



Better Enforcement

Why and how improved enforcement of employment law would help to protect homeworkers.

In many cases the UK government has good laws in place to protect workers rights. Too often, however unscrupulous employers are able to simply ignore these laws as they know the chances of getting caught are very slim, and even if they are caught, penalties are not severe. Homeworkers, who are not generally unionised and often lack access to information on their rights, are particularly vulnerable to exploitation where enforcement of employment law is lacking.

Why we need a Fair Employment Commission

NGH supports the Citizens Advice campaign for a Fair Employment Commission. Whilst there have been many improvements to statutory employment rights in recent years, hundreds of thousands of the most vulnerable low paid workers in the UK are missing out. They are non-unionised and are working from home or in small work places – and don't have access to the kind of information and support they need in order to assert their statutory rights. As a result, they are vulnerable both to deliberate abuse by a rogue

employer, and to inadvertent non-compliance by an inadequately informed employer.

Whilst the government proactively enforces the National Minimum Wage through the NMW Compliance Unit and health and safety standards through the Health and Safety Executive, there is no equivalent body to investigate workers being denied their rightful holiday pay, maternity protections, sick pay or other key employment rights. Citizens Advice is arguing that a Fair Employment Commission is needed to do this job, providing a more joined-up system of advice and guidance for small employers, and a more proactive approach to compliance and, where necessary, enforcement.

The current narrow scope of individual enforcement agencies can leave them powerless to act even when they know a worker's rights are being denied. For example, NMW compliance officers carrying out investigations for NMW purposes have found evidence of workers not receiving holiday pay – which is a statutory right under the Working Time Regulations. However, as they

can only deal with NMW issues the compliance officers are unable to intervene and tackle this non-compliance with the Working Time Regulations.

Employment Tribunals

Advice agencies such as NGH and Citizens Advice work to raise awareness about statutory rights and support workers who are not receiving them. However, currently the principal (and in many cases the only) way for non-unionised workers to enforce their rights if their employer does not co-operate is to make an individual claim to an Employment Tribunal. This can be a daunting, drawn-out and unpredictable process. Every year about one third of all ET claims are withdrawn by the claimant, and the most common reason given for withdrawal is 'stress'. Furthermore, vulnerable workers can be discouraged from even attempting to make an ET claim, fearful that they may lose their job as a consequence.

Proactive Enforcement

Vulnerable workers need an accessible and proactive system of enforcement so that the more stressful Employment Tribunal process can genuinely become a remedy of last resort. The HMRC NMW Helpline and Compliance Unit provide just this approach for minimum wage enforcement, and the Health and Safety Executive is another example, disseminating information, operating a helpline, investigating complaints and conducting inspections.

Advantages to this approach include:

- Non-compliance can be tackled without individual workers having to put their jobs at risk by taking action themselves.
- Pro-active enforcement works at the level of employer rather than worker – improving the lot of every worker in a workplace, rather than just the one who makes the complaint.
- Because much non-compliance by employers is inadvertent, rather than deliberately exploitative, the mere intervention of an enforcement agency can, in most cases, achieve full compliance.

Role of the FEC

In conclusion, the proposed role of the Fair Employment Commission would be to:

- Undertake publicity campaigns to raise awareness amongst employers of their statutory duties, and amongst workers of their rights.
- Investigate complaints (including anonymous complaints) from both workers and third parties about non-compliance with certain statutory employment rights. (A Fair Employment Commission could not enforce *all* statutory rights, but as previously mentioned some of these are already covered by other bodies).
- Conduct on-site inspections targeted on carefully selected

- employers, deemed likely to be at risk of non-compliance.
- Provide guidance and, where necessary, practical assistance to non-compliant employers.
 - Where necessary undertake effective enforcement action.

Improving enforcement – recent progress

Support for improvements to the enforcement of employment rights is on the increase. The TUC made the call for stronger enforcement a high priority at its 2007 annual congress, and even the CBI has acknowledged that better enforcement ensures a level playing field where decent businesses cannot be undercut by the rogues.

The Commission on Vulnerable Employment, a panel of employers, trade unionists and independent experts reported in May 2008 and made a number of recommendations on the need for improvements to the enforcement regime, including greater strategic coordination and an extension of the Gangmasters Licensing Authority to cover other sectors where workers are at risk of exploitation.

The government has also been taking action to improve enforcement, with an enhanced budget for minimum wage enforcement and new penalties for employers who break the rules. There is still, of course, much room for improvement and NGH believes the government should make more

use of criminal prosecutions to punish employers who underpay, as this would send a strong message to other rogue employers, where currently there is little deterrent to those who flout the law.

Lack of clarity on status

Homeworkers can also miss out on their rights due to a lack of clarity over their employment status. This uncertainty over status can make it very difficult for homeworkers to find out what rights they are entitled to, and subsequently to assert those rights – if necessary at an Employment Tribunal. A revision of homeworkers' employment status would strengthen their access to employment rights, and simplify the enforcement of labour law. The National Group on Homeworking is calling for employee status to be extended to all homeworkers (and other workers) who are not genuinely running a business on their own account. For further information please see Briefing Paper No 6 – Employment Status.

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For further information and a copy of the Citizens Advice briefing 'Somewhere to turn: The case for a Fair Employment Commission' please contact Citizens Advice Policy Officer, Richard Dunstan at Social.policy@citizensadvice.org.uk

Or visit –

<http://www.citizensadvice.org.uk>

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