

SHAKY FOUNDATIONS:

**LABOUR EXPLOITATION
IN LONDON'S
CONSTRUCTION
SECTOR**



**FOCUS ON
LABOUR
EXPLOITATION**

SHAKY FOUNDATIONS: LABOUR EXPLOITATION IN LONDON'S CONSTRUCTION
SECTOR FLEX 2018

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Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation.
For more information, please visit our website: <http://www.labourexploitation.org>

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ACRONYMS

Acas	Advisory, Conciliation and Arbitration Service
BEIS	The Department for Business, Energy and Industrial Strategy
CBI	The Confederation of British Industry
CIOB	The Chartered Institute of Building
CIS	The Construction Industry Scheme
CITB	The Construction Industry Training Board
EAS	The Employment Agency Standards Inspectorate
EU	European Union
GDP	Gross Domestic Product
GLAA	The Gangmasters and Labour Abuse Authority
HMRC	Her Majesty's Revenue and Customs
IASC	The Independent Anti-Slavery Commissioner
ILO	International Labour Organisation
LEAG	The Labour Exploitation Advisory Group
LLW	London Living Wage
MP	Member of Parliament
NIESR	The National Institute of Economic and Social Research
NLW	National Living Wage
NMW	National Minimum Wage
NVQ	National Vocational Qualification
PAYE	Pay As You Earn
SAWS	Seasonal Agricultural Workers Scheme
TUC	The Trades Union Congress
UCATT	The Union of Construction, Allied Trades and Technicians
UTR	Unique Taxpayer Reference
WRS	Worker Registration Scheme

EXECUTIVE SUMMARY

BACKGROUND

Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation. To achieve this, FLEX conducts research and policy advocacy that aims to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation.

In much of its work, FLEX has set out the link between labour abuses and labour exploitation. Abuses occur across the spectrum, from relatively minor infractions to extreme exploitation and modern slavery. FLEX research¹ has identified a strong causal link between labour abuses and severe labour exploitation within certain UK labour sectors and particularly amongst migrant communities. Labour abuses such as non-payment of living wage, non-payment of holiday and sick leave, and unfair dismissal are most common. When left unchecked these can develop into severe exploitation.

The construction sector has been identified as a high-risk industry for modern slavery.² To understand the root causes and drivers of exploitation in this sector, FLEX has undertaken research with a focus on the structural factors in the labour market that place workers at risk of labour exploitation. Based on the findings of this research, we recommend targeted interventions to prevent labour abuses and modern slavery in the UK construction sector.

This research is of particular relevance as the construction industry faces major challenges in the wake of the UK's vote to leave the European Union – here on referred to as 'Brexit'. The nature of the UK construction industry means the demand for a flexible workforce is strong. This has led to an increased reliance on migrant workers and there is strong evidence indicating that the sector will continue to remain highly reliant on migrant labour in the future. Given the reliance on migrant labour, any future restrictions on legal employment of migrants resulting from Brexit will have serious ramifications for the migrant and employment status of workers in the sector. As FLEX research³ has shown, workers with insecure status are at a high risk of labour abuse and exploitation. This research into the construction sector shows that action is urgently required to address both the existing gaps in protections for workers in the construction sector and the future vulnerabilities that could arise following Brexit.

¹ FLEX and the Labour Exploitation Advisory Group (LEAG), *Labour Compliance to Exploitation and the Abuses In-Between*, 2016. Available at: <http://www.labour-exploitation.org/sites/default/files/publications/LEAG%20position%20paper%2001.pdf>

² Alistair Geddes et al., *Forced Labour in the UK*, 2013, p.18. Available at: <https://www.jrf.org.uk/report/forced-labour-uk>

³ FLEX and the Labour Exploitation Advisory Group (LEAG), *Labour Compliance to Exploitation and the Abuses In-Between*, 2016. Available at: <http://www.labour-exploitation.org/sites/default/files/publications/LEAG%20position%20paper%2001.pdf>

KEY FINDINGS**THE DEMAND FOR A FLEXIBLE WORKFORCE IN LOWER-PAID ROLES HAS PLACED MANY WORKERS AT RISK OF ABUSE**

Fluctuating demand for labour and pressure on costs means that the construction sector has come to rely on a high degree of flexibility from its workforce, with jobs often lasting just a few days or weeks and employment status offering little protection for workers. At the lower-paid end of the sector this creates a high level of insecurity for workers who have little or no legal recourse in cases of abuse, leaving them at risk of exploitation.

INSECURE WORK, PARTICULARLY INFORMAL HIRING AND FIRING PRACTICES, FOSTERS FEAR AMONG THE MOST AT-RISK WORKERS

FLEX found contractors using informal hiring and firing practices, taking on temporary workers on verbal contracts at short notice and firing people without warning when costs are too high. Half of all workers surveyed by FLEX do not have a written contract. This creates a highly insecure workforce, and causes fear among workers that they could lose their job at any moment. This fear discourages many from complaining about abuse, as they are aware that they are easily replaceable.

EMPLOYMENT ARRANGEMENTS OFFER FEW PROTECTIONS AND MAKE IT DIFFICULT FOR WORKERS TO UNDERSTAND AND ACCESS RIGHTS

FLEX spoke to workers who were unclear about their employment status and didn't know to whom they could complain about abuse. False self-employment is a problem, leaving workers with few rights and therefore little or no protection against poor treatment. Complex and extensive subcontracting means end users are unlikely to know how workers in the chain are being treated, and are able to deny responsibility for abuses happening in their supply chain. Agency workers employed through payroll companies reported being sent back and forth between agency and umbrella company over pay disputes, with each denying responsibility for underpayment. Unclear deductions are a common problem, with over a third of all workers surveyed reporting they do not fully understand deductions on their payslips. This lack of accountability in practice for breaches of employment rights, leaves the door open to exploitation.

LACK OF OVERSIGHT AND ENFORCEMENT MEANS WORKERS ARE UNABLE TO CHALLENGE ABUSE

The absence of proactive labour market enforcement in the construction sector means those workers who are unable or afraid to challenge abuse are left unprotected. A large number of workers are being made to work in dangerous conditions - an issue reported by over half of survey respondents. Many research participants reported having no choice but to work in unsafe conditions, as complaining would mean losing the jobs they rely on for survival. Only 12.1% of workers in the sector are unionised, meaning that many workers lack support to understand rights and pursue claims in cases of abuse.⁴

MIGRANT WORKERS – REGARDLESS OF STATUS – ARE PARTICULARLY VULNERABLE TO EXPLOITATION

Migrant workers in the construction sector face a number of specific challenges including discrimination, barriers to accessing the labour market, and a lack of alternative job opportunities which can leave them reliant on insecure, poorly paid and unsafe work. These workers also face obstacles challenging abuse and accessing remedy, as the available mechanisms are not tailored to their needs. These issues combined put migrant workers at risk of severe exploitation. Some workers have already suffered discrimination as a result of the UK's decision to leave the EU with over a third of those surveyed reporting that they have experienced discrimination and/or abuse at work related to their nationality after the referendum. From those, nearly half were told they cannot legally work in the UK anymore, illustrating how unscrupulous employers are profiting from the confusion and uncertainty arising from Brexit to abuse and exploit workers.

⁴ Department for Business, Energy and Industrial Strategy, *Trade Union Membership 2016: Statistical Bulletin*, 2017, p.28. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/616966/trade-union-membership-statistical-bulletin-2016-rev.pdf

WHERE ONE FORM OF LABOUR ABUSE IS TAKING PLACE, OTHER ABUSES FOLLOW

FLEX's survey found workers facing multiple labour abuses at the same time. For example, from those being paid below National Living Wage all but one mentioned not being paid for work at least once, while none had written contracts. The majority of respondents also reported being paid cash-in-hand and having been made to work in dangerous working conditions. While the sample of workers paid below the National Living Wage is too limited to draw strong conclusions, these findings indicate that one form of labour abuse often leads to further abuses, which when combined can amount to severe exploitation.

RECOMMENDATIONS

TO THE DIRECTOR OF LABOUR MARKET ENFORCEMENT

- Recommend increases to resources dedicated to UK labour inspection authorities. In the short term, the UK should at least meet the ILO target of one inspector for every 10,000 workers and in the long term act as a best practice example in Europe;
- Initiate a review to establish how joint and several liability for the payment of wages and holiday entitlements may be included in UK law;
- Promote best practice public procurement policy and legislation to address labour exploitation;
- Develop a model for licensing labour providers in the construction industry.

TO THE UK GOVERNMENT

- Adopt the recommendation made in the Taylor Review of Modern Working Practices, that the remit of the Employment Agency Standards Inspectorate be extended, along with an additional resource commitment, to umbrella companies and other intermediaries in the supply chain.
- Work with civil society, including trade unions and charities representing migrant workers, to ensure that post-Brexit immigration schemes do not put workers at risk of exploitation.
- Initiate a review of the impact of insecure immigration status on workers' ability to report labour abuse and exploitation, and how this relates to the identification of victims of human trafficking for labour exploitation.

TO THE MAYOR OF LONDON

- Develop a responsible public procurement policy, which requires companies to pay all workers, regardless of employment status, the London Living Wage and which limits the number of vertical subcontracting layers in construction and other high-risk sectors for exploitation.

TO INDUSTRY REPRESENTATIVES

- Construction industry bodies should develop standards for working conditions with their member companies and support them in carrying out labour rights due diligence in their supply chains.

1

INTRODUCTION

The UK construction sector is a large, valuable and varied industry covering a range of activities including mining, forestry, infrastructure, buildings, manufacturing and maintenance. According to government statistics, the construction industry contributes roughly £103 billion in economic output, or 6.5% of total GDP, and provides approximately 2.3 million jobs, or 6.2% of all employment.⁵

The industry is highly susceptible to economic fluctuations: the demand for labour in the sector can decrease dramatically during economic downturns, and increase equally fast during economic booms or as a result of government investment. In response to the uncertainty and volatility of the market, companies adopt short-term strategies that drive the need for a highly flexible workforce that relies heavily on migrant workers to fill skills and labour shortages.

The Office for National Statistics' data suggests that in 2016, non-UK workers made up 11% of the UK construction workforce.⁶ In London, however, more than 50% of workers in the construction sector are migrants.⁷ The majority of migrant workers occupy lower-paid sections of the industry, making up 44% of the low-wage 'building' workforce, suggesting an over-representation of migrant workers in low-pay work and a significant under-representation in higher paid positions.⁸

As will be discussed in this report, the key characteristic of this low-wage workforce is flexibility, as fluctuating demand across different geographical areas, both within London and nationwide, require labour and, to a lesser extent, skills to be both mobile and available at short notice. As a result, this workforce must also be willing and able to work with varying degrees of uncertainty, as the same fluctuating demand that drives their employment can also quickly make them surplus to requirements.

CONSTRUCTION workforce overview



⁵ Chris Rhodes, *Construction industry: statistics and policy*. House of Commons Library, Briefing Paper No. 01432, 2015, p.5. Available at: <http://researchbriefings.files.parliament.uk/documents/SN01432/SN01432.pdf>; Office for National Statistics, 'Construction Statistics, Number 18, 2017.

Available at: <https://www.ons.gov.uk/businessindustryandtrade/constructionindustry/articles/constructionstatistics/number182017edition#international-comparisons>

⁶ Office for National Statistics, 'International immigration and the labour market', 2016. Available at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/migrationandthelabourmarketuk/2016#what-industry-and-occupations-did-non-uk-nationals-work-i>

⁷ Ibid

⁸ National Institute of Economic and Social Research, *The impact of free movement on the labour market: case studies of hospitality, food processing and construction*, 2016. Available at: <http://www.niesr.ac.uk/publications/impact-free-movement-labour-market-case-studies-hospitality-food-processing-and#WNkkBBLytZo>

FLEX's research has found that this drive for flexibility, combined with little protection or enforcement of employment rights at the lower-wage end of the market, has created a workforce at risk of abuse or exploitation. Working arrangements that demand maximum flexibility from workers offer minimum protections, resulting in a significant power differential between workers and employers. This power imbalance is further exacerbated for migrant workers by other factors such as poverty, language barriers and insecure immigration status.

Interviews and surveys with workers in the sector show that labour abuses and severe exploitation go unchecked as workers are too afraid of losing work to challenge treatment or conditions. Workers interviewed and surveyed by FLEX report employment without a contract, withheld wages, unpaid overtime, high fees for wage processing, unsafe working conditions, wages well below the National Living Wage, discrimination and unfair dismissal. At the same time as many workers do not report labour abuses for fear of losing their jobs, limited resources have left labour inspection authorities unable to effectively enforce labour rights.

This research shows evidence of abuse and exploitation of workers in the construction industry which is enabled by broader structural factors such as types of employment relationship, limited monitoring of labour standards, and the absence of, or obstacles to, access to safe and secure employment for migrant workers. It shows that further analysis is needed of the ways in which these factors both demand and create an at-risk workforce and how this can best be addressed by legislative change and improved oversight of labour standards within the industry. Finally, the research shows that specific action is needed to address a lack of rights and protections for workers within the construction sector and the lack of accessible, effective mechanisms that empower workers to understand and enforce these rights while enabling government agencies to penalise non-compliant employers and eradicate abusive practices.

2

METHODOLOGY

This project involved detailed desk-based research in order to provide an overview of the construction industry, key issues and potential areas of focus. This was followed by primary data collection divided into three phases:

During **phase I** (mid-2016 to early 2017), a researcher visited builders merchants where informal day labourers gather and made contact with migrant workers working in different roles across the construction industry in London, including casual day labourers, those employed on larger sites, and small business owners. The research targeted Romanian and Bulgarian workers in the sector. This allowed us to explore the impact of the transitional controls placed on nationals from these countries working in the UK between 2007 and 2014. Desk research had shown that these controls are one reason for the high number of Romanian and Bulgarian nationals who are currently self-employed, many falsely so.⁹ For this reason, we considered their experiences to be of particular relevance in the context of Brexit, where EU migrant workers in the UK find themselves in an environment of transition and insecurity. Seven Romanian migrant workers were interviewed in this phase. A focus group comprised of a trade union and two migrant community group representatives was also conducted to further explore some of the issues arising from worker interviews.

During **phase II** (late-2017), two community researchers were recruited through migrant community organisations to carry out interviews and support the research.¹⁰ The researchers used their networks to identify migrants working in construction and scheduled interviews. Ten Romanian migrant workers were interviewed in this phase.

For **phase III** (early-2018) FLEX developed an online survey to gather quantitative data on the main issues uncovered in previous phases. The survey was posted on online forums where employers post job opportunities in construction with a brief description of the project and links to the survey in English, Polish and Romanian. FLEX also worked with community researchers during this phase. One native Romanian speaker and two native Polish speakers carried out the survey face-to-face in areas of London with a sizeable Romanian or Polish population. The survey was completed by 134 people working in construction in London. From this group, 127 were nationals of EU countries (excluding British nationals) such as Romania, Poland, Lithuania and Bulgaria.

Whilst this report provides valuable insight into the issues faced by migrants working in construction, it does not represent a complete picture of the problems in this vast and varied labour sector. We acknowledge that the sample size is too small to represent the whole sector and all the subsectors that fall within it, and that our focus on Romanian and Polish nationals through our interviews and survey do not necessarily reflect the experiences of other nationality groups. Another limitation is the overrepresentation of men in our interviews and survey. Only 12.8% of workers in the construction sector are women and our researchers found it challenging to reach them despite the fact that several of the researchers were themselves women.¹¹

Despite these limitations, our findings give an important overview of the labour abuses in the sector, provide insight into patterns of abuse and how these can increase risk of exploitation.

9 See Steve Murphy, 'Regulate the gangmasters exploiting Bulgarian and Romanian workers', *The Guardian*, 10.01.13, <https://www.theguardian.com/commentis-free/2013/jan/18/romanian-bulgarian-workers-full-rights>

10 FLEX, *Researching labour exploitation: a FLEX guide to research with hard-to-reach migrant workers in the UK*, 2018 (forthcoming).

11 Charlie Schouten, Women in construction: what do the numbers say?, *Construction News*, 07.03.18. <https://www.constructionnews.co.uk/data/industry-barometer/women-in-construction-what-do-the-numbers-say/10017870.article>

3

UNDERSTANDING RISK IN THE UK LABOUR MARKET

In much of its work, FLEX has set out the link between labour abuses and labour exploitation. This has involved analysis of the ways in which labour abuses put workers at risk of severe exploitation.¹² In *Risky Business: Tackling labour exploitation in the UK labour market*, FLEX developed a risk matrix to guide more focussed and intelligence-driven monitoring and intervention in areas of the labour market where the risk of trafficking for labour exploitation is highest.¹³ This research into the UK construction sector – in combination with FLEX work in other labour sectors – has supported both the development and testing of FLEX’s risk matrix.

This risk matrix enables a more structured analysis of the level of vulnerability to exploitation in a given labour sector. The following chapters demonstrate how some of these indicators interact in the construction sector to make workers more at risk of, or resilient against, labour exploitation.

CATEGORY	VULNERABILITY	RESILIENCE
Migrant status	No or limited right to remain; restrictions on work and access to public funds; registration requirements; tied visas	Right to work
Unionisation	Non-unionised	Unionised
Community	Limited community ties	Strong community support
Contract	Zero hours; short hours; extensive subcontracting	Worker contract hours and terms requirements met
Terms	Self-employment; agency work; part-time work	Employee, full time
Pay	Debts; deductions; mandatory unpaid time; non-payment of national living wage	Living wage
Treatment	Multiple, persistent labour abuses; health and safety breaches; discrimination	Accessible routes to remedy; worker awareness of advice gateways
Oversight	Deregulation; poor enforcement; prioritisation of immigration control	Strong, worker-centred labour inspection and enforcement; firewall between immigration control and labour inspection
Welfare	Homeless; destitute; no recourse to public funds	Access to benefits, housing and ongoing support

Table 1. FLEX Risk Indicators¹⁴

¹² See FLEX ‘Between Decent Work and Modern Slavery’. Available at <https://www.youtube.com/watch?v=ZArhWbvEBOg>.

¹³ FLEX, *Risky Business: tackling exploitation in the UK labour market*, 2017. Available at: http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf

¹⁴ For more details on FLEX’s indicators of vulnerability and resilience see *ibid*, p.6-12.

FLEX SURVEY

into the London construction workforce



50% have
no written contract



53% were made to work under
dangerous conditions



36% report
not being paid
for work completed



36% do not understand all
payslip deductions

33% have experienced
verbal or physical abuse
while at work

* SURVEY COMPLETED BY 134 WORKERS

4

FINDINGS

4.1 EMPLOYMENT RELATIONSHIPS: SELF-EMPLOYMENT, UMBRELLA COMPANIES AND SUBCONTRACTING

SELF-EMPLOYMENT

The need to balance labour requirements against fluctuating demand in an often volatile industry has led to the widespread use of self-employment as the preferred contracting arrangement. Self-employed workers have significantly fewer rights than employees.

The union for workers in the construction sector, UCATT, stated that the sector's unique tax regime - the Construction Industry Scheme (CIS) - has "institutionalised self-employment and resulted in exploitation", as in many instances employees are not really working for themselves.¹⁵ For example, one interviewee was categorised as self-employed, though he worked through an agency who chose his work, administered his pay and dealt with his taxes, leaving little to distinguish him as self-employed.

The CIS allows employers to deduct and send tax to Her Majesty's Revenue and Customs (HMRC) directly from self-employed workers' wages, but they do not deduct National Insurance or make National Insurance payments, which makes self-employed workers much cheaper to hire. According to UCATT, the CIS has institutionalised self-employment, as contractors register workers as self-employed to cut labour costs in order to remain competitive. This puts falsely self-employed workers at significant disadvantage in terms of rights and protections:

"Bogus self-employment is a huge problem because self-employed workers have less employment rights than employees. They are not entitled to be paid the National Minimum Wage (NMW) and are not covered by the Working Time Regulations 1998, under which other workers have rights to a maximum working week, breaks and paid holidays. They are excluded from, and their employers do not contribute to, the second state pension, resulting in poverty in retirement. The practice of bogus self-employment also undermines health and safety, training and trade union organisation."¹⁶

As evidenced in a 2018 parliamentary briefing paper on the subject, the construction industry has a long history of false self-employment and there has been much debate over how to deal with this issue.¹⁷ The government describes

¹⁵ UCATT, *The Hidden Workforce Building Britain*, 2011, p.7.

Available at: <http://ucatt.info.co.uk/files/publications/UCATT%20Report%20The%20Hidden%20Workforce%20Building%20Britain%202011.pdf>

¹⁶ UCATT, *Employment Law Briefing: Bogus Self Employment*, 2012, p.2.

Available at: <http://ucatt.info.co.uk/sites/default/files/uploaded/publications/Bogus%20Self%20Employment%20Briefing%20Final%20Version%20Jan%202012.pdf>

¹⁷ Antony Seely, *Self-employment in the construction industry*. House of Commons Library, Briefing paper No. 000196, 2018.

Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN00196>

false self-employment as “individuals engaged on the basis that they are self-employed, but who are working under employment terms.”¹⁸ In 2013, over 780,000 construction workers were designated self-employed, from which it was estimated that 200,000 workers were wrongly classified.¹⁹

According to the manager of a construction company interviewed during the research, “that’s how things are done on construction sites 90% of the time. Either you’re self-employed, or you have your own limited company.” This appears to be a relatively grey area, for both employers and employees, with many unaware of their exact status or acting as self-employed with limited contractual protection, or no contract at all. This issue reflects the testimony provided by an interviewee, who said he was self-employed as a traffic marshal on a construction site, despite being employed through an agency. Though he did have a contract, he reported that this was “very short, it’s just two pieces of paper.” Despite speaking very limited English, the interviewee’s contract was provided only in English and was not explained to him by the agency’s ‘agent’; he said, “you have time to read it. [But] if you don’t understand English, usually [it’s] the agent who comes with the contract and he’s not Romanian and can’t do much to help you.”

The limited rights and protections available to workers who are falsely self-employed in the industry, particularly those not provided with contracts, and the lack of accountability for working standards for these workers, compounds the precarity of their position and prevents them from challenging abuse. One advocate for migrant workers in the sector, who had previously worked self-employed in the construction industry, reported that

“Self-employment is pushing [the most vulnerable] to accept things and to compromise. Because definitely you know that you are not treated well. But you just accept it because you know that you’re gone tomorrow, someone else is coming and taking your place.”

UMBRELLA COMPANIES

Umbrella companies were introduced in 2014 following new government rules designed to crack down on false self-employment in the construction sector. They provide a payroll service and effectively act as the employer on behalf of agencies or companies, paying employees through PAYE. In 2015, it was estimated that the wages of between 300,000 and 400,000 construction workers were managed through umbrella companies.²⁰ Though this system was intended to prevent abuse of self-employed status by agencies, a number of concerns have been raised about the way in which umbrella companies operate in the construction sector, including the charging of administration fees and other deductions for services which leave workers significantly worse off under the scheme.²¹ One interviewee whose payroll is processed through an umbrella company said:

“My income isn’t explained properly. The payslip is quite vague, it doesn’t list concrete charges and sums of money. You’ll see things like ‘LESS £50’ or ‘ADD £50’. It’s like they want to be ... borderline doing things legally, but covering themselves, you know? So they can say we’ve been informed of everything. But not everyone speaks good English or understands what they’re being told. Not everyone understands the jargon they use.”

UCATT has referred to umbrella companies as a ‘con-trick’ in a report detailing the sharp fall in workers’ pay as a result of being moved onto this system,²² and Unite the Union has recently called for the government to ban umbrella companies entirely.²³

¹⁸ Ibid

¹⁹ Office for National Statistics, Self-employment jobs by industry (Mar-13 to Dec-13), 2013.

Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/selfemploymentjobsbyindustryjobs04> ; Antony Seely, *Self-employment in the construction industry*. House of Commons Library, Briefing paper No. 000196, 2018, p.10.

Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN00196>

²⁰ BBC The One Show, 31.03.15. Available at: <https://www.youtube.com/watch?v=IHRAGNsyNZo>

²¹ Samantha Downes, ‘Umbrella companies: the latest way exploit Britain’s temporary workers’, *The Guardian*, 21.10.16,

<https://www.theguardian.com/money/2016/oct/21/temporary-workers-umbrella-companies-extra-costs-dodging-ni-cutting-rights-supply-teachers>

²² UCATT, *The Umbrella Company Con Trick*, 2014, p.1.

Available at: <https://www.ucatt.org.uk/files/publications/141023%20Umbrella%20Company%20Con-Trick%20Report.pdf>

²³ Unite the Union, ‘Unite demands government outlaws umbrella companies’, 24.02.17.

Available at: <http://www.unitetheunion.org/news/unite-demands-government-outlaws-umbrella-companies/>

One worker interviewed by FLEX exemplifies the problem faced by many others with respect to umbrella company involvement in the construction sector. After agreeing a £2 per hour raise with his supervisor he found himself making only 50p more due to unclear deductions made by an umbrella company. He explained: “[the company] pays the agency (umbrella company) £16.50 per hour for my labour out of which I get £10 per hour. I was meant to get £11.50 per hour... but the agency (umbrella company) takes £1.50 off that.” This is one of many examples of workers being left worse off under this scheme. FLEX’s survey showed that 36% of respondents do not understand all the deductions on their payslip.

WHAT’S THE PROBLEM WITH UMBRELLA COMPANIES?

Umbrella companies act as legal employer and provide payroll services for employment agencies by:

- Invoicing the agency for the number of hours worked by the contractor (worker) and any expenses
- Making deductions for tax, National Insurance, and fees
- Paying the contractor

Workers have an agreement with the agency about how much they will be paid per hour. However, deductions made by the umbrella company from the amount they receive from the agency include both employee’s and employer’s National Insurance contributions and an administration fee which can be as much as £35 per week. This means that the agreed hourly rate is severely diminished, sometimes putting take-home pay below the National Living Wage.

One industry expert interviewed during the research described umbrella companies as a ‘scourge on construction’, explaining that migrant workers he had come across were being paid below living wage and far below industry agreed rates, because the living wage hourly rate was effectively being reduced by the high administration fees charged for receiving wages. One former construction worker explained that when the scheme was introduced, workers were given no choice but to accept these conditions, or lose their jobs: “All of my friends were working for different companies on sites, mostly eastern Europeans, and they were just told ‘You have to move to this. If you don’t move, find another job.’”

This lack of choice over whether or not to become employed under the umbrella scheme

combined with some confusion over the employment status of workers under this system makes it very difficult to challenge the negative consequences for workers and ensure that rights are understood and upheld. There appears to be a gap in monitoring and oversight of some umbrella companies, as those providing only payroll services are not legally defined as employment agencies or employment businesses and so do not come under the remit of the Employment Agency Standards Inspectorate (EAS).

In a response to a parliamentary question in 2015 about the number of umbrella companies which had been subject to enforcement action by the EAS, the Government clarified that: “Umbrella companies acting as employers are still required to comply with employment law and where individuals feel that their statutory employment protections have been breached, they are able to seek redress through the normal routes.”²⁴ However, the government acknowledged that under this scheme “it can be difficult for individuals to be sure of whether they are “employees” or “workers” and which employment protections they have.”²⁵

The Taylor Review of Modern Working Practices highlighted the “increasing evidence that some companies are relying on temporary workers to fill long term positions, with the same agency worker doing the same job for years”.²⁶ While in theory agency workers are free to change jobs, this is difficult for those in low pay and insecure work. “Individuals in this situation can find it hard to seek work elsewhere, especially if they fear taking time off from the current contract may count against them in future allocations of work”.²⁷ The Review also raised issues with agency workers being charged up to £35 per week in admin fees when paid through an umbrella company, which “would be unlawful if these deductions were made by the employment business themselves”.²⁸

The confusion over workers’ employment status, their employment protections, and who is responsible for upholding protections in practice, results in a lack of accountability and recourse to justice which leaves workers less able to address abuse. Combined with the extremely low wages received as a result of deductions, increased dependency

24 Jo Swinson MP in response to Emma Lewell-Buck, ‘Tax Avoidance: Written question – 223607’, 12.02.15.

Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-02-05/223607/>

25 Ibid

26 Matthew Taylor, *Good Work: The Taylor Review of Modern Working Practices*, 2017, p.47.

Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/626772/good-work-taylor-review-modern-working-practices.pdf

27 Ibid

28 Ibid, p.58.

on work stemming from poverty, and the lack of choice for many but to work under umbrella schemes, the widespread use of umbrella companies can in some circumstances create or exacerbate worker poverty and precarity, which can leave workers at risk of exploitation.

SUBCONTRACTING

The construction industry's reliance on often complex subcontracting arrangements has de-centralised both control and oversight by creating multiple layers of contracting and subcontracting at the same site. This means that a large national building company may be in charge of the construction site and establishing subcontracting agreements, but will have little oversight over working conditions for those working for subcontractors. As the manager of a subcontracting company explained:

“For example, you wanna [sic] build a hospital. ... You go to a developer, a construction company. They say yes, but they don't build it themselves, they hire somebody else – they subcontract ... So there's the main contractor, the contractor and the subcontractor. The main contractor is the developer; the contractor is the company that is actually building. But the contractor has the option of bringing a third company, to subcontract to a company that provides all kinds of services. That would be me – I offer management consultancy for him – who's supervising the construction, or [an] other five workers who are actually doing the work.”

The pressure placed on subcontractors by the primary contractor, and the lack of oversight in place, means subcontractors can feel it necessary to bend the rules regarding health and safety and recruitment. A manager interviewed by FLEX described himself as “a buffer” between the primary contractor and the workers, allowing them to absolve responsibility for the pay and conditions of those working under a subcontractor. In this way, dangerous and potentially exploitative working practices can find their way onto even large-scale building sites.

As one union representative explained, even on some of the largest sites in London with a strong union presence acting to monitor and protect the rights of workers, abuse can be hidden as a result of complex subcontracting arrangements that are often in place as a means of reducing labour costs:

“It does start at the very top in this procurement process. People are tendering for jobs cheaper and cheaper and cheaper so that follows through all the way down to the bottom. And that's when the abuse really happens. The biggest part of any project is labour ... You've got to do the same job with half the workforce and the only way of being able to do that is the abuse on pay. So they go on to agencies and they subcontract and subcontract again. And it all gets hidden.”

FLEX and the Labour Exploitation Advisory Group (LEAG) have identified long employment chains such as those common in the construction sector as a key driver of exploitation, due to lack of accountability for abuse and confusion as to who workers are ultimately employed by.²⁹ When responsibility for working conditions is obscured by layers of subcontracting and mechanisms for remedying abuse are unclear, workers are left with little recourse to address problems and claim their rights. Long subcontracting chains, often combined with use of agencies and umbrella companies, can mean that workers don't know who their employer is or who is ultimately responsible for a construction site or project, which makes it extremely difficult to take an employment case or seek enforcement of rights.

²⁹ FLEX and the Labour Exploitation Advisory Group (LEAG), *Labour Compliance to Exploitation and the Abuses In-Between*, 2016, p.5. Available at: <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20position%20paper%2001.pdf>

LIMITING LAYERS IN SUPPLY CHAINS: AN EXAMPLE FROM SPAIN

Recognising the negative effects of long subcontracting labour supply chains on working conditions, Spain has introduced restrictions on the use of agency workers in construction.³⁰

SPAIN: LIMITS TO SUBCONTRACTING IN THE CONSTRUCTION SECTOR

The Spanish Law (32/2006) on Subcontracting in the Construction Industry limits the number of subcontractors in a supply chain to three, not including the head contractor.³¹ While work may be subcontracted to self-employed workers, self-employed workers may not subcontract.³² Importantly, this law bans the use of subcontractors whose main task is the provision of labour.³³ Employment agencies therefore may not be used in the construction sector.

The law has introduced compulsory health and safety training and company registration has been made dependent on completed training.³⁴ Trade unions and employers' organisations were actively involved in the development of the law and this has been recognised as crucial to its success.³⁵

Failure to comply with the provisions set out in the law gives rise to joint liability on the part of the subcontractor that has failed to comply, as well as the relevant contractor.³⁶ For instance, if subcontracted workers have not been paid, they may take legal action jointly against their own employer and against the relevant contractor.³⁷

This example demonstrates how labour standards in domestic supply chains may be improved by limiting subcontracting in high-risk sectors. In Spain, Law 32/2006 was crucial in fighting against deregulation in the construction sector and in increasing clarity on companies' responsibilities.³⁸

4.2 FLEXIBILITY AND PRECARIETY IN THE CONSTRUCTION SECTOR

One of the key and emerging characteristics across the UK labour market has been the drive for a flexible workforce. According to Neil Carberry, of the Confederation of British Industry (CBI) "97% of firms believe that a flexible workforce is either vital or important to the competitiveness of the UK."³⁹ The term 'flexibility' is applied to cover a range of preferred traits within a workforce – including time, place and conditions of employment – and generally relates to an employer's desire to control labour costs in response to fluctuating demand. This desire is particularly strong in industries needing to respond rapidly to abrupt changes in demand and with seasonal periods of high production, such as food processing, construction, agriculture and fishing.

The *Taylor Review of Modern Working Practices* makes much of the importance of labour market flexibility, talking of the benefits of flexibility that works for both workers and employers. Throughout this research FLEX has found that flexibility puts workers at greater risk of poverty and dangerous situations at work, and increases uncertainty and anxiety about the likelihood of obtaining work. Half of all those surveyed by FLEX did not have a written contract for example, and were uncertain about their terms, conditions and rights. One third of the surveyed workers had not been paid for work completed. These conditions contribute to the creation of 'a position of vulnerability' as set out in the Human Trafficking Protocol, leaving many workers open to exploitation, coerced through their lack of choices.

30 International Labour Organisation, *Private employment agencies, temporary agency workers and their contribution to the labour market*, 2009, p.8.

Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_162740.pdf

31 European Foundation for the Improvement of Living and Working Conditions, *Liability in Subcontracting Processes in the European construction sector: Spain*, 2008, p.1. Available at: https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0887en8.pdf

32 Comunidad de Madrid, *Normativa sobre la Subcontratación en el sector de la construcción*, 2010.

Available at: http://www.madrid.org/cs/Satellite?blobcol=urldata&blobheader=application/pdf&blobheadervalue1=Content-Disposition&blobheadervalue1=filename=construccion_def.pdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1272024751105&ssbinary=true

33 Paragraph 5f, Spanish Law 32/2006, of 18 October, Regulating the Subcontracting in the Construction Sector.

Available at: <https://www.global-regulation.com/translation/spain/1446168/law-32-2006%252c-of-18-october%252c-regulating-the-subcontracting-in-the-construction-sector.html>

34 Meardi et al., 'Construction Uncertainty: Unions and Migrant Labour in Construction in Spain and the UK', *Journal of Industrial Relations*, 54(1), 2012, p.5-21.

35 European Foundation for the Improvement of Living and Working Conditions, *Liability in Subcontracting Processes in the European construction sector: Spain*, 2008. Available at: https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0887en8.pdf

36 Ibid, p.1.

37 Ibid, p.57-58.

38 FLEX correspondence with Daniel Barragan Burgui, CCOO, September 2017.

39 Neil Carberry, 'A flexible workforce is key to the UK's economic prospects', *The Guardian*, 14.03.14,

<https://www.theguardian.com/careers/flexible-workforce-key-uk-economic-prospects>

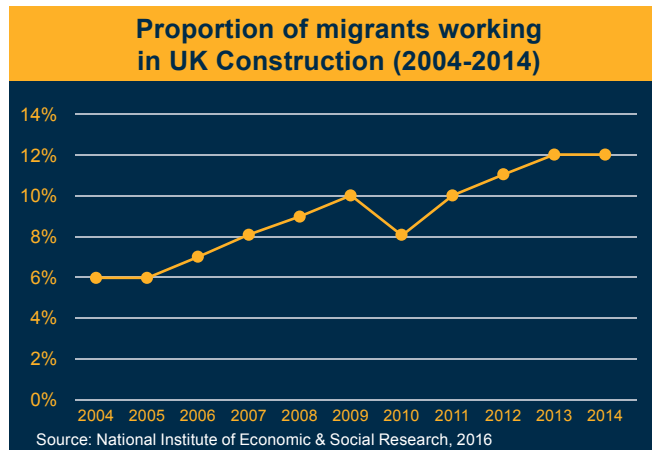
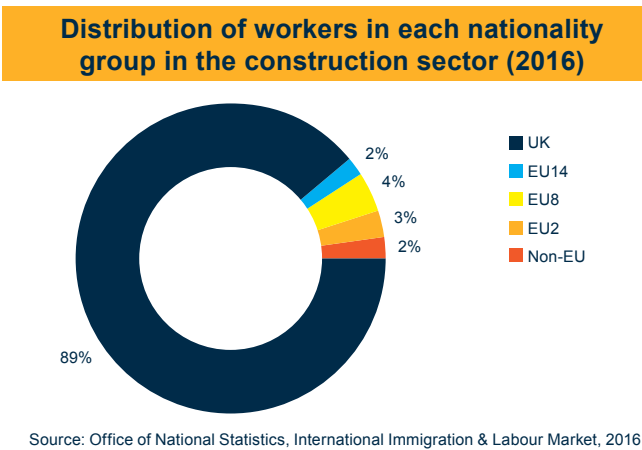
As a result of its overall size, geographic distribution, susceptibility to external factors, and the high value of individual projects, the construction industry is perhaps more reliant than other sectors on a flexible workforce. According to the Chartered Institute of Building (CIOB), the construction industry faces “unique labour supply issues” because “rather than a single work location, the workforce is constantly in flux moving from site to site, often large distances apart.”⁴⁰ Further, common challenges such as local availability of the necessary workforce are

“exacerbated by the boom and bust nature of construction activity, caused in part by what economists would describe as the accelerator effect, whereby fluctuations in the broad economy tend to be amplified in the construction sector ... This means the industry needs a highly flexible, in part itinerant, workforce to call on.”⁴¹

PREVALENCE OF MIGRANTS IN LOW-WAGE WORK

The drive for a more flexible workforce is associated with the rise in reliance on agency staff, use of zero or low hours contracts, self-employment and an increase in, and even a preference towards, migrant workers in the sector.⁴²

The Office for National Statistics’ data suggests that in 2016, non-UK workers made up 11% of the UK construction workforce.⁴³ This represents a doubling in the twelve years between 2004 and 2016.⁴⁴ Of these, the largest proportion were from the EU (9%) with just 2% non-EU workers. The majority of EU workers were from Eastern European countries, comprising 7% of the total construction workforce.⁴⁵ There are significant regional variations in the proportion of migrant workers in the labour market, ranging from 9% in the South East and 8% in the West Midlands, to just 2% in the South West and as high as 54% in London.⁴⁶



Migrant workers take up a large proportion of low-wage work. Broken down by job type, migrants comprise 44% of the low-wage ‘building’ workforce, 21% in completion and finishing and just 2% on utility projects, suggesting an over-representation of migrant workers in low paid work and a significant under-representation in higher paid positions.⁴⁷ According to analysis by National Institute of Economic and Social Research (NIESR),

“While demanding a wide range of professional and technical skills, roughly a third of workers are not qualified even to the level of NVQ level 2 and fewer than half have completed an apprenticeship. Migrants are over-represented in low skilled work and there is evidence of under-utilisation of high-level skills.”⁴⁸

40 Chartered Institute of Building, *Perspectives: An Analysis on Migration in the Construction Sector*, 2015, p.12.
 Available at: https://www.ciob.org/sites/default/files/CIOB%20research%20-%20Analysis%20on%20Migration%20in%20the%20Construction%20Sector_0.pdf
 41 Ibid
 42 Ibid
 43 EU14: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden; EU8: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia; EU2: Bulgaria and Romania. Non-EU: all other countries.
 44 National Institute of Economic and Social Research, *The impact of free movement on the labour market: case studies of hospitality, food processing and construction*, 2016. Available at: <http://www.niesr.ac.uk/publications/impact-free-movement-labour-market-case-studies-hospitality-food-processing-and#.WNkkBBLytZo>
 45 Office for National Statistics, 'International immigration and the labour market', 2016.
 Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/migrationandthelabourmarketuk/2016#hat-industry-and-occupations-did-non-uk-nationals-work-in>
 46 National Institute of Economic and Social Research, *The impact of free movement on the labour market: case studies of hospitality, food processing and construction*, 2016. Available at: <http://www.niesr.ac.uk/publications/impact-free-movement-labour-market-case-studies-hospitality-food-processing-and#.WNkkBBLytZo>
 47 Ibid
 48 Ibid, p.18.

Migrant workers in construction are concentrated in the low-wage end of the labour market where highly fluctuating demand for labour and ease of replacement combine to create the most precarious employment. These factors can easily be compounded, in particular for recent migrants, by lack of English skills and knowledge of the labour market. One former construction worker now working to support migrants in the sector explained that those with higher level skills tend to have greater resilience against abuse, as they may be more easily able to access formal work and information about their rights:

“It’s different for traders for example, for electricians or for someone who’s been doing some trainings and speaks some English. Because they know to speak for themselves, they know to ask. When they get into the work, they work probably with English people as well, and they give information. And it’s a totally other thing happening with the guys working for the logistics company, doing the bins, cleaning, getting rubbish around or in demolition.”

A Romanian worker interviewed by FLEX illustrated this link between level of education or skills and resilience to abuse; he said his advanced English skills and eight-year experience in plumbing make him better able to negotiate his pay and working conditions. When reflecting on the working conditions of other labourers he said:

“I guess you could say I’m a bit different to other labourers ... the work I do is much easier than the work an actual labourer does – they wash, clean and carry stuff most of the time. Even in our construction site there are Romanians who work and get paid in cash about £50 a day.”

However, since he does not have the equivalent British certification he is still considered an ‘unskilled worker’, which requires him to pay an apprenticeship levy, adding to the list of deductions from his pay made by an umbrella company.

LACK OF ALTERNATIVE JOBS AND WORKING ARRANGEMENTS FACILITATE EXPLOITATION

The prevalence of migrants in low-wage, flexible employment has been linked to a widespread assumption in political and public discourse that migrant workers are more willing to accept lower paid jobs and working conditions than local UK workers. This assumption is based on the idea that migrant workers have a “different frame of reference” and that they are better off in these jobs than they would be in their countries of origin.⁴⁹

According to research conducted by the National Institute of Economic and Social Research (NIESR),

“The construction industry also places a premium on flexibility, and the increased presence of migrants in the sector, particularly in London, has been explained with reference to fluctuations in demand for labour resulting from market volatility and building project size ... While flexible contracts can be problematic for British workers, including for practical reasons relating to welfare benefits and childcare, they appear to be more acceptable to migrants, at least in the short term.”⁵⁰

The acceptability of flexible contracts to migrant workers as set out by NIESR is not clear from FLEX’s research. In fact, the apparent acceptance of ‘flexible’ employment models among migrant workers in the sector has been attributed by workers themselves to a lack of alternative options, pointing to the vulnerability of those driven by a need to work rather than by the freedom to choose such arrangements over more stable employment.

Many of those interviewed discussed acceptance of flexible employment arrangements alongside other issues such as low pay and poor working conditions in terms of necessity rather than choice, seeming to view the abuses they experienced as the price of employment, in an industry in which migrant workers at the low wage end of the market have very limited negotiating power.

49 See Migration Advisory Committee, *Migrants in low-skilled work*, 2014.

Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf; David Barrett, ‘British firms are relying on migrant workers, says survey’, *The Telegraph*, 30.09.14,

<http://www.telegraph.co.uk/news/uknews/immigration/11128787/British-firms-are-relying-on-migrant-workers-says-survey.html>

50 National Institute of Economic and Social Research, *The impact of free movement on the labour market: case studies of hospitality, food processing and construction*, 2016, p.6.

Available at: <http://www.niesr.ac.uk/publications/impact-free-movement-labour-market-case-studies-hospitality-food-processing-and#.WNkkBBLytZo>

Almost all workers interviewed for this study had a high degree of flexibility in their employment arrangements. This flexibility means workers can obtain work at short notice. However, the reason for workers seeking employment at short notice is the short-term and uncertain nature of the work available. One Romanian national interviewed while waiting for work outside a local builders merchant, along with approximately 25 others, arrived in the UK two months prior to being interviewed, and had been doing day work on construction sites across the capital. He told FLEX that he is often called the evening before he is required by any number of contacts. He said that he had “worked five hours yesterday, seven the day before yesterday; about 20 hours [this week].” Since arriving in the UK, he had worked in a number of different jobs obtained by waiting in front of the builders merchant, on large sites and for smaller contractors, including painting, plumbing, metal work and demolition. This worker’s experience exemplifies the demand for ‘flexible’ migrant labour in the construction industry, working irregularly and at short notice.

The prevalence of migrant workers seeking informal work is linked to a lack of access to the formal labour market, particularly for newly arrived migrants who may struggle to obtain documents and navigate complex employment and tax systems with limited English. Such informal arrangements are open to abuse as hours, pay, and health and safety are not monitored and workers are often taken on for very short periods without contracts.

However, flexibility is not only required of those working at short-notice on a day by day basis. One worker recalls deciding to change jobs after he was reallocated to a construction site far away from London. While his previous job offered good working conditions, the high costs of transportation meant that he had to work for over two hours to cover his daily travel expenses. He now works closer to home, yet in poor conditions, without access to water or toilets on the site.

INFORMAL HIRING AND FIRING PRACTICES INCREASE VULNERABILITY

It appears that the preference for flexibility coupled with a ready supply of workers has led to some unscrupulous contractors quickly filling positions when required and firing individuals when demand drops or costs increase. According to one construction supervisor, who is sometimes asked by his employer to recruit workers:

“My boss has a saying: the streets are filled with them [workers]. From the internet, word of mouth, ads. You call three people you know on a construction site and say I need 10 people, and you get 30 people in two days. That’s how things go ... They’re sitting in parks and on corners. You tell them: I need loaders. You take them at 5am, at 3pm you bring them back. You give them 50 or 60 pounds.”

Such informal hiring practices also appear to lead to informal dismissal procedures, leaving workers with little or no security when demand decreases and employers look to make savings. A manager of the same construction company told FLEX:

“We sent two men home in two weeks. We even flipped a coin to decide. You can choose freely when you have plenty of people who are not specialised in their job ... They are good at what they do, but you just have to reduce the number of employees. When you go and read them the list and say you and you are going home, then they ask what was the decision based on.”

When asked why they needed to fire people so suddenly, he explained “pressure from the boss who’s saying ‘You know, I’m losing 10,000 pounds this week if you keep 20 people. Fire 10 so this way I lose only 5,000 pounds.’”

Informal hiring and firing practices and a lack of accountability for dismissal without reason also contributes to the precarity of work in this sector, as workers are well aware that they could lose the work on which they rely at a moment's notice. This knowledge deters workers from challenging abuse and exploitation. According to one union representative, this precariousness is key to understanding exploitation in the sector:

"The biggest problem within the industry and the abuse is that they're always under threat of being sacked if they're not doing the overtime, if they're not doing this, if they're not doing that ... they need to work to survive and they're also here for a reason because they want to send the money home to support their families. So they'll do anything."

These informal hiring and firing practices are facilitated by a high number of people working without employment contracts. FLEX's survey on working conditions in the London construction industry revealed that half of respondents did not have a written contract. FLEX's interviews show a similar picture with 65% of interviewees working without formal contracts. Verbal contracts appear to be the norm for many workers in low-pay roles as well as some in managerial positions. The lack of written contracts increases confusion over terms and conditions of employment, including hours, pay and entitlements, and leaves workers at risk of abuse. One interviewee explained that:

"here [in the UK] a problem behind workforce exploitation is that you don't get a contract with stipulated working conditions. You don't discuss the working conditions beforehand. Everything is 'go with the flow'."

One worker described his experience with a previous employer:

"I worked for 6 months ... without a contract, and I was paid pennies - 60 pounds per day. I did all kinds of jobs: handling gypsum boards, painting, carrying stuff, sweeping the floors, everything."

Another said:

"All my rights were violated, I can give the boss's name if you want...It's not a company because I didn't get a contract, nothing."

The absence of a contract essentially removes any safety net for the worker whilst strengthening the position of the employer. In this situation there is little the worker can do to remedy abuse, leaving unscrupulous employers free to act with impunity. According to the Union of Construction, Allied Trades and Technicians (UCATT) – now part of Unite – "the construction industry is notorious for its short term contracts, complex sub-contracting chains and informal employment practices, all of which leave workers open to exploitation."⁵¹ For many already on low pay and struggling to make ends meet, the loss of their job can easily result in homelessness, debt and other associated risks.

The possibility of being fired without notice or reason creates fear and dependency, making it difficult to complain about abusive or exploitative treatment. As one interviewee explained, "you cannot complain about anything. Or if you do, you can go home."

⁵¹ UCATT, *The Hidden Workforce Building Britain*, 2011, p.12.

Available at: <http://ucatt.info.co.uk/files/publications/UCATT%20Report%20The%20Hidden%20Workforce%20Building%20Britain%202011.pdf>

PRECARIOUS WORK

According to the International Labour Organisation (ILO), precarious workers are those “with temporary contracts, in triangular relationships (those hired through agencies and subcontractors), and workers who are labelled as self-employed when they are in fact dependent on or integrated into the firm for which they perform the work; in other words, workers working under a disguised, ambiguous or triangular employment relationship.”⁵²

Precarious workers are subject to unstable employment, lower wages and more dangerous working conditions. They rarely receive social benefits and are often denied the right to join a union. When labour abuses do happen, workers are often too scared to report them, as they know they are easily replaceable. Women, minorities and migrant workers are overrepresented in precarious work.⁵³

The workers most adversely affected experience:

1. Precarious contractual arrangements:

- a. The limited duration of the contract (fixed-term, short-term, temporary, seasonal, day-labour and casual labour)
- b. The nature of the employment relationship (triangular and disguised employment relationships, bogus self-employment, subcontracting and agency contracts)

2. Precarious working conditions:

- a. Low wage
- b. Poor protection from termination of employment
- c. Lack of access to social protection and benefits usually associated with full-time standard employment
- d. Lack of or limited access of workers to exercise their rights at work.⁵⁴

Irregular or unstable work can be a contributing factor to the vulnerability of migrant workers. A fluctuating income makes it difficult for migrants to establish themselves in a new country by finding stable accommodation and their ability to meet their basic needs. The pressure to earn enough money to cover these expenses, as well as sending money back home, can drive desperation to work. One interviewee waiting outside of a builders merchant to find passing work told the researcher “I just came here to find work, I have a family and kids, I didn’t come here to steal.” This individual also expressed a willingness to do any work for almost any money and explained that he had managed to find about 20 hours of work that week.

The pressure to find work is further compounded by the debt some workers find themselves in, following travel costs, borrowing money on arrival or paying for necessary documentation. One interviewee, working self-employed as a traffic marshal on a large building site, explained that he had paid significant amounts of money for certificates on the promise of jobs that never materialized. He is now “some 2,000 to 3,000 pounds” in debt. As a result, he said:

“you have no other choice, you have to work. You have to pay rent, buy food, so you work for 50, 60 pounds. I had to accept a worse paid job than the one I had before because I have to work. The last job I had was better paid, but I left for a worse one. There was a guy who gave us jobs, but eventually he gave us nothing at all.”

The use of existing or accrued debt is widely acknowledged as a common method used by traffickers and criminal gangmasters to hold workers in situations of exploitation or forced labour. This type of exploitation has been found operating on UK building sites, for example, in cases where migrant workers have been charged by gangmasters for obtaining documentation needed to find work and enter building sites legitimately. Combined with threats made against the worker or their loved ones, such debt is used to force individuals into situations where they are too afraid to speak out about their exploitation. One union representative confirmed that:

⁵² ILO, *Policies and regulations to combat precarious employment*, 2011, p.1,

Available at: http://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/--actrav/documents/meetingdocument/wcms_164286.pdf

⁵³ International Labour Rights Forum, *Precarious work*, <https://www.laborrights.org/issues/precarious-work>

⁵⁴ ILO, *Policies and regulations to combat precarious employment*, 2011, p.7,

Available at: http://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/--actrav/documents/meetingdocument/wcms_164286.pdf

“They have them in a stranglehold because they may have built up two or three thousand pounds of debt from the initial acquisition [of documents], but then it’s a criminal organisation so they’ll never pay it off ... You’ll find that 99.9% of the times if this is happening to them they won’t speak to you. Because they’re afraid. Because they know if they go back their family could be at risk.”

The majority of those workers interviewed by FLEX who were currently employed reported changing jobs regularly as one came to an end, suggesting a relatively high prevalence of short-term job roles. Many of these roles were found through word of mouth from friends, Facebook or classified ads platforms. One worker explained:

“somebody told me: so-and-so needs a person to work, so I went there, I talked to them, they said let’s get to work, we’ll pay you such-and-such, but you’ll receive more with time. But with time nothing changed, and finally I didn’t stay anymore because there just wasn’t enough money and they didn’t give me a contract.”

Another worker said he takes any work he can get and had worked in numerous jobs in London during the eight months he had been there:

“I work in any possible field. In Romania I did every kind of job there is in construction. Here - the same: digging, everything the man tells me to do, clean his courtyard... People come and ask if I know to do this and that job and I just answer them.”

This same individual explained that it was his precarious financial situation that drove him to find any work he could, saying:

“I’m barely making ends meet. This month you’re maybe left with 100 pounds, but next month there’s nothing ... you have no other choice, you have to work. You have to pay rent.”

LOW PAY LEAVES WORKERS AT RISK OF EXPLOITATION

Low pay is another driving factor for increased risk in the construction sector. FLEX’s research reveals that issues related to low pay are often compounded by other factors faced by construction workers, including: irregular employment; false self-employment meaning workers cannot access the National Living Wage; and the burden of additional fees charged by work-finding agencies and payroll companies charging administration fees.

FLEX’s survey showed that half of respondents working in London are paid below the London Living Wage. Of these, 13% earn below the National Living Wage. The high number of workers living on low wages is concerning, in particular when considering the high cost of living in London. Those workers with more stable jobs reported receiving around £1000 per month; however, those seeking work outside of builders merchants in the casual, day-labourer market, reported being paid below living wage. Interviewees seeking work in this way reported being paid different amounts by different employers for different jobs; however, on average, they reported receiving around £7 per hour. One individual who worked a variety of jobs reported receiving between £40 and £70 for nine hours’ work; at the time of the interview, he was working nine hours per day for £60, or £6.66 per hour, below the National Living Wage.

Some of those interviewed by FLEX who reported earning above the National Living Wage or even above the London Living Wage mentioned having had to work for low pay at one point. One interviewee recalled his first job in construction in the UK, which he found through Facebook. His boss would drive him 200 miles outside London for the day and pay him £50 cash-in-hand for eight hours of work, or £6.25 per hour, significantly below the National Living Wage. He was also not paid for the 5-hour commute, meaning that his actual take-home salary amounted to about £4 per hour. Looking back on this experience he said ‘I know [it is not ok], but it’s something that’s quietly accepted by everyone’.

COMBINED LABOUR ABUSES INCREASE RISK OF EXPLOITATION

FLEX's survey found workers facing multiple labour abuses at the same time. For example, all but one of the survey respondents who reported being paid below the National Living Wage mentioned not being paid for work at least once and none of these respondents had written contracts. The majority of respondents also reported being paid cash-in-hand and having been made to work in dangerous conditions. While the sample of workers paid below the National Living Wage is too limited to draw strong conclusions, these findings indicate that one form of labour abuse often leads to further abuses, which when combined can amount to severe exploitation.

Low pay means workers need to work longer to make ends meet, and also increases the likelihood of falling below the poverty line. This increases pressure for workers to find any work they can, thereby increasing the potential for exploitation.

4.3 BARRIERS TO ACCESSING DECENT WORK

Barriers to accessing decent, safe, stable work often push migrant workers into more precarious positions as they struggle to obtain the necessary identification and insurance numbers, documents, qualifications and information while needing to work to survive.

According to journalist Sorana Stanescu, longer established migrants, such as those from Poland, were able to find better-paid, more stable work on construction sites. However, as a result of transitional restrictions, A2 workers from Romania and Bulgaria were unable to acquire a National Insurance number and were therefore forced to work self-employed for cash-in-hand.⁵⁵ One former construction worker confirmed this, explaining:

“It was so difficult to get the National Insurance number. It was even more complicated to apply for the UTR [Unique Taxpayer Reference] number because you either do it online or you either had to get someone to call or you have no idea how to do this. It's very complicated for people who don't know how to use a computer or have no knowledge of English. And then you end up in a way being forced to do something illegally, because the system is built in this way, it's pushing you to do something. It's not that you actually want to do it. You have to do it.”

For those with limited knowledge and resources, or those with restricted access to employment under immigration rules, it is clear that the costs associated with entry into the labour market served to drive already at-risk workers into informal and often unsafe situations. Two individuals interviewed as they waited for work with large groups of other migrant workers outside a builders merchant cited prohibitive costs for papers and equipment as barriers to obtaining more legitimate or secure work. One of them revealed “It's difficult to get these legal papers because they ask for a lot of money ... I have to work for more than a week just to pay for that card.”

Though the sample size was small, it would appear that this form of job-seeking is largely undertaken by recent migrants in the most unstable and precarious situations. One interviewee said, “I'm a day labourer because I don't have the proper papers. I need money to set my papers in order.” He went on to explain that this ‘day-labourer’ workforce was entirely comprised of migrant workers, while those hiring them were generally English small business owners:

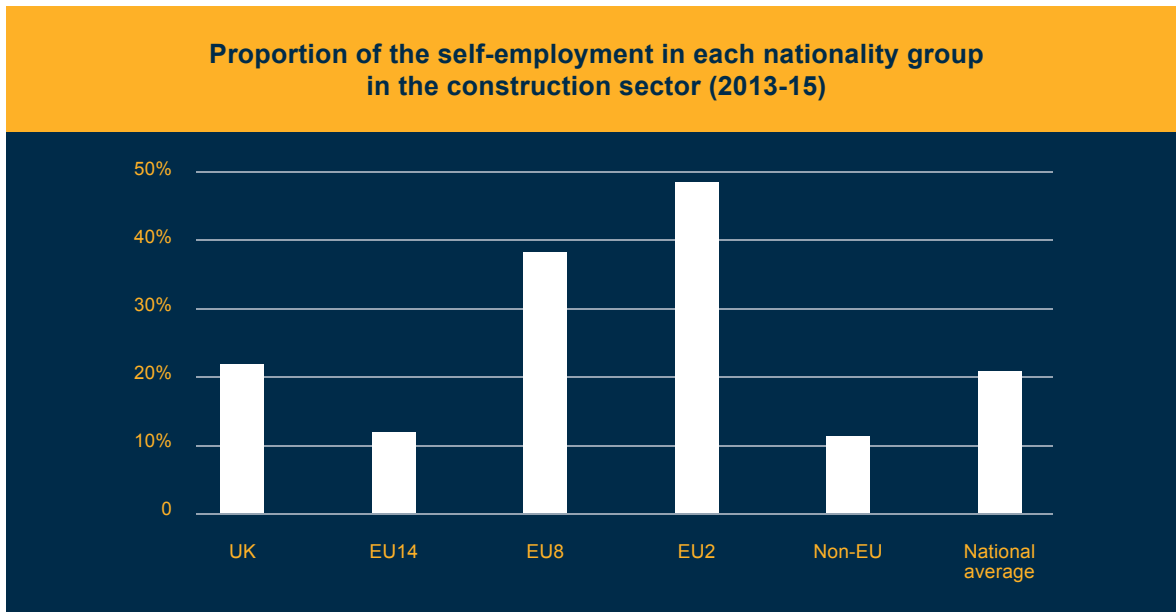
“[W]e use the sledgehammer here, not the English. We are the workforce. Why do these guys get jobs? Because they have companies, tools, cars. If I had 10,000 pounds, I would buy a car, some tools and I would get a construction job, but I don't have that kind of money.”

There is a clear need for accessible routes to safe work for migrants coming to the UK to fill skills and labour shortages in industries such as construction. This is particularly pertinent in light of the UK's decision to leave the European Union and resulting uncertainty about migrant workers' rights and status, and what systems will be developed to facilitate or restrict their access to UK employment in the future.

⁵⁵ Sorana Stanescu, ‘Cheap, and far from free: The migrant army building Britain’, *New Statesman*, 11.10.12, <http://www.newstatesman.com/politics/politics/2012/10/cheap-and-far-free-migrant-army-building-britain>

THE IMPACT OF IMMIGRATION SCHEMES ON VULNERABILITY TO EXPLOITATION

It is not a coincidence that self-employment in the construction sector is most common among Romanians and Bulgarians (A2) – 50%, and those in the A8 group – 40%⁵⁶. The prevalence of self-employed status among these groups is a result of immigration controls that facilitated or even encouraged certain forms of employment arrangements. For example, the Association Agreements in the 1990s allowed nationals from A8 countries, and later the A2 countries, to work in the UK if self-employed.⁵⁷ As this was one of the easiest ways to enter the UK and work legally, many workers came under these regulations despite not being effectively self-employed. Although the Association Agreements were abolished in 2011 for A8 workers and 2014 for A2 workers, the legacy of these arrangements continues to influence working arrangements in the construction industry.



A 2012 article by Stanescu revealed that migrant workers make up a large proportion of the workforce in the ‘grey market’ of informal day-labourers.⁵⁸ Her article reports that Romanians and Bulgarians – who at the time were under transitional restrictions that limited their working opportunities – gathered in large groups outside of a DIY centre in London to wait for work. They were mostly being picked up for cash-in-hand day jobs by smaller companies looking to fill a temporary labour shortage. Some of these individuals also end up working on larger construction sites as a result of subcontracting arrangements. One interviewee working as a supervisor at a construction site explained to FLEX:

“I worked with people taken off the street, and I was with a big company. At my previous job I worked for a subcontractor, but not with my company, I was self-employed, and every day he brought about 5 people in his car, he left them in front of the construction site: here’s your men. Until evening, I usually fired 3 of them, the next day he brought 3 more.”

All of the construction workers interviewed by FLEX in London were from Romania and reported a range of issues, including informal and irregular employment, discrimination, low-pay, underpayment and unsafe working conditions. According to one respondent, the vast majority of those who work this way are migrant workers:

“There are very few British doing this job. Believe me, on the construction sites I’ve worked, I didn’t see any British doing this kind of jobs. Most of them are foreigners. I only saw one British man, who was a hoist operator employed by the agency.”

⁵⁶ A8: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia; A2: Bulgaria and Romania.

⁵⁷ Bridget Anderson, *Us & Them? The Dangerous Politics of Immigration Control*, 2013, p.87.

⁵⁸ Sorana Stanescu, ‘Cheap, and far from free: The migrant army building Britain’, *New Statesman*, 11.10.12, <http://www.newstatesman.com/politics/politics/2012/10/cheap-and-far-free-migrant-army-building-britain>

The impact of the transition arrangements on working conditions and the prevalence of self-employment among A8 and A2 nationals illustrates how “immigration controls work to form types of labour with particular relations to employers and to labour markets”.⁵⁹ Immigration schemes that restrict workers’ ability to access certain types of employment, and create dependency and power imbalances between workers and employers, place workers at a higher risk of exploitation.

DISCRIMINATION SERVES TO ISOLATE WORKERS

Discrimination is an issue faced by many migrant workers, which can have a negative impact on their willingness to exercise their rights and leave them at risk of exploitation. One Romanian migrant worker interviewed by FLEX stated:

“It depends a lot on your nationality. If you’re Romanian, Bulgarian, Albanian, you know, from poorer countries, they take you for a fool. You don’t have the same rights as everybody else. Or you do, but they won’t give them to you.”

This quote illustrates the chilling impact that discrimination can have on an individual’s perception of their rights, in the sense that one’s rights are there to be given or taken away by others. Another interviewee felt consistently disadvantaged as a result of discrimination:

“There’s another huge problem: racism. If you’re Romanian, actually, no, if you’re anything else but English, you’re down by 100 points to begin with. No matter how much you prove to them ... I’m more competent and earn less, but that incompetent guy earns more just because he’s English.”

Since the Brexit referendum in June 2016, FLEX’s Labour Exploitation Advisory Group (LEAG) members have reported increased hostility, discrimination and hate crime towards the migrant communities with whom they work.⁶⁰ Katarzyna Zagrodniczek, from the East European Resource Centre said:

“We had a team of ten builders working on a site, and the manager gave them the wrong instructions so the ceiling was set up the wrong height. He wanted to sack those people without paying them despite the fact that it wasn’t their fault. When they started asking for the money he told them where to go because they are Poles and he’s not going to deal with them, he’s not going to pay them.”⁶¹

FLEX’s survey showed that 35% of EU nationals have experienced mistreatment at work since the Brexit referendum. From those 48% suffered discrimination at work, while 25% had been verbally abused. This kind of discrimination can contribute to a situation of unequal power between workers and increase the power differential between workers and employers, leaving the most at-risk workers feeling entitled to less, and less able to challenge unfair or abusive treatment.

FUTURE SKILL SHORTAGE AND NEED TO PROTECT WORKERS’ RIGHTS

As discussed, the nature of the construction industry means the demand for a flexible workforce is extremely strong. This has led to an increased reliance on migrant workers, particularly in London. This is a fact that has long been recognised by the industry as a whole, with representatives regularly calling on the government for improved clarity around the ongoing ability of migrants to work in the sector after Brexit.⁶² A major contributing factor for the reliance on migrant workers is the apparent skills and labour shortage faced by the sector, with one recent forecast by the Construction Industry Training Board (CITB) suggesting that the industry will need to find approximately 224,000 new recruits between 2015 and 2019.⁶³ According to a 2015 report by CIOB, the Chartered Institute of Building, the construction industry has relied heavily on migration to meet its skills need for many years, with the report concluding:

59 Bridget Anderson. ‘Migration, immigration controls and the fashioning of precarious workers’, *Work, employment and society* 24(2), 2010, p.300-17.

60 FLEX and LEAG, *Lost in Transition: Brexit and Labour Exploitation*, 2017, p.5. Available at: <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20POSITION%20Impacts%20of%20Brexit-Final.pdf>

61 *Ibid*, p.6.

62 “‘Construction needs immigrants’ – industry reacts to Brexit”, *Construction Manager*, 28.06.17, <http://www.constructionmanagemagazine.com/news/keep-poles-co6ming-con5struction-reacts-brexit/>

63 Construction Industry Training Board, *Industry Insights: Construction Skills Network: Blueprint for Construction 2015 -2019*, 2015, p.12. Available at: https://www.citb.co.uk/documents/research/csn_reports_2015-2019/construction-skills-network-uk-2015-2019.pdf

“Migration is necessary to construction. It dampens the harmful effects of having a volatile labour market. Tight regulation of migration would damage construction activity in the UK.”⁶⁴

The report goes on to suggest that this trend is likely to increase, and that businesses will be “attracted to draw more heavily on migrant workers as the industry emerges from recession.”⁶⁵

The construction industry therefore now faces a major challenge in the wake of the UK’s vote to leave the EU. Employers are striving to understand how Brexit will affect their workforce. A Romanian worker interviewed by FLEX recalled being asked to complete a questionnaire ‘asking us about our plans for the future, what we were going to do workwise’ shortly after the Brexit vote. Industry representatives also demonstrate concerns about the consequences of Brexit for its vital migrant workforce, which is likely to compound what some refer to as an already existing ‘skills crisis’. Mark Robinson, chief executive of the Scape Group, a public-sector partnership working to improve the built environment, said:

“The government must clarify as a matter of urgency what will happen to the EU construction workers in the UK, as they are currently filling the gap left by our skills crisis. We need to recruit a million workers into the industry by 2020, and putting EU migrants off coming here will only exacerbate this problem.”⁶⁶

Given this reliance on migrant labour, any restrictions on legal employment of migrants as a result of Brexit is likely to lead to an increase in undocumented working in the sector. As research by the Labour Exploitation Advisory Group (LEAG) has shown, workers with insecure status are far more at risk of abuse as the threat of immigration enforcement can be used to hold them in exploitative situations and prevents them from reporting abuse to the authorities.⁶⁷

Some construction workers are already feeling the impact of Brexit. FLEX’s survey showed that 35% of EU nationals interviewed have experienced poor treatment after the referendum. Of those, 43% were told they can no longer work legally in the UK, demonstrating the urgent need for clear information about EU workers’ rights during this transition period.

Some previous immigration schemes, such as the Worker Registration Scheme (WRS) and the Seasonal Agricultural Workers Scheme (SAWS) have put workers at higher risk of exploitation or discrimination. For example, the WRS, a system used to monitor A8 countries’ participation in the UK workforce between 2004 and 2011, has been shown to have increased workers’ vulnerability to exploitation by making access to essential services, such as homelessness assistance and welfare benefits, contingent on 12 months continuous registered employment⁶⁸, and leaving those not registered at risk of being denied all their legal employment rights⁶⁹. The TUC has documented cases of employers using the scheme as a tool to exploit workers, for instance by pretending to have registered workers but deliberately missing the time limit.⁷⁰ As seen before in the case of the Association Agreements, such schemes can continue to affect workers even after the scheme is abolished.

64 Chartered Institute of Building, *Perspectives: An Analysis on Migration in the Construction Sector*, 2015, p.5.

Available at: https://www.ciob.org/sites/default/files/CIOB%20research%20-%20Analysis%20on%20Migration%20in%20the%20Construction%20Sector_0.pdf

65 Ibid, p.5.

66 “Construction needs immigrants” – industry reacts to Brexit’, *Construction Manager*, 28.06.17,

<http://www.constructionmanagermagazine.com/news/keep-po9les-co6ming-con5truction-reacts-brexit/>

67 FLEX and the Labour Exploitation Advisory Group (LEAG), *Labour Compliance to Exploitation and the Abuses In-Between*, 2016.

Available at: <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20position%20paper%2001.pdf>

68 Northern Ireland Human Rights Commission, *Submission of evidence to the UK Border Agency regarding the impact of the workers registration scheme*, 2009.

Available at: <http://www.nihrc.org/uploads/documents/advice-to-government/2009/of-ukba-regarding-worker-registration-scheme-march-2009.pdf>

69 TUC Commission on Vulnerable Employment, *Hard Work, Hidden Lives: The Full Report of the Commission on Vulnerable Employment*, 2008.

Available at: http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf

70 Ibid

4.4 RESPONSES TO EXPLOITATION IN THE CONSTRUCTION SECTOR

Lack of awareness of employment rights in the UK is frequently cited as a barrier to migrant workers reporting or challenging abuses in the workplace. However, during the research discussion forum hosted by FLEX, the consensus among the unions and community organisations supporting migrant construction workers was that whilst understanding of rights may be limited for recent migrants, a more important barrier to remedy for abuse is the lack of enforcement of employment rights in the sector. One support worker observed, “if there’s no effective enforcement and you are really desperate to be in a job, it doesn’t matter if you know all your rights.” This is borne out by testimony from workers interviewed by FLEX as part of this research: interviewees were aware that their treatment was unlawful, but felt unable to challenge abuses due to a combination of fear and lack of available support, oversight or mechanisms to access justice.

In support of this, Citizen’s Advice suggests that whereas a “growing variation in working patterns and contracts” has meant “understanding employment rights has become more difficult”⁷¹, the avenues for support have been reduced. They suggest that there are a “confusing and often poorly-resourced set of enforcement bodies, including Her Majesty’s Revenue and Customs (HMRC), the Advisory, Conciliation and Arbitration Service (Acas), Gangmasters and Labour Abuse Authority (GLAA) and Employment Agency Standards Inspectorate (EAS). This leaves many workers unaware of, unsure about, or unable to enforce their rights.”⁷² LEAG has reported similar difficulties faced by the workers with whom members work, particularly as enforcement bodies have faced resource constraints, especially over the past seven years.

In addition to being dismissed without warning, being paid below living wage or not being paid at all, several interviewees were subject to other abuse such as breaches of health and safety law and discrimination. One interviewee reports being made to wash a roof with only an improvised cable tied around his waist:

“For instance, I was on the roof of the house, which has a floor and a loft, and I was washing it with the water pistol used in car-washing. Another guy was helping me descend with a cable on the shingle ... They just tied a cable around my waist, and the guy on the roof had another cable around his waist and this is how we did things. I had to do it, otherwise they sent me home. If I said I didn’t want to do it, they would say: go home, we’ll find another. And I didn’t have a contract.”

When this worker was asked why he didn’t complain about unpaid overtime, he replied “Whom was I supposed to say that to? The boss?” Another worker who was not paid for extra hours described being sent back and forth between agency and umbrella company, with both denying responsibility: “Well, the agencies don’t pay you directly, first of all. If you talk to them, they send you to payroll, payroll sends you back to the agency.”

One former construction worker attributed the prevalence of such abuse to an overall “lack of control” within the industry. He explained:

“Managers know that they can get away with nothing [sic] if they sack a person with no reason. If they ask this person to do stupid things or to work more than he or she should, then who’s going to check him? I’ve seen lots of supervisors asking people to do crazy things, with no fear.”

Discussion forum participants stressed the need for improved oversight and enforcement of labour rights in the sector. They expressed concern that the newly expanded GLAA did not currently have the resources or knowledge to do its job effectively given a number of industry-specific challenges such as the high number of contractors and subcontractors on site, the short-term nature of projects, and off-site location of documents relating to workers and their employment.

⁷¹ Citizen’s Advice (2017), ‘How can job security exist in the modern world of work?’, 2017, p.4. Available at: <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-policy-research/how-can-job-security-exist-in-the-modern-world-of-work/>
⁷² Ibid, p.4.

Other options for workers to enforce their rights are fragmented and can be slow and difficult to navigate. Citizens Advice have recently called on the UK government to simplify and centralize responsibility for awareness and enforcement of employment rights, claiming that there are currently 13 different bodies dealing with different aspects of labour market enforcement which creates confusion for workers.⁷³ The main labour abuse advice service, Acas, is reportedly difficult to use for migrant workers, many of whom are not aware of its existence. The advice line's operating hours are a challenge to those who work long hours, and accessing advice in languages other than English is often difficult.⁷⁴

Union representation and union presence on sites was recognized as a positive way to raise awareness, monitor the treatment of workers and provide advice and support for those experiencing problems. Unions in the construction industry work to ensure that industrial agreements such as those setting out agreed standards of pay are upheld, with some larger companies allowing full-time union conveners on major projects. However, union membership in construction is low and has seen a significant decline over the past 20 years; in 2016, just 12.1% of employees in the sector were members of a union, compared with 30.4% in 1995.⁷⁵ Many companies are reportedly hostile to the presence of unions, and UCATT has reported that false self-employment also undermines union organization in the sector.⁷⁶

73 Citizens Advice, 'Employment rights are only as strong as your ability to enforce them', 14.06.17. Available at: <https://wearecitizensadvice.org.uk/employment-rights-are-only-as-strong-as-your-ability-to-enforce-them-b4f070252b5e>

74 FLEX, *Risky Business: tackling exploitation in the UK labour market*, 2017, p.26. Available at: http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf

75 Department for Business, Energy and Industrial Strategy, *Trade Union Membership 2016: Statistical Bulletin*, 2017, p.28. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/616966/trade-union-membership-statistical-bulletin-2016-rev.pdf

76 UCATT, *Employment Law Briefing: Bogus Self Employment*, 2012, p.2. Available at: <http://ucatt.info.co.uk/sites/default/files/uploaded/publications/Bogus%20Self%20Employment%20Briefing%20Final%20Version%20Jan%202012.pdf>

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CONCLUSION

Reflecting wider shifts in modern employment across the UK, working relationships within the construction industry have changed significantly in recent years. While the general trend across the entire UK labour market has been geared towards a more flexible workforce – a development that has seen an increase in the use of temporary agency staff, zero-hours contracts and self-employment – this trend has been particularly strong in the construction industry. As a sector that is deeply affected by fluctuations in the broader economy, as well as inherent labour supply issues associated with shifting demand, geographic dispersion and other factors, the construction sector is more reliant than most on a flexible workforce.

While there are many benefits to flexibility within the workforce, it is also clear that those filling positions at the lower-paid end of the industry – where migrant workers make up a large proportion – often bear the negative consequences of this drive for flexibility. Irregular and informal employment, driven by the demand for labour ‘on tap’, results in many workers facing unstable employment and fluctuating incomes. One of the major factors facilitating the informality in employment is the widespread use of self-employment, which denies workers their basic rights and, as UCATT asserts, is strongly linked to exploitation. In addition, the development of umbrella companies set up to provide payroll services and shield employment agencies from their responsibilities to staff has further confused the situation, with many self-employed workers unsure of exactly who they are employed by and what their status is. Widespread reports of umbrella companies paying workers less than advertised and charging high administration fees for payroll place workers at risk of poverty which itself creates a risk of exploitation.

Complex subcontracting arrangements on construction sites mean that the large, primary contracting company may have little to do with how their subcontractors hire, fire, pay and treat their employees. However, the control such companies exert and the need for cost savings means the consequences of decisions made further up the supply chain are inevitably felt most sharply by those at the bottom. The construction industry represents a unique and complex labour enforcement challenge. A highly developed approach founded in a deep understanding of the peculiarities of labour arrangements and relationships in this sector is therefore necessary to better protect workers and prevent exploitation.

Exploitation in the construction sector cannot be prevented without addressing the extreme risk created by the precarious nature of work at the low-paid end of the construction labour market. Fear of losing work appears to be the largest barrier to workers challenging the most abusive practices and this, combined with a lack of regulation and enforcement of labour standards, leaves the industry open to exploitation. In order to empower both workers and employers to address abuse and prevent exploitation, the power differential within employment relationships in the sector should be rebalanced. This requires a reassessment of workers’ employment rights in the sector as well as reflection and review of the capacity of labour market enforcement authorities to tackle the complexities of the sector.

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