

Illegal Working Group - fourth meeting, 6 May 2003

Date: 6 May 2003; Time: 1400

Location

Home Office, 50 Queen Anne's Gate, London SW1

Chair

Beverley Hughes, Minister of State for Citizenship, Immigration and Community Cohesion.

Present

Ian Barr (CRE), Kay Carberry (TUC), Martin Couchman (BHA), Amanda Deacon (M&S), Shaun Leavey (NFU), Justin McCracken (HSE), Tony Merricks (CSCS), Margaret Murray (CBI), Marcia Roberts (REC), Paul Williams (SBS).

Guests

Zad Padda - Fusion Personnel

Victoria - DEFRA

Lindsay Harris - DEFRA

Officials attending

Martin Donnelly, Russell Bain, Mary Batchelor, Ed Mackie and Sara Kvarnstrom.

Apologies

John Adshead OBE (J Sainsbury), Lutfur Ali (DoH), David Frost (BCC).

1. Introductions

The Chair welcomed all attendees and introduced Marcia Roberts from the Recruitment and Employment Confederation to the group.

Zad Padda from Fusion Personnel, along with Lindsay Harris and Victoria Plain, from DEFRA, were also welcomed as guests.

2. Minutes

The Minutes of the third Illegal Working Steering Group and steering group members, held on 10 February 2003, were agreed. The minutes would be published on the Home Office website in due course.

Matters arising from the minutes had been swept up in the agenda for the current meeting.

Shaun Leavey thanked the Home Office for sending a representative to speak about tackling illegal working to a recent National Farmers Union conference. He reported that the event had been very positive.

3. Report on combating illegal working in the Netherlands

Justin McCracken gave a short report of his visit to the Hague on 27 February 2003 in which, along with four Immigration and Nationality Directorate officials, he had attended a Netherlands Labour Inspectorate workshop on tackling illegal working. The key findings that had emerged following discussions with Dutch enforcement and policy officials were:

- Tackling illegal working was a high priority across the Dutch Government and an integral part of the overall labour migration strategy, which was based on economic need.
- Connections with asylum seeking and illegal working were not made in the same way as they often were in the UK.
- As in the UK, legal labour migration routes favoured seasonal agricultural workers and highly skilled migrants while illegal workers tended to be located in low-skilled sectors.

The system for tackling illegal working was focused on the employer and the Labour Inspectorate adopted a broad view of what constituted an employer. It was noted that the list of documents accepted as proof of eligibility to work was more streamlined than in the UK.

- Enforcement was carried out by a dedicated section within the Netherlands Labour Inspectorate, and its staffing levels were due to be doubled in 2004 from 90 to 180 inspectors.
- The Dutch adopted a systematic joint agency approach to enforcement and brought the whole weight of the law to bear on transgressors - eg tax and VAT evasion - as well as prosecution for employing illegal workers. This was a deliberate approach to make employment of illegal workers much less attractive.
- 800 notices for prosecutions were written in 2002, and the maximum penalty per employee was about to be increased to 3000 Euros.
- Plans were underway to introduce an administrative fines system, to be enforced by inspectors rather than the courts.
- The key element to the Dutch approach was the political will that existed across the whole of Government to tackle all forms of illegal working. This was achieved through ensuring compliance across the broadest range of departmental interests.

The Chair thanked Justin for organising the meeting and commented that there was much for the UK to consider in the Dutch model in respect of developing future strategies to combat illegal working.

Discussion

In discussion, it was suggested that the Home Office should consider, along the lines of the Dutch model, broadening the definition of "employer" so that compliance could be enforced throughout a contractual chain. It was agreed that this would be looked at by officials in the context of forthcoming guidance to employers.

4. Presentations and Discussion

Illegal working in the UK and the supply of labour by agencies and gangmasters.

Marcia Roberts gave an introduction to the REC's work and the issues surrounding illegal working which affected their members:

- The REC was an umbrella organisation and had 13,000 regionalised recruitment agencies which employed some 82,000 consultants in the UK. It had 11 specialist divisions covering areas such as catering, construction and hospitality.
- REC members found work for 0.5 million permanent workers a year and they had 1.3 million temporary workers on their registers at any one time. They covered approximately 3% of the working population.
- There were a number of issues for members in respect of illegal working activity: -
Confusion over whether new employees had the correct documentation. This was often compounded by lack of up to date information on the IND website, in particular on passport stamps.
- Lack of consistent enforcement.
- Potential abuse of schemes for legal entry that allowed employment, such as the student working hours conditions. For agencies there were problems with the Work Permit scheme where work permits were job specific and did not apply to workers on agency books. People were abusing this by applying for a work permit when they had entered the UK and then registering with agencies for other work.
- Need for more guidance and greater interaction with Local Enforcement Officers on what should be done with people who do not have correct papers.

Zad Padda gave a presentation on preventing illegal working from a gangmaster's perspective:

- Anecdotal evidence suggested there were 70,000 seasonal and casual workers in the UK and the UK's 2,000 gangmasters have traditionally played a role in their supply.
Gangmasters tended to have a wider area of operations than previously, which had led to problems with illegal working increasingly exponentially.
- There were a number of concerns for gangmasters:
Cash-in-hand payments undercut genuine gangmasters because they disregard legitimate costs (eg NI and PAYE).
- Abuse of the SAWS scheme had led effectively to competition through migration schemes - did the Government want this? The scheme should be geographically focussed.
- In terms of worker welfare there was often an ignorance of cultural backgrounds. Also a lack of investment in staff led to health and safety issues

including poor facilities.

There was a blame culture, which ultimately stopped at the gangmaster.

- In managed migration terms, gangmasters should be the first line of defence against illegal working and should be working closer with Government to make use of their experience with cultural differences and the informal economy.
- Possible future developments were a Code of Practice for Gangmasters, a Best Practice Toolkit, and independent audit system and a registration system. Work was continuing with DEFRA on these subjects.

Questions and Discussion

The Chair invited questions and a discussion of the issues raised in both presentations. The following questions and issues were raised:

- Students were clearly told how many hours they could work in their conditions of entry and in a dedicated leaflet produced and issued by IND.
- The one thing that would empower legitimate gangmasters was commercial pressure from supermarkets - ie to get the industry to follow a code of practice. A gangmaster will only follow a code of practice if there is commercial benefit.
Although there is a difference between a gangmaster and an agency, there is some interchange.
- There is a registration scheme for agencies (a DTI one), but it was felt that this was not enforced or financed at a level which allowed it to function in an effective manner.
- There is a problem with Local Enforcement Officers from the Immigration Service having insufficient dedicated resources to be able to work with employers at a ground level.
- Registration scheme would encourage legitimacy but use should be made of computer technology.
- Responsibility should extend all the way down the supply chain, from the supplier to the end user.
- There were regulatory steps to set up an agency - Employment Agency Regulations 1976 specifies the checks to be made on employees supplied, employment law applied to recruitment through an agency, DTI carry out inspections of agencies' work and the REC also investigate complaints against agencies.
- Gangmasters were concerned about becoming Immigration Officers. Better communication with LEOs needed, particularly since fraud with paperwork is on a large-scale - in some sectors more than others.
- Government needed to be involved to ensure more holistic use of technology eg. Microchip in CSCS card could be given wider application.

Summing up, the Chair emphasised that labour market providers have a significant role to play in tackling illegal working. She noted concern about the apparent lack of response from Government agencies, in particular Local Enforcement Officers and requested that a representative from the Immigration Service attend a future meeting to discuss this matter.

5. Draft Secondary Legislation and Guidance

The Chair said that the drafts that had been circulated were very much a first attempt. They needed simplifying and clarifying. She wanted to agree a process among steering group members for more considered comments.

Russell Bain explained that the approach to the draft secondary legislation and guidance had been to follow the recommendations of the Cabinet Committee, MISC 16, which produced a Government report on tackling illegal working in November 2001. The focus of the revised legislation had been to improve the security and clarity of the process. An important facet of this was to reduce the possibility of using fraudulent documents.

In discussion the following points were made:

- Concern was expressed about the proposed removal of the national insurance number as a single document.
- It should be borne in mind that the legislation and guidance needed to be simple otherwise they would be ignored.
- Were any data protection issues raised, i.e. by employers passing information to the Government?
- Who is the employer? There were problems around sub-contracting and it would be necessary to ensure that the right part of industry was involved.
- Legitimate part of industry needs to be enjoined so that compliance levels are raised.
Areas of industry that were most non-compliant should be targeted.
- A regulatory impact assessment should be done.
- The new legislation would only work if enforcement was increased.
- There would be a disproportionate impact on ethnic minorities because new legislation may lead employers to discriminate. The relevant part of the guidance needed strengthening - with an example of how not to discriminate.
- Guidance on detecting forgery needs to make clear that employers are not expected to be experts.

6. Any Other Business

Tony Merricks asked whether the Chair had considered his suggestion that there should be a sub-group with a specific focus on how the issues affected the construction industry.

The Chair confirmed that she agreed this was a good idea and that the group should include a Home Office representative.

7. Date and Possible Topics for discussion at next meeting

The Chair suggested and it was agreed that smaller groups should be formed to focus on the detail of the two documents. There needed also to be two more meetings of the whole group before the summer. The dates for these were agreed as:

Wednesday 18 June, 1330 - 1530

Tuesday 8 July, time to be arranged.

It was agreed that the Immigration Service should be invited to attend a future meeting.