective employer (p78).

The current study indicates that there is a continuous need for providing advice and information to employers and employees on racial discrimination, including on tackling both direct and indirect discrimination in the workplace. While there was some agreement amongst interviewees that the question of addressing indirect discrimination "is a difficult one as a lot of it is a matter of perception from the workers as well" (Trade Union official), there is a need to raise awareness amongst employers about the impact their actions can have on migrant workers' situation and perceptions.

Between November 2010 and November 2012, the ICTU's Migrant Worker Support Unit dealt with 12 cases where racial discrimination was directly raised by the client as an issue (face-to-face consultations). Those ranged from alleged discrimination in selection for redundancy to racial verbal abuse by co-workers. Examples of such cases included the two following incidents:

Case study

A client was a chef in a Belfast city centre hotel restaurant. He reported that another chef, his supervisor, was abusive to him and on a number of occasions shouted racist abuse at him. His complaints were not taken seriously by the manager. When he decided to leave the job, he found out that throughout his employment, kitchen staff were given a share of the tips received from the restaurant patrons. He was never told this was the case, neither were the tips ever given to him. He took a race discrimination case against his former employer.

Case study

A bakery made three clients, members of the same family, redundant. They were employed for four years, three years and six months, respectively. They only received three days' notice of redundancy. The company did not conduct any consultation, never informed them of selection criteria nor scheduled a meeting to explain why redundancies are taking place. Due to the length of the period of employment, two of the clients were also entitled to redundancy pay which they did not receive. The ICTU's Migrant Workers Unit appealed the decision and wrote to the employer pointing out the irregularities. The employer never responded, however the client phoned in to inform ICTU that the employer wants to reinstate them. The clients were not sure about the terms of their reinstatement or how long the work was going to last. Later, one of the clients returned to work but another one, a woman, was not asked to go back. The Unit has written to the employer again, however they did not respond. The Unit has assisted the female client in filling a complaint with the Tribunal on the grounds of failure to conduct consultation and apply appropriate dismissal procedures, failure to pay redundancy and alleging race discrimination on the grounds that the company would have never treated a local worker in a similar manner. The employer decided to pay the worker redundancy she was entitled to and the Unit assisted her in withdrawing the Tribunal case.

While the number of cases where clients raised the issue of racial discrimination directly appears to be low, it was clear from the wider analysis of the case files and the interviews with migrant workers and advice staff that the

prevalence of discrimination is much higher. Clients present with a variety of issues which they consider an immediate problem – like non-payment of wages or lack of contracts – but at the core of many of those problems lies differential treatment by employers and vulnerabilities connected to issues such as lack of English and lack of knowledge of employment rights. ICTU project workers stated that elements of racial discrimination are present in around 90% of the cases they are dealing with.

There are many reasons for under-reporting of racial discrimination. Many migrant workers are reluctant to complain when they are subjected to differential treatment because of their background. In a study undertaken for DEL in 2009, 70% of those who suffered verbal abuse because of their migrant status did not report it to anyone (Bell, et.al, 2009, p115). Neither did the 65% percent of respondents in the same study, who felt that they have been discriminated against. Of those who reported incidents to their employers, only 28% were 'satisfied or very satisfied' with the employer's response, while almost a quarter were either very dissatisfied or dissatisfied with the way the complaint was handled (ibid, p116).

In cases where workers do complain about racial discrimination, this can be difficult to prove. Migrant workers and advice workers reported that it was often hard to find the support needed to pursue the case, and it can be difficult to convince co-workers to make statements about what has happened and act as witnesses. This reluctance is often connected to the wider concern about job stability in the current economic climate (addressed later in this report) and not wanting to 'rock the boat' in case complaints were to lead to job losses.

Previous research indicates that migrant workers who are of white ethnic background, can find it difficult to recognise or name the differential treatment as 'racism' (McVeigh, 2006, p50). Advice workers interviewed for this study were also concerned that migrant staff often internalise differential treatment as 'normal' in their situation and may feel unable to challenge it:

"To a certain extent, people will accept that they are treated differently than local workers because they themselves think 'we are foreign [...] this is not our country'. So they came to expect that this comes with a 'package' of being 'a foreign worker' that you have to work harder, you have to try more... They complain about it [quietly] but... To some degree there is racism in many workplaces but it's difficult to quantify or prove in a Tribunal [unless a worker has a solid proof]" (ICTU advice worker).

In cases where workers, for whatever reason, feel unable or unwilling to challenge discriminatory practices individually, the role of Trade Unions in supporting staff and providing necessary advice to employers cannot be overstated. As the following case illustrates, an intervention from Trade Unions can have a positive impact on the situation of workers as well as providing the necessary awareness raising for employers who are willing to support good practices in the workplace.

Case study

– indirect racial discrimination

A team of cleaning staff providing a service in a large retail establishment was awarded a recognition prize for their work. The team is split into a number of smaller groups covering certain times of the day in shifts. A celebration was organised for 9am and invitation was extended to all members of the team by the team manager. However, a shift comprising of a number of workers from the same country was only allowed (by their contract requirements) to leave their duty stations at 9am. Due to the size of the establishment, the time which it takes to get to the staff room and the need to hand over equipment after the shift, the shift team was only able to get to the celebration for 9.20am. By then, celebrations were over and there was no-one in the room. The team felt that they were discriminated against and excluded. They felt that there was no reason why the celebrations could not have been set for 9.30am as all members of the cleaning staff would have been able to attend at that time.

In this case, the employer has met with the Trade Unions and undertook to introduce measures to ensure that workers are treated equally in the future and that efforts are made by the company to integrate all teams (migrant workers and local workers) through, for example, social events and raising cultural awareness in the workplace. The employer was not aware of any purposeful discrimination but acknowledged that some past practices may have had a differential impact on migrant worker staff and agreed that those will be reviewed and more attention will be paid by the company to ensure equal treatment. The constructive engagement between the employer and

Trade Unions in this case has had a clear positive impact on workplace policies and practices.

The provision of support and advice to both employees and employers becomes even more important in case of smaller firms which may not have dedicated human resources staff to be able to monitor the development and implementation of appropriate workplace policies and where staff are not necessarily unionised. In those circumstances, services such as the ICTU's Migrant Workers Unit plays a hugely important role in the provision of such support and advice, improving relationships in the workplace in the longer term as evidenced in a number of cases reviewed for this study.

Racism and direct and indirect racial discrimination in the workplace continue to be a serious issue and there is no question that the extent of differential treatment remains under-reported. Additionally, there is some evidence to suggest that workplaces, especially in the case of larger companies, have often become segregated by national backgrounds for a variety of reasons, including grouping of workers by language/nationality to aid communication between employers and workers with little or no English (McKay, Craw and Chopra, 2006, pp85-90). While some practices, such as grouping workers by language group, may be introduced with a positive motive of lessening isolation, in the long-term, they can prevent integration and inadvertently cause segregation in the workplace which becomes more difficult to address. Tackling racism and discrimination should therefore not be limited to the provision of diversity and equality training and introduction of appropriate policies in the workplace. What is required is a

proactive approach which combines policies and training with creating spaces and opportunities for interaction between local and migrant workers, as well as workplace integration initiatives to ensure that segregation does not become a regular feature. Employers' initiatives, such as those mentioned in the case study above, should be done in partnership with Trade Unions who can lend their expertise on creating inclusive workplaces and equal access to rights.

3. Contracts and pay

Difficulties with contracts and pay have been reported regularly by migrant workers in much of the research and evaluations undertaken in the last decade in Northern Ireland and elsewhere. In 2004, 10% of respondents to a large-scale survey stated that they experienced problems with their pay and some reported difficulties in getting paid for days off sick and receiving maternity pay and holiday pay (Bell, Jarman and Lefebvre, 2004, p64). A study undertaken in 2009 for the Department for Employment and Learning found that very few workers reported breaches of minimum wage regulations by employers where wages were regularly paid (Bell, et.al., 2009).² However, some respondents amongst workers and migrant worker support organisations indicated at the time that workers faced significant delays in being paid or their wages did not include appropriate payments for overtime (ibid, p90). A 2010 study of the situation of migrant workers undertaken by the Equality Commission for Northern Ireland noted that 60% of agency workers and 18% of direct employees experienced problems with their

pay, including miscalculations in the rate of pay; unlawful/unexplained deductions from pay and delays in receiving pay (ECNI, 2010, p72 and p75).

The case file analysis undertaken for this current research revealed that a number of issues relating to pay and contracts continue to affect migrant workers. Such issues included: non-payment of wages (9% of face-to-face clients), non-payment of holiday pay (7% of clients) and non-payment of statutory sick pay (4%). Similar percentages of inquiries regarding pay have been noted for phone consultations undertaken between December 2010 and December 2012. In most instances where the employer was contacted, outstanding monies were paid following an intervention from ICTU. The following case study illustrates one such instance:

Case study

A client was working for a restaurant in Belfast city centre. He did not receive his last pay and holiday pay after leaving his employment. The ICTU's Migrant Workers Unit has written a letter to the employer requesting payment of outstanding monies; this was followed up with telephone calls. The employer has agreed to pay all the outstanding monies to the client.

In some cases, an intervention from Trade Unions was not, however, sufficient and workers were forced to take their cases to the Industrial Tribunal, as the following case illustrates:

² A study by the Trade Union Congress in 2007 showed that 10 to 14% of respondents (depending on nationality) received pay below the NMW level (Anderson, B., Clark, N., Parutis, V., 2006). This indicates significant under-reporting of the issue.

Case study

The client was working for a recruitment agency. He was owed payment for a number of assignments. After repeatedly raising the matter with the agency, some of the hours were paid but payment for some was still outstanding. He contacted the ICTU's Migrant Workers Unit and a letter was written to the agency; however the response was not satisfactory. The client was assisted in lodging a Tribunal case.

Non-payment of wages, no matter what the amount, can have very serious consequences for workers, especially those who are working in lower-paid jobs. Agency workers are particularly vulnerable as they have few enforceable rights and little recourse to legal protection in the workplace. The availability of the Industrial Tribunal process as a measure of last resort is of utmost importance in such cases, workers however, face considerable difficulties in accessing Tribunals to pursue their cases. These are discussed later in this report.

Contracts

Previous research into experiences of migrant workers across the UK consistently showed that lack of contracts is one of the major issues facing this group. In England and Wales, nearly a quarter of migrant workers surveyed by TUC in 2007 reported not having a contract, with this proportion increasing to one-third for agency workers (Anderson, Clark and Parutis, 2007, p12). Half of all those surveyed by Anderson, et.al. (2006) stated that they worked without a written contract, with the highest proportion of workers affected employed in hospitality and construction and as au pairs (p49). In Northern Ireland, the Equality Commission for Northern Ireland reported in 2010 that

20% respondents to their study of agency workers stated that they did not receive written contracts or only received them after significant delay (ECNI, 2010, p60). Lack of written contracts has been reported to impact negatively on the ability and/or willingness by workers to challenge employers when their employment rights are being breached (Anderson, Clark and Perutis, 2007, p15).

In this current study, around half of the interviewees stated that they faced a number of difficulties with their contracts and ICTU and other advice workers and union officials were in agreement that lack of contracts or the failure to provide copies of written contracts to employees continue to be a major issue. Interviewees also reported having been given basic contracts only after significant delays and/or after an intervention from Trade Unions. In one case in the current study, a challenge about some details in the contract resulted in the employee being left without one:

"The whole contract was wrong, my name in it, all of it. Wanted it changed so I gave it back, never got it back after that" (hospitality sector).

Where contracts were provided, these were most often in English even when the firms only employed workers speaking in one foreign language. Where written contracts were not provided, employees' only proof of employment were their pay slips, which in some cases did not reflect the actual number of hours worked.

Interviewees for the current study reported that they feel unable to complain about such issues as employers either threaten them with job losses or temporarily cut the hours back to the main agreed hours. In 2009, during a study undertaken for DEL, one of the interviewees reported a similar situation:

"The contract says I'm employed only as long as the company needs me. It's a part-time contract through an agency but I work average 38 hours per week. I have to work 12 hours a day many times and when I refused, my manager cut my hours [to] 5 hours per day 5 days a week. I didn't have enough money to live on. When I asked my manager to increase my hours again, I was made to work 12 hours a day that weekend. I thought that this is to make me not to complain." (Bell, et.al., 2009, p105).

While it is difficult to assess with any degree of certainty whether such practices are common, it is of concern that the situation appears to have changed very little in the last 4 to 5 years, at least for some workers. Another interviewee in the current study reported a similar experience stating that he was formally required only to work 17.5 hours (he was not given a written contract). Normally, he worked 40 to 50 hours a week and whilst he was paid for the additional hours, his other entitlements – such as holidays - were calculated as per part-time contract. He was afraid to complain or challenge the employer as he was worried his employer would then cut his hours to the main contracted ones and he will not be able to cover his rent and food and other expenses (contract cleaning sector). After joining a Trade Union, his case was taken up on his behalf by his union representative and the issues were resolved to the worker's satisfaction. This example shows that it can be extremely difficult for workers to challenge employers and claim their rights individually but issues can be successfully resolved if raised by Union representatives as part of a dialogue with employers on behalf of their members and shows the importance of Trade Unions engaging with migrant workers.

The amount of work hours allocated to an employee can also be used to "keep them in check" (ICTU project worker) and stop them from complaining. An interviewee who worked in a food shop stated that after she challenged the employer over non-payment of sick-pay, upon returning to work she noticed her working hours cut significantly while other employees' working time increased. At interview she said that she felt as if:

"you were 'rewarded' with hours for 'good behaviour' or 'punished' with fewer hours for 'bad behaviour'" (retail – food shops)

Some contracts are being described as 'casual' even when employees have worked for a particular employer for a continuous period of two or three years. While in some cases flexible contracts allowing for an increase or reduction of hours can be justified for business reasons, such as the seasonal fluctuation of demand for example, it was the view of advice workers that in other cases, 'casual' contracts are used to circumscribe employees' rights or prevent them from claiming their in-work entitlements:

"My view is that the reason they get those 'casual contracts' is to keep them under control. Because many of them have 17.5, 20 hour contracts and for two years, four years, they work 40 hours a week. People think that they have a temporary contract or 'casual contract' that doesn't give them any rights. [...] they would say "But I have a temporary contract so I don't have any rights" and I have to say "No, that's not correct because you've been there a year or two years, working 40 hours every single week, you can't say that you are a casual worker anymore". But they are afraid [...] and think that they have to work hard to get a permanent

contract before they get any sort of entitlements. So I would say it is more about control than anything else." (ICTU project worker).

The lack of understanding of the nature of the contract and the related entitlements, or misinformation by employers, has significant negative impact on migrant workers who can miss out on leave, sick pay, maternity pay and so on:

"Employers would say 'you are not entitled to this' and people would take it for granted as they think they have a casual contract or indeed when they work part-time they think they are not entitled to sick pay for example, that happens quite often" (ICTU project worker).

The situation is similar for those on the so-called 'zero hours' contracts. Such contracts are traditionally used by employment agencies where the work cannot be guaranteed and are used by agencies because "the worker is only employed when he or she is actually assigned hours to work. When the assignment comes to an end, the employment relationship terminates" (ECNI, 2010, p66). While perfectly legal, the contracts usually reserved for arrangements for temporary work (such as hiring 'bank staff') are becoming more widespread, for example in the contract cleaning sector. While many workers on 'zero-hour' contracts are effectively working full-time hours of 35 or 40 hours a week, this is not widely understood by them as having a full-time contract. Proving that a contract existed would be possible before a Tribunal but this is only done in a limited number of cases and it was the view of advice providers that many workers lose their entitlements annually, not being aware that they can take holidays, claim holiday pay or sick

pay. When challenged, some employers admit that the workers are in fact entitled to leave or sick pay:

"Some workers are messed around by employers because they don't know any better but when issues are raised, employers are responsive and you will find that they pay outstanding monies, give leaves, etc." (Trade Union official)

Employee handbooks

Interviewees in the current study were very rarely provided with 'Employee Handbooks' although they would sometimes be provided with 'principles' outlining appropriate behaviour in the workplace. As with written contracts, employee handbooks were often provided after an intervention from the Trade Unions who represented the workers in their disputes with employers indicating that companies do have them but in some cases do not share those with employees. More often than not, where provided, Handbooks were given out in English and workers therefore found it difficult to make themselves familiar with company procedures, including with grievance and disciplinary processes. These issues are discussed in more detail in the sections which follow on working conditions and the use of disciplinary procedures in the workplace.

4. Working conditions

Issues concerning long, and often unrestricted hours of work, featured in almost all interviews conducted for this study. Previous research indicates that employers often recruit migrant workers because of their “willingness” to work long hours and the perception that many will work without overtime being paid at a higher rate (Dench, et.al, 2006, p32). Workers in the lower skilled jobs and those earning minimum wage were often found to be working the longest hours (McKay, Craw and Chopra, 2006, p7). This “willingness” to extend working time must, however, be questioned as while many interviewees in this current study were prepared to work long hours for reasons of achieving more financial stability, others felt compelled to do so because they were afraid of losing their jobs:

“I worked all hours of the day. There was only two of us and when my colleague went on leave, I worked three weeks straight with no break, 11 hours a day to keep the shop open” (retail – food shops).

Feeling compelled to work long hours and not taking much time off meant that some of the workers were placing themselves and potentially others at risk, including continuing to work when injured:

“I worked for 13-14 hours non-stop, no breaks. Even when I was injured at work, burnt my hand, I kept working” (catering).

Research elsewhere noted that the rate of accidents at work is higher for migrant workers than for UK-born workers, with one of the reasons being fatigue caused by long working hours (McKay, Craw and Chopra, 2006, p.viii and pp29-30). Migrant workers have also stated that they are less likely to report accidents as “they were concerned that employers might view them as a risk and dismiss them” (ibid), while racism and discrimination in the workplace contributed to the workers’ inability to raise concerns about health and safety risks more generally (p.ix). Previous research in Northern Ireland indicates that fear of losing employment is one of the major factors in workers’ becoming more vulnerable to exploitation and in some cases placing themselves or their health at risk. In 2010, the Equality Commission reported that some agency workers in particular were afraid to take time off in cases of sickness or injury, worrying that if they did, they will no longer be given work by the agency (ECNI, 2010, p62). Others reported losing their jobs or being threatened with dismissal if they took time off when sick (p63). In the current study, interviewees also reported feeling pressurised into working harder

within their time limits and concerned that if they are unable to prove their 'effectiveness', they will be dismissed. One interviewee recalled how:

"One member of staff was sacked because she couldn't cope with the speed of cleaning the rooms" (hospitality sector).

Almost all of the of interviewees stated that they are aware of the difficulties on the job market and were concerned that if they raise complaints, they may not be able to find another employment. The lack of jobs means workers agree to longer hours, not to take annual leave, come to work even if sick and tolerate worse working conditions; many are prepared to accept such treatment and demands as they believe "things are just like that" (ICTU project worker) for foreign workers. While accepting below par working conditions is also currently true for many 'local' workers as well as migrant workers, added vulnerability of the latter is connected to employers' perceptions that migrant workers should be there on their "beck and call" (ICTU project worker) and that if they complain, they can be "easily replaced" (hospitality sector):

"When people were on holiday, we had to take on 30 or more rooms to clean. Our manager said that if we didn't like it, we could just go home [and lose our jobs]" (hospitality sector).

Pressures relating to feeling compelled to be 'more effective' can have a negative impact on both physical and mental health. In the current study, one interviewee recalled a particularly difficult working relationship with her manager which she stated "had [her] tortured. I lost [well over a stone] in weight in one month with all the work and stress" (hospitality sector). Much of the pressure comes from colleagues or immediate

supervisors. Asked if they made their managers or employers aware of the treatment by colleagues, interviewees largely expressed their unwillingness to complain about being put under pressure due to a concern about losing their jobs or lack of knowledge of complaints procedures. Some also stated that they had little faith their working relationships will be addressed by management and inappropriate behaviours challenged, after their previous complaints were not appropriately dealt with:

"I did complain to the manager [after being shouted at by a supervisor] but she turned her back on me and tried to convince me that the supervisor was right" (hospitality sector).

"The [manager] was a bit dismissive" (hospitality sector).

The consequences of making a complaint can be very serious – from victimisation in the workplace by colleagues and managers to dismissal for the most minor breaches of discipline. Occasionally, interviewees felt that such breaches of discipline had been "fabricated" (hospitality sector) to dismiss employees who dared to complain about their working conditions. As one recalled,

"I got a letter dismissing me disciplinarily. It was all lies. I sought advice because I wanted my name cleared" (retail – food shops).

In other cases, staying in work has been made "hard" by other employees or management after the complaint:

"I was given extra jobs after I complained. I took it for a while..." (hospitality sector).

"Suddenly [after the complaint] everything that I did was wrong. I was

told I left fingerprints on mirrors, the beds weren't done properly, I was told to go back to the same room over and over to do it again. I was hired part-time but in effect for a while I worked full-time with all the going back to clean the same rooms twice or three times..." (hospitality sector).

The latter interviewee recalled how the treatment impacted on her belief that she was doing her job well. Before the difficulties with her supervisor began, she was always praised for her work:

"I thought I was going crazy for a while, I started taking photos of the rooms after first clean to convince myself, as much as anyone else, that I was not going crazy" (hospitality sector).

Aside from most of the interviewees reporting having to work long hours, disregard for the agreed working patterns was also mentioned and some employers were unwilling to make family-friendly arrangements or give time-off for emergency child care. The issue is illustrated by the following quotes:

"When I asked for a day off because of child-care arrangements, I was told, if I wanted to keep the job, I should 'adjust my life to the work rota'" (retail – food shops).

"They wouldn't give us any weekends off. One colleague asked for one Saturday off, she made her request three weeks before the actual date. It was refused." (hospitality sector)

In one case, the employer was aware that the employee was pregnant. Her work pattern was not adjusted and, more importantly, she was not given breaks to eat or to take rest during her working hours.

"I couldn't even eat, I had to eat as I was pregnant" (hospitality sector).

It is important to state here that ICTU's project workers' experience in relation to the treatment of pregnant workers by some employers raises considerable concerns. ICTU's Migrant Workers Unit regularly advises women in cases where health and safety regulations concerning pregnancy are being breached by employers and where employers ignore letters from workers' GPs asking for reasonable adjustments to be made. This situation is similar to that reported by McKay, Craw and Chopra in 2006 who found that employers did not always make the necessary adjustments to ensure pregnant women could work safely (p.x). Pregnant workers often continue to work in difficult conditions, compromising their health for fear of losing employment (ibid). As stated in the next section, of concern is also the fact that a quarter of all dismissal cases dealt with by the ICTU's Migrant Workers Unit in face-to-face consultations are those of pregnant women. Sex discrimination in the workplace adds to the vulnerability of migrant workers.

Again, it was the concern of advice providers that workers often internalise their treatment as "the norm" and are reluctant to challenge the lack of family-friendly practices, even when they impact negatively on their health and family and social relationships, or to challenge sex discrimination. Interviewees who have been able to change employment are sometimes "surprised" that things can be different:

"I went to work for another employer [in the same sector] and I couldn't believe that things can be normal at work. I am very happy now, things are so different here, we are treated very well" (retail – food shops).

5. The use of disciplinary processes

As stated earlier, there has been some concern expressed in the past that disciplinary processes are used in a discriminatory manner in cases involving migrant workers. First noted in relation to Northern Ireland by Holder and Lanao in 2005, who reported on the differential use of discipline against Portuguese workers, concerns have more recently been raised by UNISON (2009) who reported on the experiences of migrant workers in the health and social care sector being disciplined more frequently than local workers.

The analysis of case files of face-to-face consultations held by the ICTU's Migrant Workers Unit showed that 19% of the cases requiring face-to-face consultation between November 2010 and November 2012 concerned disciplinary proceedings (including those which ended in dismissal). The records of phone consultations provided by the Unit between December 2010 and December 2012 show that up to 15% of calls per quarter concern disciplinary processes (9% per quarter on average).

The use of disciplinary procedures

While in some cases the use of a disciplinary process was found to be appropriate, there was a significant concern expressed by advice workers, Trade Union representatives and workers alike that in many cases disciplinary measures are used for the most minor of infringements and that their use is increasing. In one case brought to the attention of the Migrant Worker Support Unit, the employer dismissed the employee and when challenged stated that he "forgot to give written reasons for the dismissal" (retail – food shops) in the notice letter, terminating employment. When a letter was provided it stated that the employee was dismissed disciplinarily, allegedly for taking some damaged products out of the shop without permission. The employee stated that she had been told by the employer in a one-to-one conversation that she was being dismissed "for 'not respecting' the job" (retail – food shops). In other cases, migrant workers were disciplined effectively for misunderstanding company policies as this example illustrates:

Case study

A client was dismissed for gross misconduct. She was working as a cleaner for a cleaning company supplying services to one of the big supermarkets. She has been employed for over two years. The supermarket provided leftover food to their employees, the food being placed in the canteen for the staff. One day, after finishing her shift, the client wanted to take home a couple of buns and a small box of fruit. She was spot-checked on her way out of work and the food was taken away from her. She was charged with gross misconduct and dismissed. The ICTU's Migrant Worker Unit appealed the dismissal pointing out that the food was classified as 'waste' and that the client was not aware the food could only be consumed on the premises and not taken home. The Unit also submitted that the client has always been a conscientious and hard working employee.

Some interviewees complained that disciplinary action is sometimes taken due to misunderstanding of gestures, for example. In one case, an employee was suspended for allegedly "being aggressive" towards a client in a shop she was cleaning in. The employee submitted that she was not being aggressive, she was just trying to explain to the client, with the help of hand gestures, that she does not speak English and that the client should ask another person for assistance. The employee was banned from working in the shop and subjected to a disciplinary process. She was provided with assistance in her case by a Trade Union and was eventually re-instated and was able to return to work for the same employer. The whole process, however, took more than a year for the case to be resolved.

It is important that where disciplinary processes are used, these are appropriately explained to employees and that employees receive all the appropriate information and support to be able to understand the allegations against them, the evidence used and to be able to prepare their defence/challenge the charges where necessary and appropriate. While some examples of good practice in this respect have been reported, in most cases brought to the ICTU workers either did not know the procedures or felt unable to challenge the process, including due to the language barrier. It was also the experience of some of the interviewees, confirmed by representatives of Trade Unions, that employers set dates and times of disciplinary meetings in a way as to make representation or getting any kind of advice more difficult (for example, setting a meeting during the Christmas break or on New Year's Eve). The employers give the employees a short notice so...

"[...] they follow the procedure in a way [...] and people go because they are scared, and they go unrepresented" (ICTU advice worker).

In relation to being able to effectively take part in the disciplinary process, one interviewee recalled how he was informed on the morning he turned up for work that he was being suspended and that he should go home and wait for a call from the manager. He was not informed what he was being suspended for or what the investigation concerned or, in fact, that there was to be an investigation. The company representative phoned him two days later to say that a disciplinary hearing has been organised and that he needs to attend. While an interpreter was provided for the hearing, notes of the evidence were only provided after an intervention from the Trade Unions; these were all

provided in English (small-size service company).

The Labour Relations Agency's *Code of Practice on Disciplinary and Grievance Procedures* is clear that:

“To accommodate the handling of disciplinary and grievance issues in the workplace employers should pay particular attention to those employees who have difficulty reading or whose first language is not English” (Labour Relations Agency, 2011, p2)

Access to interpretation would ensure that processes are better understood and fairer and also give employees the opportunity to consider whether and how to challenge the process where necessary. It is important to stress that understanding of disciplinary proceedings is necessary for the worker's right to defend themselves. While some employers were very willing to provide interpretation, others either refused such support or workers organised interpreters for themselves and paid interpreter fees from their own wages. Other employees speaking the same language were also used by employers, a practice which has to be questioned in particular from the point of confidentiality of the disciplinary process and the potential for the introduction of bias to the proceedings connected to having a work colleague providing assistance. Understanding of the necessary procedures and the provision of time to seek advice and representation would also limit the need for appeals, benefiting both employees and employers. It was the view of the advice providers that

“It would be better if we got involved earlier, as early as possible rather than them waiting for the appeal but sometimes, obviously, we have no choice and we would get involved at whatever stage people contact us” (ICTU project worker)

Sex discrimination in cases of dismissal

Around 12% of cases dealt with by ICTU concerned dismissals in a variety of contexts (*other* than the use of the disciplinary process). It was of huge concern that a number of women who have sought advice from the Unit have been dismissed by employers when they let them know they were pregnant (a quarter of all dismissal cases). Women who are pregnant are particularly vulnerable to dismissal when they are not yet fully protected by their contracts, i.e. when they have not worked for their employers for a year or more. Issues relating to casual or 'zero-hours' contracts, outlined in the previous chapter, impact more negatively on women workers as pregnancy and maternity entitlements are strictly connected to the length and nature of any contract of employment.

Case study

The client was working in a restaurant, washing dishes in the kitchen. Following her return from holidays she informed the company that she was pregnant and shortly after that her name was removed from the staff rota. She has made an appointment with the ICTU's Migrant Workers Unit and a letter was written to the employer appealing the decision and alleging sex discrimination on grounds of pregnancy. The client was represented at a meeting with her employer, following which she was reinstated.

The consequences of dismissal in the circumstances of limited protection of employment law can be devastating for the women concerned as recalled by this interviewee:

“I was sacked for being pregnant. I lost my house and nearly lost my child. It’s not how they should treat people” (hospitality sector).

Of concern was also the fact that some employers, albeit in limited cases, used health and safety regulations to dismiss women who were pregnant. A limited number of interviewees also reported that while women may not be sacked directly for being pregnant, they have their working hours cut to the extent that employment ceases to be viable in terms of pay received. In those cases, women leave to look for other work which would allow them to earn enough to cover their living expenses. It is important that in cases of pregnant employees, any changes of contract are fully justified and non-discriminatory; they should also be fully explained to the employee concerned to avoid allegations of sex discrimination:

Case study

A client has been working in a bakery for over 2 years. She informed the company that she was pregnant. The next day she received a letter informing her of a temporary lay off. She believed that it was only her and another pregnant employee that have been selected for the lay off. She contacted the Citizens Advice Bureau who wrote a letter raising a sex discrimination grievance. The company explained that due to financial difficulties the company decided to temporarily lay off staff from the night shift and that each employee would take a turn. ICTU advised the company that all affected employees should receive letters about the exact date when their lay-off were to start and finish and to ensure that all employees understood that they will all be affected by the changes. The company also agreed to make arrangements so that the amount of the Statutory Maternity Pay for the ICTU’s client was not adversely affected.

7. Language support and professional development

Language and language support

The issue of barriers in access to employment and integration within employment because of lack of English has been raised in previous research in both the UK and Ireland. In 2008, a research undertaken by LOCUS found that many clients of employment agencies had “low standard of English. This [...] impacts upon job search, interviews, willingness of employers to hire and exclusion if they gained employment” (LOCUS, 2008, pp.6-7). Lack of language skills meant that many migrant workers had fewer opportunities of promotion and career progression (Conroy and Brennan, 2003; ECNI, 2010; see also below). Earlier research also indicated that lack of language skills can cause difficulties and conflicts in the workplace (Bell, et.al., 2009, p113). Many employers report difficulties in communication with employees, with two-thirds of employers in Northern Ireland admitting such issues (up to 82% in the hotels and catering industries)(Oxford Economics, 2009, p45). However, only 7% of employers stated that they thought it necessary to provide additional English language classes to their employees (ibid).

There are different aspects of the impact of the lack of English skills on the situation of migrant workers. The first is the understanding of contracts and contractual requirements. In 2009, Bell, et.al. reported that a number of employers provided support in dealing with contracts, including by employing bi-lingual human resources staff (p114). Similarly, some of the interviewees for the current research stated that they knew of very good practices in the different sectors where contracts and any other official documents, such as employee handbooks, had been translated into the workers’ main languages. More often, however, the interviewees for this current research were asked to sign contracts in English and had no access to employee handbooks or any other materials in their own language. Where staff had colleagues from the same country working with them, they would depend on their colleagues to translate the documents or to translate proceedings at meetings. Requests for interpreters to attend core meetings – such as those regarding consultation on company restructuring or reconfiguration of patterns of work – were often dismissed:

“We were told that since we’ve signed contracts in English, it must mean that we know the language and therefore there is no need for an interpreter to attend the consultation meeting” (hospitality sector).

“At the meeting, we were told that this is an English-speaking company and that we should understand English” (hospitality sector).

Clearly, the lack of provision of interpretation in such situations leads to exclusion of migrant workers from internal company processes which may have an impact on their employment and terms and conditions of their contracts. It

is important to stress that job descriptions for many jobs in the hospitality, contract cleaning and other sectors do not require knowledge of English as employment criteria. While employees often managed to secure translation of their contracts or information from meetings, through their colleagues, friends or family members, there was a concern raised that in some cases lack of English can have very serious consequences, including putting employee names to untrue statements in company documentation:

“Migrant staff signed documents which they didn’t fully understand. There was supposed to be a refresher training provided every six months, there was no training at all and yet we were asked to sign documents in English to say that we have been trained” (hospitality sector).

This is reminiscent of the experiences of agency workers reported by Bell, Jarman and Lefebvre in 2004 knowing of “people who had signed statements on the instruction of their supervisor saying they had completed training when they had not” (p65). The Equality Commission for Northern Ireland has also reported similar concerns in 2010 in relation to agency workers’ contracts stating that:

“The language barrier prevented some participants from fully understanding the documents they signed. [This] prevented participants having the same opportunities to question and understand documents” (ECNI, 2010, p59).

The Equality Commission also pointed out that even the provision of translated documents may not always be sufficient if the workers have no appropriate time to consider the documents and raise questions before signing contracts. It reported that some participants to

its study of employment agencies felt pressurized to sign the documents quickly and even where those were provided in their national language, they had no time to go over the terms and conditions (ECNI, 2010, p60).

Not being able to speak English increases workers’ vulnerability and in some cases it was reported in the current study that lack of language skills was used as a way of intimidating workers, particularly in small food shops where staff had limited opportunities to learn/improve their English due to the jobs being mainly based on speaking their first language. Some good practices have been reported in the sector, with one particular employer ensuring that all documentation was provided in both English and the employees’ first language. In another case, however, the employer used English language documentation in a case of a dismissal of three employees although both the employer and the employees are Polish speakers and the employees had limited English. The support from ICTU enabled the employees to challenge the dismissals and all three had been reinstated. However, when workers claim their rights, some reported being branded “troublesome” (retail – food shops) and it was alleged that different employers exchange information about former employees, making it difficult to find another post in the same sector.

“They employ [people from within the same community] as they know they don’t know English and don’t know their rights” (retail – food shops).

Job development and progression

A survey of employers undertaken by Oxford Economics in 2009 revealed that 72% of employers in Northern Ireland felt they provided equal opportunities for progression and employment in senior

positions to migrant and local workers, “though the remainder were slightly more likely to employ migrants in more junior positions” (p44). The report also stated that employers largely felt that when they employed migrant workers, this was in jobs generally in line with the workers’ qualifications and skills (ibid). The report authors did, however, question the latter assessment and suggested that employers were not always aware of what qualifications workers actually hold.

The sector which showed a departure from the general pattern of balanced employment of migrant workers in junior and senior positions was the hospitality sector in which 44% of employers stated that they tend to employ migrants in lower level positions (Oxford Economics, 2009, p44). The report suggested that this situation was linked to the nature of vacancies available in the sector at the time rather than existence of any particular recruitment policy (ibid).

Interviewees in the current study felt, however, that there are certain limits to their progression and while some duties, such as a “Room Checker” in hotels, are within their reach, there is a definite “glass ceiling” when it comes to progressing to managerial or supervisory positions (hospitality sector). This was true also in companies where the main workforce was almost exclusively made up of migrant workers.

“The higher you get [in the employee structure], the fewer migrant workers you will get” (hospitality sector).

In the 2009 study undertaken for DEL, only 21% of respondent to the survey indicated that they have been promoted at work although in some cases follow-up interviews revealed perceptions of differential treatment by nationality within migrant worker groups (Bell, et.al.,

2009, p97 and pp99-100). The Oxford Economics study in 2009 stated that progression is also sometimes hampered by workers’ decision to move on to other jobs or to leave the country all together (p3) and that overall, migrant workers rarely seek to achieve promotions because of the temporary nature of their stay in a particular job (p54). The same report also indicated that while in sectors such as hotels and catering, “particular occupations such as housekeeping and kitchen portering are dominated by migrant workers”, fewer performed customer-facing roles due to “language problems and perceived cultural barriers” (p37).

Lack of requisite English skills creates significant barriers to progression, with at least some workers expressing frustration that they are unable to progress to jobs more in line with their qualifications due to lack of language (Bell, et.al, 2009, p94). However, there is also evidence to suggest that many employers give migrant workers only a minimum of training (Oxford Economics, 2009 ,p3) which can impact negatively on promotion and progression also for those with sufficient English skills. Only 13% of employers in Northern Ireland stated that they provided external training opportunities for migrant workers (p51) and the report clearly states that overall migrant workers receive “very little capacity-building training during their employment” (p52). As one of the interviewees for the current study said:

“I didn’t feel that there were any opportunities for progression. I know in [company name] they make sure staff get additional training, they almost ‘push them’ to progress. Our company promised a lot but when it came to getting the necessary training and opportunities, these were not provided” (hospitality sector).

In the current study, respondents stated that where opportunities for progression are available, migrant workers are not always informed about them and given the opportunity to apply for supervisory or managerial jobs, regardless of their ability to speak English or perform such jobs. One interviewee recalled how she undertook supervisory duties for 18 months before a new Team Leader was appointed through competition. She was not informed about the post being available, neither was she given the opportunity to compete for the post. She stated that she was only informed about the Team Leader position when she challenged the manager after learning “through word of mouth” that new Team Leader has been appointed from another establishment belonging to the same company. The new Team Leader was a local employee (i.e. not a migrant worker). It was the assessment of Trade Union officials that cases such as this illustrate discrimination based on nationality, and that migrant workers still face considerable difficulties in reaching higher positions:

“It’s more than a glass ceiling, it’s a concrete floor” (Trade Union official).

8. Trade Union membership and awareness of employment rights

The establishment of the ICTU's Migrant Workers Unit was one of the outcomes of a research undertaken for NIC ICTU in 2006 by Robbie McVeigh. The research focused on the experiences of migrant workers and their families, but was also designed to make recommendations on the ways in which Trade Unions can respond to the needs of this group. The central assumption of the research was that the Trade Unions have the "unique responsibility and privilege [...] in terms of organising and representing Migrant Workers who can be among the most vulnerable and exploited workers in Northern Ireland" (McVeigh, 2006, p6). They also have both the duty and the capacity to organise and support migrant workers (ibid).

Trade Unions in Northern Ireland and elsewhere responded to the needs of migrant workers by providing targeted information and by targeted recruitment. However, the low levels of awareness of employment rights amongst migrant workers has been a long-standing issue and many challenges remain for both the unions and the workers. Available figures suggest that contact with outside organisations by migrant workers is rare and very few are members of Trade Unions across the UK (with migrant workers who arrived after the 2004 expansion of the European Union least likely to join – see: Anderson, Clark and Parutis, 2007, p21). Most often, the reasons given for not joining a Trade Union relate to cost, lack of information or brevity of stay in the UK, as well as ideological reasons or experiences of union membership in the country of origin (ibid). The lack of English skills can also be a barrier to membership (McVeigh, 2006, p54). Systemic issues, such as limited resources in the Trade Unions to engage more with migrant workers, and employers' practices which frustrate the efforts of Trade Unions to organise workers also play a significant role (ibid, pp54-55).

It is important to state that awareness of rights or membership of a Trade Union is not in itself a guarantee of better protection. Language remains a huge barrier to the workers' ability to assert their rights as "it can be extremely difficult to articulate what the problem is and challenge the employer" (Trade Union official). In 2010, the Equality Commission reported that even where agency workers were aware of their rights and entitlements, the inability to speak English and associated difficulties with understanding of the procedures for asserting rights remained an issue which impacted negatively on the situation of

migrant workers (ECNI, 2010, p64). In this respect, the support offered in particular by Trade Unions and advice organisations was especially valued by workers who felt that having someone to take the case on their behalf was extremely helpful (ibid).

All but one interviewee in this current research stated that before they came across the ICTU's Migrant Worker Unit and their Employment Rights Clinic, they were unaware of their rights in the workplace and unaware of where to turn for help. The vast majority of the interviewees learned about the project by word of mouth from their friends and colleagues; some have been referred to ICTU by other advice organisations such as the Migrants' Rights Centre in Belfast. Some stated that having to seek help, encouraged them to research the information available on-line and find out about the sources of practical help.

Some of the difficulties which migrant workers face in joining the Trade Unions were recognised by the unions themselves. In some cases, migrant workers may be aware of the unions but are afraid to join or are reluctant to join because of their own perceptions based on the experiences of union activity in their own countries. It was also recognised that there is a continuous need to raise awareness among migrant workers of the existence of Trade Unions and the types of assistance they can provide, going beyond interventions when things "go bad":

"People don't know how to get in touch with the trade unions, we need to improve on that" (Trade Union official).

While encouraging Trade Union membership and facilitating access is an important issue, both workers and Trade Unions face additional challenges brought about by recession. What was of concern was that workers are not willing to bring their cases forward for fear of losing their

jobs in the current economic climate. As one of the ICTU project workers recalled after an advice session for migrant workers:

"[even with] simple, straightforward cases [...] they all said they were afraid, didn't want to raise it. That's the first time I've seen that, it's first time I've seen that level of fear across everybody in that room" (ICTU project worker).

Sometimes the fear may also concern the employment of other family members, as the following case illustrates:

Case study

The client was employed in a factory for 4 years. The company selected him for redundancy. The client felt that the selection process was unfair and that the company targeted him because he was Polish. The ICTU's Migrant Workers Unit advised the client that he had grounds to appeal the redundancy. As the company also employed the client's son, he was concerned that if he appealed the decision, his son's employment may be compromised and he may not be able to support his young family. The client decided not to pursue the case after he received the redundancy payment and other entitlements.

While this research showed that employers generally didn't refuse to meet with Trade Union representatives, some of the interviewees stated that they faced significant difficulties when they asked for representation. Staff from the ICTU's Migrant Workers Unit also recalled instances in which employers or their representatives acted aggressively towards them. One of the interviewees (employees) recalled how a Trade Union representative was to attend a disciplinary meeting with him and had "doors shut in his face" (small-size service company).

Overall, however, the interviewees reported that asking for assistance had very positive impact on both the cases with which they turned to the Trade Unions and on working conditions afterwards. One interviewee stated that once the employer realised that staff accessed assistance, the way in which they had been treated changed for the better. Another interviewee, who asked the ICTU for assistance with their contract of employment, stated that it was important that she could access such support and have her rights, as well as contractual obligations, properly explained. She valued the fact that she was able to discuss those with someone with appropriate knowledge and that when the contract turned out to be correct, this also improved her confidence in the employer. Another commented that:

“It’s the support that is important, having somewhere to go. It matters less if you win the case, it’s the assistance that important” (contract cleaning).

Grievance procedures and the statutory right to be accompanied at grievance meetings³ were core to the protection of rights of migrant workers:

“Having the grievance procedure and then the right to be accompanied / representation by [Trade Unions] that’s still very useful for migrant workers’ experience of trying to get their concerns raised. If they raise a grievance and then we are there, it forces the employer to take the issues seriously” (ICTU project worker).

It was clear from the research that the work of the ICTU’s Migrant Workers Unit plays an important role in providing advice to employees about the grievance process, also in terms of what kinds of issues should be raised through statutory grievance procedures and which are more appropriately dealt with informally. The project plays a role in providing information about contractual obligations to employees and explains what is expected of them, explaining employers’ procedures and practices. In this respect, the project plays an important role in ensuring that grievance procedures are not used by employees where the employer acts within the contract of employment or established practices or where, for any other reason, using a grievance process is not appropriate.

Single employment rights enforcement body

One of the issues raised by interviewees, Trade Union officials and advice workers was the lack of a single employment rights enforcement body creating a situation where workers are confused about where to complain if breaches of employment legislation are alleged.

Currently in Northern Ireland, there are a number of different agencies with powers to inspect different aspects of employment practices: HM Revenue and Customs responsible for minimum wage and pay-related issues; the Gangmasters Licensing Authority responsible for inspecting employment in agriculture and fisheries; the Department for Employment and Learning responsible for registration and inspection of employment agencies; UK Border Agency involved in enforcement relating to undocumented workers and the Health and Safety Executive enforcing health and safety legislation. The issue of the lack of a single enforcement authority

³ The right to be accompanied by a colleague or a trade union official to grievance or disciplinary meetings is contained in Articles 12-17 of the Employment Relations (NI) Order 1999.

has been raised on a number of occasions in the past and research undertaken for NIC ICTU by McVeigh (2006) noted that there is a

“[...] need to look more coherently and strategically at the way in which employment rights are enforced” (p28).

It was the view of the advice workers and Trade Union officials that the existence of a single enforcement authority would not only improve the situation of migrant workers in terms of access to advice and inspection, but would also result in fewer cases needed to be taken to Industrial Tribunals. Referring to the establishment of the National Employment Rights Agency (NERA) in the Republic of Ireland, one advice worker stated:

“It [would reduce] the burden on tribunals if you have an inspection and enforcement body, they can take up the cases of unpaid wages, for example. If you’re talking about serious grievance, in terms of harassment or bullying or where there is race discrimination or something like that, the grievance procedure is very useful. If you’re talking about something like non-payment of wages, those sort of simpler things, which don’t require a grievance procedure, an inspection like that would be very useful for sorting people’s problems quickly and effectively” (ICTU project worker).

Access to Industrial Tribunals

While the ICTU’s Migrant Workers Support Unit does not represent migrant workers before Industrial Tribunals, it often helps them in obtaining the necessary information and provides advice on how to prepare cases and where to turn for further assistance. Around 5% of all phone consultations provided by ICTU concerned Tribunal cases, with 10% of

face-to-face consultations including advice on potential or on-going Tribunal cases.

The Unit’s experience since 2007 showed that very few migrant workers utilise the Tribunal route for resolving disputes with employers. In the majority of instances where a case could be taken to a Tribunal, the cost of the process for low-paid workers is prohibitive, especially in terms of obtaining legal representation the costs of which may not be fully covered even if the Tribunal awards compensation. In other cases, migrant workers may be discouraged from bringing Tribunal cases by a lack of independent advocates who may provide assistance. Organisations such as the Equality Commission for Northern Ireland focus, due to limited resources, on supporting strategic cases only, and other organisations – including the ICTU – are limited by their remit (and resources) in the extent to which they can provide assistance. Additionally, the experience of advisors such as those working in the ICTU’s Migrant Workers Support Unit, shows that migrant workers find it difficult to understand the Tribunal process and face significant language barriers in dealing with documentation and evidence.

The practice of the ICTU’s Migrant Workers Support Unit clearly established that there is a significant gap in support for migrant workers wishing to use the Tribunals. The project often exceeded its remit in getting involved in advising on and helping the preparation of Tribunal cases; it could not, however, play a role of an independent representative. The gap in the provision of representation at a reasonable or no cost to the client meant that migrant workers often did not pursue their cases or withdrew them in the process.

Conclusions and recommendations

Many workers who arrived in Northern Ireland over the last decade, and before then, are by now well settled here and it could be argued that, particularly with the onset of recession, migrant workers are facing many of the same challenges that 'local' workers face in the workplace. Interviews for this research show, however, that workers from outside of the UK and Ireland remain a group which is hard to reach and which continues to face very particular issues which make them vulnerable to exploitation and differential treatment.

It is of concern that many of the issues faced by migrant workers in their workplaces remain the same despite the passage of time and improved provision of information and support. Lack of written contracts, the prevalence of 'casual' or 'zero-hour' contracts, long working hours, difficulties with pay and in accessing in-work entitlements such as leave all form large part of their experience of the workplace. So do racism and discrimination which can have devastating consequences for workers in relation to their treatment by employers, managers and colleagues; their experience of work; their career progression and development and their relationships with the wider community. In terms of access to rights, it was clear

from the interviews conducted that there remains a significant lack of knowledge of employment rights amongst migrant workers and access to protection is not always easy. Often, lack of knowledge is also a factor in employers' practices and services such as that provided by the ICTU's Migrant Workers Unit play an important role in providing information to employers on legislation and good practice guidelines. Where employers engage with employees and their representatives to resolve issues constructively, the involvement of Trade Unions can lead to "restoring good relationships" (ICTU project worker).

What was very clear from this research is that the onset of recession and the economic downturn has increased the vulnerability of many of the workers to exploitation as they are unwilling to complain about their working conditions for fear of losing employment. The potential loss of a job was quoted as the single most important factor in the decision-making process and many stated that both them and their colleagues are afraid to challenge inappropriate working practices. In this context, they were clear that an existence of a single employment rights enforcement body to which they could complain without disclosing their identity or as a larger group of employees would make a significant difference to the way in which their rights are protected in the workplace. Providing organisations such as the ICTU with both the remit and resources to represent migrant workers before the Industrial Tribunal where necessary and appropriate should also be considered as a way of improving protection and access to justice.

The following recommendations are therefore made:

1. There is a continuous need to provide targeted services supporting migrant workers in the workplace. These should, like the ICTU's Migrant Workers Unit, provide advice and representation to ensure that workers can avail of their right to be accompanied where necessary. The Department for Employment and Learning, which provided on-going funding and support for the project, should consider extending the funding to include resources for Tribunal representation by the ICTU to those workers who are not members of individual Trade Unions.
2. There is a continuous need to challenge racism and racist discrimination in the workplace. This includes challenging indirect discrimination and should extend beyond the provision of training and development of workplace policies. Employers should create opportunities for integration of migrant workers with local workforce. State bodies (such as Department for Employment and Learning and Invest NI) which fund business start-ups or provide any funding for business development should ensure that businesses availing of such funding commit to challenging racism and that this is made a condition for the provision of funding.
3. The Department for Employment and Learning and other bodies, such as the Equality Commission for Northern Ireland, should support research into positive practices in employing migrant workers, with a focus on examples of best practice in providing equal access to rights and to workplace integration. These examples should then be used in the provision of advice and training to employers whose practices fall short of such positive practice.
4. The experience of the Trade Unions and migrant workers alike indicate that membership of a union provides migrant workers with an important source of information about employment rights as well as providing a safety net in cases where those rights are breached. There is a continuous need to raise awareness of the Trade Unions amongst migrant workers and for the Trade Unions to actively recruit and organise migrant workers.
5. An establishment of a single inspection and employment rights enforcement body should be considered as a matter of urgency.

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4-6 Donegall Street Place
Belfast
BT1 2FN

Tel: 028 9024 7940
Fax: 028 9024 6898

Email: info@ictuni.org

www.ictuni.org