The future implications of migrant labour for employment relations

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A number of factors have come into play that make it more likely that migrant workers will be present in UK workplaces in the years to come, including a likely growth in agency employment, the ageing of the UK labour force and a skills disparity. Acas commissioned Professor Sonia Mckay, from the Working Lives Research Institute to explore the implications for employment relations of the future participation of migrant workers in Britain’s workplaces. The paper examines the definitions and demographic profile of migrant labour. It then goes on to explore aspects of the changing nature of the employment relationship in which many migrant workers find themselves including the increase in subcontracting, agency working and posted work.

The author then goes on to look at the specific challenges for employers and argues that they will need to look creatively at employee communication and recruitment methods, and will be required to get involved in matters that are generally seen as being external to workplace relations, such as providing welfare support. Without such engagement, says Mckay, the negative consequence for employment relationships could be workforces further divided on national or ethnic grounds. This could lead to the prospect of increasing conflict among workers, and particularly those who find themselves excluded.
Introduction

Migrant labour represents an increasingly near dominant form in some occupations and sectors of employment – in particular although not exclusively, in low wage, low skilled jobs in agriculture, construction, hotels, food processing and personal care. This is not to say that the majority of workers in these sectors or occupations are migrants, but that the use of migrant labour is a response to the way that work is increasingly organised and performed, and that this has an impact on all workers, not just migrants, and on employment relations.

The intensification of agricultural production; the requirements of the supermarket chains for quick turnarounds from producers; the decline in the offer of personal care from within family households – these trends combine to support the conclusion that migrant labour will continue to be present within the UK labour force in the years to come. The hypothesis is based on three premises.

First, the continued world-wide economic crisis will act as a push factor for migrants facing the collapse of economies at home. Even if the UK economy appears weakened, it is still likely to offer more opportunities for employment than many of the economies of the developing world and, in particular, of Africa and the Middle East, our two neighbouring world regions.

Second is the principle of free movement within Europe and potentially a further enlarged EU. The five candidate countries – Croatia, the Former Yugoslav Republic of Macedonia, Iceland, Montenegro and Turkey – will expand the European Union’s population by almost 100m. Regardless of whether the UK government chooses to impose a bar on free movement for a stipulated period, workers from states that do accede will, at some stage, have the right to enter and, even prior to this date, are likely to be able to enter under specific conditions – for example as self-employed workers.

Third, is the demographic profile of the UK, whose ageing workforce is simply unlikely to be in a position to respond to the needs of the labour market for the 21st century, regardless of what the government does with respect to pension and retirement ages. It is a simple fact that workers in their late 60s will not be physically able to perform many of the manual jobs in agriculture, food processing, and construction and in the care sector that increasingly are carried out by (younger) migrants.

Migrant labour is also present in large numbers in professional jobs, for example, in education, health and in the finance sector. While it is anticipated that the number of third country nationals in these sectors may decrease given a changed migration policy at national level, the competing pressure of a global labour market may act as a counter-weight to any decline that otherwise might have occurred. One recent study (de Poel, 2011), for the temporary agency sector, projects a continuing increase in migrant labour, particularly in highly skilled sectors. It reported that despite the overall decline in employment prospects, the number of employers that were planning to recruit migrants had risen to over a fifth (22%) of employers, from 17%, with noticeable increases in the education and healthcare sectors.
As businesses globalise they will increasingly stipulate the right to bring in workers, either to deal with specific business challenges or to provide the kind of international training and knowledge which is best acquired through the experience of working in different contexts. Particularly in a period of economic downturn, it is unlikely that governments will feel sufficiently assertive to refuse to satisfy the requirements of the big global players, like the financial institutions and the IT sector.

Simply to assume that the movements of highly qualified labour can be controlled represents a failure to accept how international capital is now organised and how it is engaged in the movement of personnel globally. Similarly, while the current government has stated an intention to reduce the numbers of overseas students coming to the UK, it seems likely that universities, faced with limited budgets and possibly declining numbers of home students due to increased fees, will encourage overseas students to study in the UK. This would in turn lead to the latter’s presence in the labour market, both during their period of study and afterwards.

This paper therefore advances the premise that, far from declining in numbers, migrant labour is in fact more likely to rise over the next decade, even taking account of the continuing economic crisis. Furthermore it asserts that this is likely to impact on workplace employment relations, both for work identified as low-skilled, as well as in relation to jobs that are seen as highly skilled.

Definitions of migrant labour

The term ‘migrant’ is used widely but it has different meanings both in the literature and when utilised for the collection of statistical data. Yet it is fundamental to our understanding and conceptualisation of migration that we should accept that just because someone arrives as a migrant, they do not have to forever be identified as such. Experiences of migration and of work, access to workplace integration and the degree of acceptance they experience from wider society determine whether or not an arrived ‘migrant’ remains a ‘migrant’.

The UN Convention on the Protection of the Rights of all Migrant Workers and their Families defines a migrant worker as ‘a person who is engaged or has been engaged in remunerated activity in a State of which he or she is not a national’. This bases the definition on national status, suggesting that individuals who acquire a new nationality in the host country should no longer be identified as migrants. The UK Labour Force Survey uses the term ‘foreign’ rather than ‘migrant’ and defines a ‘foreign’ worker as ‘someone who works but has foreign citizenship’ and a ‘foreign-born’ worker as anyone born outside of the UK, including British citizens’. Here the emphasis is on place of birth rather than on citizenship or nationality. For the purpose of calculating the migrant population, the Office of National Statistics’ International Passenger Survey bases its migration estimates on the number of passengers surveyed who, on arrival, indicate their intention to remain in the UK for more than a year.
There are inevitably problems with any definition of a population as diverse as the migrant one. The term is used in its ‘popular’ context (for example in the media) when referring to individuals who are visibly or linguistically distinct from the indigenous population and who can therefore easily be separated out as ‘different’. In turn, the term ‘migrant’ is often attached to other terms like ‘economic migrant’ or ‘undocumented migrant’, and some of these terms carry specific value judgments. The reality of course is that an individual who migrated to the UK 35 years ago as a young person, who has worked all or most of her/his life in this country, does not face the same experiences at work as a recent migrant, nor does work necessarily present the same challenges. Similarly, an individual who arrives from abroad to work in a senior position in the finance or health sector, for example, does not encounter the same challenges as does someone who migrates to a low skilled, low paid job. This is not to say that all who migrate do not encounter some difficulties, but these are variable, dependent on their economic and class position; the financial rewards obtained from their labour; and the degree to which their visible or linguistic differences are met with prejudice or racism. All of this means that we need to be aware of the different and complex challenges when reflecting on the role of the key employment relations actors – employers, workers and employee representatives.

The demographics of migration

Migrants to the UK today represent a much more varied population than was the case even 30 years ago. Then migrants came mainly from the Commonwealth countries (old and new), from Ireland and from the United States of America. Since the end of the 1990s migration has continued to increase on a year by year basis but it is always important to keep in mind that the migrant workforce remains a relatively small (if growing) segment of the UK labour force. As Table 1 demonstrates, even today, despite a relatively large increase in migrants over the last decade, they make up less than 14 per cent of the labour force and migrants from outside the EU represent approximately nine per cent of the total.

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<th>Table 1: Composition of the UK labour force</th>
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1 This total does not equal the sum of UK-born and Non-UK born because it includes people who did not state their country of birth.

Source: Office of National Statistics May 2011

Migration statistics

In the year to September 2010, the last year for which the statistics are available, net migration increased by 242,000 over the previous year. This was its highest level of increase since the year ending June 2005, when it reached 260,000 and it supports the thesis that migration is not on the wane. Net migration of non-EU citizens increased, as did that of
migrants from A8 countries (Office for National Statistics news release, May, 2011).

The data also show that the largest proportion of migrant workers arriving in the last year were in work classified as low skilled process operatives, e.g. transport drivers, food, drink and tobacco process operators (The Migration Observatory, 2011) and this rising proportion of low skilled migration dates from 2005 onwards. The second largest group is of lower, middle skilled workers with jobs in computer programming, consultancy and scientific research and development. Most of the increase in non-UK workers in low-skill jobs came from EU A8 countries. There was also an increase of those born in the ‘rest of the world’ countries. The only fall experienced was marginal and was from those countries that made up the old EU prior to enlargement (ONS, News release May 2011).

Migrants are generally younger than the working population overall. Around half of all migrants who arrived in the UK in 2008 were aged 25 to 44 years old (ONS 2009). The most common individual citizenship group was non UK born British (15 per cent of all new migrants) and the most common reasons stated for migration were work related, with two-thirds already having a job to go to. After British citizens, Polish and Indian citizens were the next two largest groups. They were followed by China, Germany, Pakistan, the USA, South Africa, Australia and Italy. Citizens from other EU countries made up a third of the total. Similar proportions of men and women migrated to the UK in that year, although a higher proportion of men migrated for work-related reasons than women.

The changing nature of the employment relationship

Much of the literature endorses the view that UK employment relations are changing. Some aspects are unquestionable. The trade union density level has declined from 38 per cent in 1990 (Charlwood, 2003) to 26 per cent in 2010 (Achur 2011) and fewer than half of all UK employees (46 per cent in 2010) are in workplaces with a trade union presence, with only 30 per cent having their pay and conditions covered by a collective agreement.

Employment status has also become a focus, with the past often characterised by the full-time male worker in a contractual relationship with an employer, on a contract of indeterminate length, where both parties assumed that the contractual relationship would continue, probably until the time of retirement. Of course, this was never the experience.
of all workers since casual work has always been a feature of the labour market, for instance among dock labour. In this sector, for instance, workers were traditionally hired in circumstances similar to those that are today experienced by recently arrived migrants who, in their search for the most readily available jobs, are more likely to settle for work which is casual. However by the beginning of the 1960s a large enough majority did experience the employment relationship as a form of established, permanent and secure employment to allow it to appear dominant and fixed. This enabled people to plan their lives, to raise their families and to secure accommodation in the relative security of permanent work. Periods of unemployment challenged this picture but, in the UK there were fairly long periods of more or less full employment.

Today, a majority of workers are employed on permanent full-time contracts. The latest data from the Labour Force Survey (April 2011) shows that 73 per cent of the labour force is in full-time employment; and 27 per cent in part-time employment (ONS June 2011). Furthermore, 86 per cent of all workers had employee status – ie employed by an employer under a contract of employment – with just over six per cent in temporary employment, of whom more than one-in-three are involuntary temporary workers because they could not find permanent work. Fourteen per cent of the labour force is self-employed.

Yet, these broad figures disguise some significant changes in employment patterns. Of particular significance to the discussion of migrant labour is the growth of what might be identified as ‘triangular relationships’ evident in sub-contracted, agency and posted work arrangements10. These forms of employment, as discussed below, question the identity of who the employer is, make the categorisation of the relationship more complex, and present additional challenges in particular to concepts of ‘normal’ employment relationships.

This paper thus now turns to look at forms of employment relationship characterised by distance, that is where the individual migrant does not work directly for the employer who utilises her/his labour.

**Migration and distanced forms of employment relationship**

Employment relationships may be described as ‘distanced’ where there is some form of third party involvement, such as subcontracting or through an agency or a gangmaster. This kind of arrangement can be perceived as offering specific advantages to employers, since it offers flexibility of labour supply and potentially less pressure to provide job security, together with non-negotiated and often inferior terms and conditions. The nature of the employment relationship they foster: often of a temporary nature, work involving specifically set tasks and often with limited or no scope for professional or career development, little access to in-work training and less opportunity to build strong workplace identities – make them less attractive to indigenous workers and thus by default provide an area of the labour market which a migrant or transient labour force is more likely to inhabit.

The McKay 2009 Acas study noted that in the hotel sector decisions to hire migrant
labour were associated with particular types of work or with a perceived need for casual or more flexible workers. Principally in the case of low waged jobs, the study found that these had been outsourced to sub-contractors, as a way of resolving recruitment issues, with agencies taking over the job of finding suitable workers. Similarly, in the construction sector, an increased reliance on sub-contracted labour, with most workers having the formal status of self-employed, had also led to increased use of agency staff and consequently to distanced employment relationships. The next sections move on to look at sub-contracted employment, agency and posted work, focusing on the implications for employment relations of these contractual arrangements.

Sub-contracted employment

For a range of reasons, it seems likely that subcontracting will increase over the coming five to ten years. First, during a period of economic instability, a growth of sub-contracting is likely. Faced with economic constraints, businesses will seek to contract out as much work as possible as it offers greater labour flexibility and lessens their exposure to the costs associated with dismissing workers. Any increase in sub-contracting is likely to be associated with the employment of migrant workers and will in turn endorse a two-tier workforce pattern, with a core group holding effective employment rights and a second tier in a weaker relationship with the employer sub-contractor.

Migrant workers are more likely to be in this second tier for a range of reasons. First, they are less likely, at least on initial arrival, to have as a primary concern a requirement to be in a permanently secure employment relationship. Their prime motivation is to get a job; the type of job and in particular the contractual form that it takes, is less likely to be an issue. Indeed it may be several years before migrants conceptualise themselves as people who are intending to remain, and feel driven towards securing permanent or secure work. It is five years after arrival that individuals can apply for settlement or indefinite leave to remain and is therefore an accepted point of time after which migration moves from a possibly temporary to a permanent residence decision.

Second, migrants may also arrive as a consequence of the sub-contracting process, and in many cases, they may be self-employed. Sectors like food processing have experienced a particular growth in such an arrangement. In relation to the EU candidate countries (see above) if and when they accede to the European Union, restrictions are likely to be placed on their free movement, similar to those imposed after the accession of Bulgaria and Romania where they do not allow their citizens to migrate save as self-employed workers. It can be assumed that workers from any newly acceded EU states will initially arrive as self-employed workers and are therefore more likely to work for sub-contractors.

Finally, sub-contracted employment is particularly likely in an era in which the Government has placed increased emphasis on privatisation. In July 2011, for example, it announced plans to privatise nine UK prisons. Earlier in the year plans for the part privatisation of the NHS blood and transfer services were proposed. In April 2011 potential
contractors were invited to tender for the Identity Assurance (IDA) service (identity cards) and there are advanced plans for the privatisation of aspects of higher education.

If the above scenarios are correct and if work accessed through sub-contractors becomes more predominant then how will this impact on employment relationships? The assumption is that employers are more likely to seek to impose self-employed status on workers and that migrants will be disproportionately affected by this. A move away from employed status to self-employment implies more than just a change in the form of the contract. It means that the employer may avoid some of the obligations that would apply in the case of workers directly employed.

Agency working

Over the last three decades there has also been a significant growth in agency employment. In their recent study for Acas, Chris Forde and Gary Slater (2011) make reference to a 500 per cent rise in the number of agency workers between the mid-1980s and 2007 and state that while the economic recession of 2007 caused a subsequent decline in the numbers of agency workers, they began to rise again in 2009 (Forde and Slater, 2010). Employment agencies have always played a role in providing labour, either in times of peak requirements or where the skill set required is very specific, or a combination of both these features.

The report by the then Department for Business, Enterprise and Regulatory Reform (BERR 2008) provides a mid-point estimate of around 1.3 million workers employed through agencies, showing that they still represent less than five per cent of the labour force. The report states, however, that there are significantly more agency workers who are from a minority group (including Eastern Europeans) compared with all employees and notes that migrant workers from Eastern Europe make up the largest single group within the category of agency workers. In one survey of 164 employers, 34 per cent had used agencies specifically to source migrant labour (McKay et al, 2006). Agencies appear to perform a particularly important function in introducing migrant workers to employers and it represents a significant first entry point into the labour market for a considerable number of migrant workers (McKay and Winkelmann-Gleed, 2005; McKay et al, 2006).

This growth in agency work in the UK has depended on a variety of dynamics, ranging from the nature of national regulation to changes in the labour process and industrial structure (McKay and Markova, 2011). Studies have explored the economic and socio-cultural factors driving this development (Arrowsmith, 2006; Bergstrom and Storrie, 2003; Koene and Purcell, 2004; Michon, 2005); the roles of low paid and forced migrant labour in domestic work (Anderson, 2007), hospitality (Anderson et al, 2006; Wright and Pollert, 2006); and the au-pair sector (Williams and Balaz, 2004; Ruhs and Anderson 2006). Agency employment also offers migrant workers more speedy access to the labour market and this may act as a strong motivator for migrants, who have an immediate need to find work, often avoiding having to comply with more rigid selection criteria attached to direct employment.
The assumption here too is that agency labour will grow in the years to come. While the Agency Worker Regulations, effective from 1 October 2011, give agency workers the right to no less favourable treatment than is available to directly employed staff, the regulations only come into effect after a period of 12 weeks of employment. This means that, in particular for work that is supplied for a relatively short duration, agency work offers clear advantages to employers, as it is work that comes without associated employment rights and without the additional costs of direct hiring, such as human resources costs, management and supervision, training and so forth.

Workers employed through agencies enter into employment relationships that often are complex and difficult to assign an employment status to. The triangular relationship, between worker, agency and end user employer, means that it is not clear what contract the worker has with either the agency or the end user. Whether or not agency workers are employees of the agency itself depends on the nature of the contract between them and it. This has led to a variety of judicial rulings that have increased the uncertainties as to the nature of the relationships and which lean to a view that an employment status cannot be implied.

Additionally, there remains the question of how agency workers will exercise their rights, in the absence of representation and advice, and also how agencies themselves can be encouraged to introduce equal treatment provisions regardless of length of employment. If the premise here is correct and if agency work grows then it will also represent an important source of employment for migrant workers. This will apply to both low and high skilled workers, as even for the latter, agencies represent a route into work.

The introduction of the agency workers regulations 2011 could lead to some agencies adopting what is known as the ‘Swedish derogation’ model. Under this, provided that workers are permanently employed by the umbrella (agency) company, they cannot claim the right to equal pay with those in workplaces in which they are assigned to work. If agencies adopt this model then it will also contribute to a rise in agency working. While it might be argued that technically they are no longer agency workers, but workers with permanent contracts, their attractiveness to employers, as a way of avoiding equal pay, makes it more likely that their number will grow. Regardless of how they are identified in terms of their contracts, they remain mobile workers subject to the same conditions of vulnerability as are experienced by traditionally employed agency workers.

Posted workers

Posted workers are required by their country of origin employer to work in another country for a specified period of time, usually to complete the work as set down in a contract between their employer and the contracting party. The Posted Workers Directive generally requires that the host state ensure that the workers posted to it are guaranteed the standards laid down by law, regulation or administrative provision in the host state in specified areas. The host state’s rules in these areas apply to a posted worker even where they provide inferior protection (Acas 2009).
There is limited data on the numbers of posted workers in the UK, but a Labour Force Survey question in 2008, led to an assessment of around 165,000 posted workers. Most worked in business services (23%) and financial intermediation (14%), manufacturing (14%) and health and social work (12%). Only 4% worked in construction\textsuperscript{14}.

The industrial dispute at the Lindsey oil refinery, along with a number of other disputes in 2009, in North Lincolnshire, Milford Haven and in the Vale of Glamorgan highlighted some of the difficulties that may arise where posted foreign workers lack knowledge of existing terms and conditions or of prevailing work practices and where local workers assume that their employment is directly associated with cutting staff costs and that it deviates from established terms and conditions.

Posted workers comprise a variety of migrants. They may be well qualified, highly remunerated workers, whose specific expertise, skills and knowledge is the reason why their employers post them to fulfil the terms of a contract, for example in areas like finance. However, they may equally be low-paid workers utilised because they reduce labour costs and cases heard at the Court of Justice of the European Union\textsuperscript{15} indicate that posted workers are often utilised as a low wage alternative to local labour. The economic crisis is likely to encourage a greater level of posting as firms compete for available work and as tenders are increasingly focused on reducing costs. Particularly where the labour required has specific skills it is increasingly likely that businesses located in other EU states will bid for contracts that include their supply of labour.

**The implications for employment relations**

The sections above have described changes that will continue to shape the labour market. They have demonstrated that migrant workers are likely to play an increasingly dominant role in both facilitating and accommodating these changes. Taking this into account, this section turns to look at the implications of this changing labour market for existing employment relations. The implications for employers extend beyond issues related to the types of distanced employment discussed above. Employment relations, even where based on the standard model of employer and directly employed employee, are likely to be re-modelled and reshaped as a consequence of employer use of migrant labour.

The key premise is that, against such a back drop, the employment relationship will inevitably change, but that how it changes will depend on two potentially competing scenarios. First, employers may recognise the need to change existing procedures to accommodate migrant workers across a number of fundamental areas (see below). However, they may believe that the challenges that they face, in particular, the current economic climate do not provide room for manoeuvre and as a result they may choose to ignore the issue of migrant labour. This scenario carries the risk of eroding existing employment relations, making human resources more difficult to manage, and potentially leading to conflict among workers. The choices
therefore are either that they make
the necessary adjustments to respond
to changes or alternatively they risk
endorsing less orderly industrial relations.
The fundamentals which would need to
be addressed are in relation to:

- Information and consultation within
  the workplace and the challenges
  of communicating across different
  languages, cultural and professional
  expectations;
- Representation of employee
  interests whether through formal
  or informal channels, in workplaces
  that are culturally or ethnically
  diverse;
- Methods of competence and skills
  testing;
- Equal opportunities policies in
  relation to recruitment, networks
  and agencies;
- Migrant labour and gender
  segregation;
- Promoting workplace integration;
  and
- The facilitation of workplace
  integration beyond the confines of
  the workplace.

Each of these areas represents important
challenges for the future, and is
considered in the following sections.

**Communicating across diverse groups of
workers**

Employers are obliged to inform
and consult with their employees in
specific circumstances, for example in
relation to redundancies. And many
employers recognise that information
and consultation procedures are valuable
in promoting good workplace relations.
Both dimensions are important to the
effective integration of migrant workers
as are a number of other aspects of
communication.

The Tuckman and Harris (2009)
study noted that language training
and translation was a key concern of
the employers interviewed. In the
McKay (2009) study managers raised
communication as a key challenge,
reporting on the steps that they had
taken to translate key documents –
particularly concerning health and safety
– into the languages of the main migrant
groups. They saw this as an essential
pre-condition to the employment of
migrant workers, although this did, in
some cases, lead to favouring particular
linguistic groups when it came to
recruitment, as the management of
relatively few languages of origin was
seen as being less problematic. Examples
cited included:

- The creation of linguistically defined
  levels of supervision, with bi-lingual
  staff acting as a communication
  channel between workers and the
  established supervisory structure in
  the firm;
- Ensuring that key documents,
  including contracts, were translated
  into the languages of at least the
  dominant migrant groups within the
  workplace;
- Ensuring that workers were
  grouped in teams with at least one
  team member who was bi-lingual; and
• Using visual methods of communication where appropriate.

The introduction of these kinds of communication methods clearly carries resource implications. There are the direct costs, for instance in employing staff with specific languages, but also costs in terms of the time taken to complete tasks where communication plays an important part of the process. Failure to ensure that these resources are available to enable effective communication with workers, in some circumstances such as redundancy handling, may mean that employers fail to meet their legal obligations.

It clearly follows that employers do need to be able to communicate with their workforce. But equally, workers need to be able to communicate with one another, not solely to carry out their assigned tasks safely and efficiently, but also so that they can develop the friendship networks that are an equally important component of any work relationship (Tuckman and Harris, 2009; Dench et al, 2006).

Communication therefore is more than just having the essential material translated into the significant languages contained in the workplace. It is about facilitating the creation of an environment where individuals know that their voices will be heard. It is also about recognising distinctive cultural norms may mean that individuals represent their abilities or skills differently. For example, they may be less comfortable about emphasising their range of abilities where this is considered boastful or egocentric. This is particularly important in the context of skilled or professional workers who may practice their skills or exercise their professional competences in ways that are different and which therefore may appear to demonstrate less competence. Ensuring that the workplace acts as an effective instrument of communication requires employers to take account of communication in this wider context.

**Representing the interests of migrant workers**

The central research hypothesis of the McKay (2009) study was that recent large-scale migration to the UK might be likely to have consequences for employment policies and practices and for the representation of diverse worker interests. At a strategic level the creation of the Gangmasters Licensing Authority has set up a regulatory framework for addressing the concerns of vulnerable workers although only in the agricultural sector. But inside the workplace, other actors also have a role to play.

In workplaces where trade unions are recognised, unions need to ensure that they represent the views of all relevant workers and are not just reflecting one historical or cultural experience. In workplaces without a union presence where there are other communication channels, for example employee forums or councils, employers need similarly to ensure that the views of all varied groups of workers are heard.

Existing information channels may not necessarily be constructed to encompass the interests of migrant workers or to take account of their specific needs. A consequence of the changing nature of employment relationships discussed above is that migrants, and in particular those in low-skilled jobs are more likely
to be in workplaces where there is an absence of formal representation or may be in sub-contracted sectors with no means of exerting influence on the end user employer. Where formal channels do exist they need to be sensitive to the requests of migrant workers. Among skilled or professional workers, for instance, the types of challenges they face can include recognition of qualifications, difficulty in securing promotion, or being assigned to work in less prestigious areas of their profession.

Among all migrant workers a key issue is also about ensuring that terms and conditions in the workplace reflect their concerns, for example appropriate arrangements for annual leave that might allow them to take it in larger blocks or at specific times. Indeed there are likely to be a number of employment relations issues which could be addressed through communication channels. But this means ensuring that migrants are represented in all bodies, whether formal or informal. This also includes representation on health and safety committees; ensuring that staff opinion surveys are translated where necessary and that when they are circulated, they are accompanied by information in appropriate languages, which explain why the survey is being conducted and how it will be used.

In terms of the employment of agency staff the issue of representation is even more problematic and it is insufficient to leave their issues of representation as something that is relevant only within the context of their employment relationship with the agency itself.

Employers and trade unions who want to promote good workplace relationships will discover the value of adopting procedures that allow them to take account of agency worker voice. This may mean creating new or additional representation channels or ensuring that existing channels are capable of articulating the voice of workers whose relationship with the rest of the workforce is necessarily distanced.

One specific issue which many agency workers raise is that there should be a transparent procedure for transfer to direct employment. Providing this can help to break down divisions between directly employed and agency worker. In a study conducted in the poultry industry, one of the most frequently voiced requests from agency workers was that they should know what the procedures were for a transfer to direct employment (Gibbons et al. 2007).

Trade unions too have played an important role in ensuring that the interests of migrant workers are reflected in their work. Martinez et al. (2007), in a study on the role of trade unions note that they are providing migrant workers with information and support services, often in union learning centres, on a range of issues, including access to ESOL and employment rights. Unions have also addressed the issue of representation through setting up structures specific to migrant workers; appointing union officers with responsibility for migrant worker issues; and providing support for language classes for migrant workers.

Methods of competence and skills’ testing

One of the key challenges in relation to the employment of migrant labour is in competence and skills testing. McKay (2009) reviewed whether there was
evidence of recruitment methods having been changed to place greater reliance on competence testing. It was noted that it was more difficult for employers to interpret qualifications obtained abroad and that it was necessary to have other forms of testing. In some cases, testing was carried out in the applicant’s country of origin, prior to employment; in others skills and competencies were tested on the job. It may therefore be assumed that new methods of assessment, and in particular ‘on the job’ assessments, are likely to replace the formal submission of documents verifying the individual’s qualifications.

Employers who need to be able to assure themselves of the abilities of migrant workers are likely therefore to develop alternative forms of assessment. This may have immediate advantages, in that it means that they can profile the worker against the specific requirements of the job. However it means moving away from a transparent form of assessment to one that is more likely to be value based and which is likely to be subject to greater error.

Having clear procedures in place to assess competencies and skills will be important not only because this means that work can be properly matched with the skills that individuals have, but also because the whole workforce can then be confident about the skills and competencies of their colleagues. This is particularly important in overcoming any prejudices that may be held that migrant workers are in someway less competent or qualified, or that their qualifications are of lower value. Additionally workers are likely to feel safer and more able to work effectively where they are confident that the colleagues who work alongside them are capable of carrying out the required tasks.

While for some professional groups – for example doctors – there are established routes to recognition of qualifications, this is not the case for all groups of workers. There is likely to be a need to put in place new systems to ensure that there is a transparency over how skills are recognised and developed. This might require clear tests which are agreed between representatives of employees and the employer; set time periods to allow workers to acquaint themselves with the requirements of the job; a mentoring scheme for newly appointed migrants, which can be of as short or as long a period as is necessary to confirm the individual’s skill level; and co-working which might involve an established employee working with a recent migrant recruit.

Equal opportunities policies in relation to recruitment

Research suggests that word of mouth is a primary source of recruitment for migrant workers and indeed the available evidence suggests that employers are more likely to utilise this method when seeking out migrant labour (Tuckman and Harris, 2009). McKay (2009) also found that word of mouth was widely used but that, where companies had developed HR policies, there was less reliance on word of mouth based on an awareness of its potential for discrimination. However, often the ‘solution’ they adopted had been to outsource much recruitment for low-skilled, low-paid jobs to employment agencies and the agencies in turn had tended to use word of mouth as a method of recruitment.
A recent study by the Equality and Human Rights Commission (EHRC 2009) has argued that word of mouth recruitment is discriminatory. Network and informal recruitment methods may be seen as preferable for some employers since they avoid the requirement to have formal recruiting procedures in place and remove the challenges associated with language barriers, and skills assessment (issues dealt with above). However, the approach carries some risks. Whilst they appear to remove from the employer her/his responsibility for testing skills and abilities, in law this responsibility remains, and if workers have accidents at work or injure others, then it is the employer who will face the consequences.

Informal recruitment can also encourage unequal relationships within the workforce, raising questions of patronage which in the long term can be destructive. Relying on word of mouth also results in the perpetration of a workforce that is ethnically constructed along relatively narrow lines. It closes opportunities to other groups, including other new arrivals and as the EHRC study demonstrates, can result in discrimination which is legally challengeable. Finally, migration is a constantly flowing and changing phenomenon and employers who rely on specific ethnic or national networks for recruitment may find that they reach a time when those networks are no longer capable of supplying workers.

**Migrant labour and gender segregation**

Gender segregation remains a feature within UK workplaces (Miller, Neathey et al., 2004) and workplaces with significant groups of migrant workers display the same segregation patterns that occur in non-ethnically or nationally diverse workgroups. While the statistical data demonstrate that men and women migrate in relatively similar numbers, the jobs that they do are clearly differentiated on gender lines (McKay, Markova, and Paraskevopoulou 2011).

Female migrants are much more likely than male counterparts to work in private households and in the private healthcare sector; male migrants are much more likely to work in construction and in agriculture. Indeed it may be that the constraints on access to work experienced by migrants increases the incidence of job segregation. Thus there is no reason why migration per se should eliminate the challenges to employers in ensuring that the workplace is free from sex discrimination, particularly in relation to the jobs that people do and the ways that they are recruited. Using word of mouth, for example, can act to reinforce the segregation of workers, as networks reproduce themselves.

Migrants themselves cannot be the driver against gender segregation at work but it might be hypothesized that the migration experiences of women, in particular, might create the conditions for such women to challenge their positions and roles in society and therefore also at work. Many women who now migrate, for example, do so having taken on the principal economic and financial responsibility for their families that previously rested with male workers. Equally, where employers and/or employee representatives have a developed political commitment to fighting discrimination at work, the presence of migrant and in particular
female migrant labour could be a catalyst for actions against discrimination. Certainly, we can look back to previous pivotal cases like that of the Grunwick workers, where the struggle of seemingly vulnerable workers encouraged a new debate around racism and discrimination at work and led to widespread solidarity initiatives (Pearson et al., 2010).

**Workplace integration**

The evidence obtained from the 2009 Acas studies (McKay, 2009 and Tuckman and Harris, 2009) suggests that taking clear steps to encourage workplace integration brings benefits not just to the workers concerned, both migrant and non-migrant, but also to all those involved in the employment relationship. To ensure successful integration employers will need to start from a premise that the recruitment of migrant workers will not cause tensions within the workforce, provided that it is handled in a transparent fashion and that clear principles in relation to equality, recruitment, training and skills and competencies have been adhered to.

At the same time for this to be a successful strategy they will also need to ensure that supervisors and managers are given the training necessary to enable them to work successfully with diverse groups and that it is clearly stated that employers value all workers, regardless of ethnicity or nationality. Favouring particular national or ethnic groups (for example workers from Central and Eastern Europe) on the basis of a perceived, positive work ethic can work against positive workplace integration, and potentially be divisive or conflictual. Positive employment relations are more likely to be achieved if workers are valued not because of their nationality or ethnicity but due to the contribution that they make in their work.

**Beyond the workplace**

Migrant workers, like all other workers, are not just units of labour without ties or wider responsibilities. However, the very fact that they are migrants means that their personal requirements are much more inter-related to their work relationships. For many, the primary reason for their presence in the UK is to earn money, to work and to obtain a better standard of living and, particularly in the early period of migration, work is the starting point from which all other needs are met. This creates a specific challenge to the employment relationship as it cannot be one that is ‘cut off’ so to speak, on exit from the workplace. Migrant workers may require extra support from the employment relationship and this may result in a re-construction of the obligations of employer and employee.

McKay (2009) found that the recruitment of migrant workers had led to employers looking beyond the immediate workplace and its requirements, to consider what additional support migrant workers might demand. The research found that the more progressive employers had recognised the need to provide a range of welfare services, particularly around access to banking and accommodation. Similarly, Tuckman and Harris (2009), in their complementary study for Acas, found that the employment of migrant workers had encouraged employers to take on a wider welfare role, particularly in relation to housing and associated
accommodation needs. This could be a route to putting migrants in a better situation to plan their lives and those of their families.

Additional personnel with particular skills are required to provide this kind of support to migrant workers and the approach overall means engaging in issues traditionally considered as outside the employer’s remit. These may be issues deemed as extraneous to the employment relationship. They arguably hark back to earlier forms of employment relationship, for example the new model workplaces of the 18th and 19th centuries and the welfare role which more employers offered, particularly where there were effective personnel departments. The move to human resource management was a shift away from this model, but that does not mean that it is not worth re-visiting. Treating workers as whole persons rather than simply units of production has the potential to engage workers in the enterprise in a more effective way.

Conclusion

This paper argues that migrant workers will continue to arrive in search of employment and better opportunities and that while the economic crisis may have a short-term impact on the numbers arriving, the trend will remain upwards. At the same time economic crises will challenge the continued existence of many workplaces, in both the public and the private sectors. And in these circumstances having a workforce which sees itself and is seen as an integral part of the work process is more likely to assist in the survival of institutions. Additionally, without such engagement, employers may find it difficult to recruit and retain migrant workers, particularly in those areas where their professional skills are highly valued or in short supply or where the local labour market cannot supply sufficient labour.

The challenge for employers is thus to promote fair recruitment and employment practices that will deliver a workforce that is appropriately skilled and motivated. This means encouraging sound communication procedures and taking effective steps to promote workplace integration. In addition, highly skilled migrants are likely to be a key element in the success of those enterprises that are able to ride the recession. However, if employers are to offer these additional forms of support then it is important, for the success of internal workplace relationships, that they are seen as providing similar or equivalent levels of support for all workers, regardless of whether or not they are migrants.

If, however, employers do not take responsibility for supporting the needs of migrant workers then the question arises as to whether employment agencies will be required to take on a more supportive role. This is an area not sufficiently researched but, particularly in the light of the possible impact of the regulations on agency workers in incentivising them to directly employ workers whom they place with end user employers, this is one possible direction. The challenge in any case is to guard against a ‘race to the bottom’ as a response to economic crises and to avoid taking a route which asserts that a loose labour market, with more
people looking for work than there are jobs, means that the issues raised in this paper can be put aside. In this context it can be contended that engagement with migrant workers has the potential to change the employment relationship, not just for that group of workers, but more widely for the workforce as a whole.

End Notes

1. The current economic crisis makes it difficult to forecast migration over the medium term, as a recent report by Communities and Local Government indicates. Although revising its forecasts downwards, it nevertheless shows a continuing rise in migrant stock predictions between 2011 and 2018. See: http://www.communities.gov.uk/documents/communities/pdf/1204238.pdf

2. Third country nationals are those whose country of origin is outside the EU.

3. Students who have completed their studies in the UK will continue to have the right to work even after the rules change in 2012, provided they meet the Tier 2 criteria that they are working in a graduate level job. The employer is not required to show that the job was advertised and that no UK or EEA nationals could do it. See: http://www2.ohchr.org/english/law/cmw.htm

4. See: http://www2.ohchr.org/english/law/cmw.htm


6. Net migration is the figure arrived at subtracting individuals leaving the UK from those arriving.

7. A8 countries are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia


10. A posted worker is defined as a ‘person who, for a limited period of time, carries out his or her work in the territory of an EU Member State other than the State in which he or she normally works’. 11. See Consistent Group Ltd v Kalwak and others [2008] IRLR 505 CA


13. Directive 96/71/EC

14. The LFS question was not straightforward and other research suggests a slightly higher number of posted workers. Furthermore, since most posting is temporary, the LFS data does not necessarily pick these workers up (my thanks to my colleague Nick Clarke for bringing these points to my attention.

15. See Case C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet [2008] IRLR 160; Case C-346/06 Rüffert v Land Niedersachsen [2008] IRLR 467

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