OPTIMISING OPPORTUNITIES FOR WORKPLACE JUSTICE FOR MIGRANT WORKERS IN NORTHERN IRELAND AND THE REPUBLIC OF IRELAND

Crossing Borders, Breaking Boundaries

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Northern Ireland Committee

Crossing Borders, Breaking Boundaries

Optimising Opportunities for Workplace Justice for Migrant Workers in Northern Ireland and the Republic of Ireland

Summary

This Research Brief presents an overview of the relevant academic literature, before providing a sketched outline of the Industrial Tribunal system in Northern Ireland (NI) and the Workplace Relations Commission in the Republic of Ireland (ROI). The main body of the report moves on to present research findings from the Crossing Borders, Breaking Boundaries (CBBB) project, in tandem with a set of reflections and recommendations derived from a series of interviews undertaken with CBBB staff and operational partners. The research presented in the report is designed to promote greater access to workplace justice for migrant workers in both jurisdictions, highlighting required changes in the workplace, the centrality of language to justice, the value of third party support services, recommendations for improvements in workplace inspections regimes and potential reforms to current practice in the Industrial Tribunal and Workplace Relations Commission.

Introduction

This research presented in this brief derives from the Crossing Borders, Breaking Boundaries (CBBB) project , a third sector initiative established in mid-2018. The project is supported by the European Union's PEACE IV Programme, managed by the Special EU Programmes Body (SEUPB). Focusing on the border counties of Northern Ireland (NI) and the Republic of Ireland (ROI), CBBB supports migrant workers and seeks to tackle sectarianism, discrimination and racism. The programme has engaged with over 1,200 migrant workers, including workers from within the agricultural, food processing and services sectors. A key facet of the programme involves supporting the enforcement of worker rights, including supporting participants with cases taken to the Industrial Tribunal (IT) in Northern Ireland (NI) and the Workplace Relations Commission (WRC) in the Republic of Ireland (ROI). This research brief is based on the experience and insights of CBBB Development Workers and project partners who have supported workers in a number of settings and sectors.

Literature review

The research undertaken by CBBB has confirmed the predominance of migrant workers in employment that is characterised as low-paid and low-skilled, with workers enduring dirty, monotonous, dangerous and physically demanding jobs undertaken in workplaces with limited or no access to trade union representation (Gregson et al., 2016; TUC, 2018; Wright and Clibborn, 2019). Compared to UK-born workers migrant workers are reluctant to enforce their rights legally (Barnard and Ludlow, 2016).

Barnard and Ludlow (2016) explored EU-8 migrant workers experience of Employment Tribunals (ETs) in Great Britain, an exercise hindered by the fact that there was no available data on claims made by EU-8 nationals, and that ET decisions make no reference to nationality of claimants. Barnard (2014) had previously reported that only 13 cases had been brought by EU-8 workers to the Employment Appeal Tribunal between 2005-2012. Barnard and Ludlow initially identified 1,548 potential cases of EU-8 claimants between January 2010 and December 2012, 0.005% of all cases in the period. Further refinement reduced the number of cases to 46, or about 15 cases per annum. These cases related mainly to pay (unpaid wages or holiday pay), unfair dismissal, race discrimination and notice pay. Of the initial 1,548 cases, a quarter appeared before the ET in person, unrepresented (for over 56% representation type was unknown). Very few claimants benefitted from specialist advice e.g. CABs. Trade union, or legal representatives (see also Dupont and Anderson, 2018). Analysis of the final 46 cases indicated that claimants work in jobs characterised as low-skilled, most had little or no English, making the role of interpreters vital, and many had received advice at some stage of the process. Analysis by Barnard and Ludlow suggested that the utility of the advice varied across cases. Of note, claimants struggled to cope with ET procedures, finding it 'difficult to comply with basic directions given by Employment Judges, such as providing witness statements. Limitation periods were particularly problematic as was claimants' understanding of court documents' (2016, p. 18). Claimants relied heavily on interpreters.

Overall the ETs were assessed to be sympathetic to EU-8 claimants, with no evidence of discrimination. Suggested recommendations from the authors included a simplified ET1 form, the abolition of ET costs, and a simple mechanism for claiming unpaid wages. They further suggested that other enforcement agencies e.g. HMRC and the Gangmaster Licensing Authority be given more powers to intervene to protect vulnerable workers. In general, the analysis confirms the vulnerability of migrant workers, added to by confusion over what constitutes 'employee' as opposed to 'worker', poor English, and lack of support networks for legal advice. The data highlight serious shortfalls in protection available to workers by the current range of rights enforcement through ETs.

In their review of EU-8 migrant workers experiences in industrial tribunals, Barnard et al. (2018) looked at both why so few migrant workers enforced their employment rights at employment tribunals (ETs), and what could be done to improve the enforcement of employment rights for migrant workers and other vulnerable workers in the UK labour market. They suggest that the starting point for any consideration of migrant worker rights is Article 45 of the Treaty on the Functioning of the European Union (TFEU) which 'entitles all EU nationals to look for employment in other EU Member States and grants migrant worker rights to equal treatment as to terms and conditions of employment as well as any social or tax advantages offered to domestic workers (2018, p. 227). The research identified a range of issues; those who wished to remain permanently in the UK were more likely to act, particularly Polish workers who tended to be settled for a longer period. Workers staying for a short period were even less likely to take an ET case. For those who intended to stay between 2-5 years, the primary motivation was to maximise earnings in the shortest period possible. Consequently, few workers were interested in action that would conflict with this objective, indeed some workers for example aimed to exceed the hours outlined in the Working Time Directive (1998), an outlook determined by income maximisation. In terms of practical impediments to bringing ET cases, four factors were highlighted; (1) the legal environment which facilitates precarious working (zero hours contracts and agency work); (2) workers' lack of knowledge on the role of ETs, (3) lack of access to free specialist advice in the appropriate language, and (4) the perception that success at ETs was unlikely due to the complexities involved. Barnard et al. conclude by suggesting that:

For those who want to act in the face of apparent mistreatment, the practical and legal obstacles to using ETs often prove insurmountable, making Tribunals unlikely forums in which migrant workers can vindicate their rights. This is despite evidence that Tribunal judges go to great lengths to ensure that migrant workers receive a fair hearing once they are through the doors (2018, p. 261)

Rose and Busby (2017) analysed the power relations in employment disputes to assess how low-income workers more generally make decisions as to whether to take an ET case, focussing on the role of the state in privatising dispute resolution, and the non-economic values held by workers which inform their view of worker–employer relations e.g. respect, goodwill and trust. In this regard workers' sense of these relations tend to be based on their daily experience in the workplace, and their engagement with superiors. They further note that the complexities of the contemporary employment context can problematise the notion of 'employer', including agency arrangements, outsourcing and complex corporate structures. Workers' subjectivities tend to be in line with neoliberal goals that undermine worker solidarity and reinforce employer objectives. Rose and Busby conclude that 'that many workers are indeed regulating their own behaviour so that it is in line with state objectives' (2017, p. 700). In tandem, Fudge highlighted the impact of the neoliberalisation of the UK labour market wherein the state 'simultaneously obfuscates the structural causes of labour abuse and legitimises 'light touch' labour market regulation' (2018, p. 583).

Recent evidence has reinforced the notion that options for the enforcement of labour rights are always in a state of flux. For example, in ROI Given and Fennelly (2020) noted that recent Labour Court decisions (TA Hotels Limited t/a Lynam's Hotel v Vireshwarsingh Khoosye and TA Hotels Limited t/a Lynam's Hotel v Preeti Khoosye) had important consequences for migrant workers without the required immigration permissions. Given and Fennelly suggest that in effect, the Labour Court confirmed that non-EEA 'employees without valid immigration permissions will be prevented from bringing employment rights claims through the statutory bodies set up to deal with such claims' (2020, p. 1).

Industrial Tribunals in Northern Ireland

Employment law in Norther Ireland provides access to an Industrial Tribunal (IT) which hears almost all cases involving employment disputes. Most employment tribunal cases in NI must be brought within three months from the date of the alleged incident. The first stage of an application is engagement with the Labour Relations Agency (LRA) and then the option of early conciliation. If an early settlement is deemed unlikely, the LRA can offer an arbitration service to a claimant and an employer. An independent person then decides on the dispute, negating the need to proceed to tribunal. Claimants can make an application on-line. If the early conciliation process is unsuccessful, a claimant can make an application for a hearing at the Industrial Tribunal, where a case will be heard by panel of three people – a legally qualified chairperson, one with an employer background, and one with an employee background. Although interpreters are made available for hearings, all correspondence during a case must be in English. A claimant can represent themselves or be represented by a trade union or legal representative. Unless a claimant engages the services of a legal representative, there are no charges for bringing a case. A case is initiated via the ET1 form, which initiates a response from the employer within 28 days. In both NI and the ROI, employees making an application are normally required to have one year of continuous employment in order to claim unfair dismissal.

Workplace Relations Commission (WRC) in the Republic of Ireland

Employment law in the Republic of Ireland ensures that complaints relating to alleged contraventions of employment and equality legislation can be made to the WRC , established in October 2015 under the Workplace Relations Act 2015. In 2016, 26% of applicants to the WRC were migrant workers (D'Arcy, 2016). Employees in the ROI have six months to initiate a complaint to the WRC. In accessing WRC services, workers can represent themselves or be supported e.g. by a union or a community representative. The nature of the complaint determines whether it is referred to investigation or adjudication. WRC inspectors are authorised to undertake workplace inspections, examinations or investigations to monitor and enforce employment legislation. The WRC's Inspectors can investigate specific complaints, or a team of inspectors can make random or targeted inspections in a particular employment sector. Should an employer fail to comply following the determination of a contravention, an inspector may issue a Compliance Notice. Failure to address the issues raised may initiate a WRC prosecution against the employer. The WRC provides a (voluntary) conciliation service for employers and employees which can deal with a range of issues including pay and conditions of employment, disciplinary cases, grading issues, and disputes arising from proposed changes to working practices.

The WRC also provides a (voluntary) mediation service, which aims to resolve workplace disputes and disagreements, particularly between individuals or small groups of workers, which is designed to ensure all sides are heard, and which aims to resolve issues informally, without recourse to adjudication. Workplace mediation takes place before a case moves to adjudication. Typically, it addresses personal differences, issues arising from grievance and disciplinary procedures and industrial relations issues that have not been referred through statutory dispute resolution processes. If a complaint is not successfully dealt with through mediation or conciliation, it is referred to an adjudication officer who generally undertakes an enquiry wherein both parties have an opportunity to be heard and present evidence. The adjudication officer decides in accordance with the relevant law and the decision is given to the parties in writing. Either party can then appeal the decision to the Labour Court within 42 days.

Recommendations from Crossing Borders, Breaking Boundaries

The following overview of project learning reflects the experiences of the Crossing Borders, Breaking Boundaries project (CBBB) staff working in Northern Ireland and in the Republic of Ireland. Though the CBBB project worked with migrant workers, much of the learning, and the recommendations derived from the experiences of project staff, are useful for workers generally, not simply workers drawn from outside the UK or the island of Ireland.
or simplicity of presentation, the learning from the project is not broken down to differentiate between employment law and practice in the two jurisdictions on the island, between the Industrial Tribunal (IT) system in Northern Ireland, and the Workplace Relations Commission (WRC) / Labour Court (LC) in the Republic of Ireland. Often a generic term e.g. 'industrial tribunal' or 'IT/WRC' is employed for simplicity. The sections below reflect some of the key learning from both CBBB project staff, and from colleagues in the project's host organisations.

Languages in the workplace

The language barrier remains an on-going and omnipresent disadvantage at the heart of workplace justice for migrant workers, negatively impacting all aspects of the employment experience, evident at all levels of employment relations; from recruitment, induction, employer relations in the workplace, to form-filling, presenting and defending cases at the Industrial Tribunal/Workplace Relations Commission (IT/WRC).

In all workplaces, and at the commencement of a contract, workers must be in receipt of all the relevant documentation, in their preferred language. Regardless of their legal entitlement to receive relevent documents on starting work, in practice it is by no means certain that a migrant worker receives either a contract or a statement of main terms and conditions on entering a new workplace.

• Information and training in relation to employment rights need to be delivered to workers as part of the human resources (HR) / induction process in the workplace, with materials made available in a range of languages. Failure to engage workers in their preferred language can generate confusion for workers, sow workplace divisions between workersof different nationalities, and lead to tensions between workers and supervisors.

• Codes of Practice, available in a range of languages, should be developed and made available as part of the induction process. Clearly defined codes of practice, outlining a worker's rights in the workplace, are key to setting out and maintaining the workplace standards employers need to comply with.

• Worker access to specialist translation / interpreter services is a pre-requisite for workplace justice. This service can be provided by designated employee representatives, migrant-led organisations, trade union officials or qualified third sector support organisations.

Recommendation

Every employer should be obliged to provide all documentation in the language(s) of the workplace. Robust and clearly written Codes of Practice should be provided to all workers, delineating a worker's employment rights, from the recruitment and induction process to health and safety, pay and remuneration rates, hours of work and leave entitlement. Advice and guidance on the role of Industrial Tribunals and the WRC should also be provided, both in the Code and in the induction process.

Support services in the Workplace

Support and guidance are a pre-requisite for any worker or group of workers raising workplace concerns. CBBB experience suggests that in the absence of support, workers are reluctant to raise workplace issues with their employer for fear of losing either working opportunities (hours) or their job. Project experience also suggests that only a small minority of migrant workers are aware of their employment rights, whilst fewer again know how to pursue their rights. Workers tend to be motivated by a sense of injustice, rather than a knowledge of rights, where options tend to be limited since information on employment rights tends only to be available in English.

• Access to employment rights-based support and advice should be made available to workers, either from employee representatives, trade unions representatives, or qualified personnel from third sector organisations. This is particularly pertinent for migrant workers who may have limited support networks outside the workplace.

• Workers require support and guidance to cover all manner of employment issues, from practical support in the workplace to technical and legal advice at IT/WRC level. Bespoke support and advice services are also required for specific sectors of employment, and for different categories of worker- EU workers, permit holders, undocumented workers, and agency workers etc.
• Practical support ranges from producing a letter on behalf of the worker to the employer, advice outlining potential breaches of rights and potential remedies e.g. requesting wages payment or instigating a mediation/conciliation meeting, technical support to lodge a case, and representation of a worker– all within strict time frames.

• Workers need support and guidance. A worker seeking support is not challenging the authority of their employer. Often when a worker engages with a support body, employers consider it a challenge to their workplace authority, meaning employers view the process of engagement with support bodies with suspicion, even hostility.

• 'Equality of arms.' When employers engage legal representatives, workers should be entitled to an appropriate level of legal advice and support to ensure parity of resources.

• CBBB experience indicates that the provision of support and guidance to workers is a considerable drain on time and resources, both for the individual worker and that of the support organisation.

Recommendation

Workers need access to support and guidance to cover all employment issues in the workplace. Where trade union support is not available, funding should be made available for in-house workplace advocacy officers and solicitors, to be housed within third sector migrant-led organisations, migrant worker support organisations, or the broader trade union movement e.g. the Irish
Congress of Trade Unions. This support package needs to sit within a comprehensive programme of legal aid covering workplace justice and extending to cases taken to the IT/WRC. Undocumented workers need to be supported to pursue legal remedies

Trade unions / Third-party worker representation in the workplace

Low union density in various sectors of employmen- compounds workplace precarity. CBBB experience strongly suggests that access to third party employment advice or a trade union representative could promote informal resolution to a range of issues within the workplace, negating the need to escalate issues / complaints outside the workplace.

• The challenge for the trade union movement is to re-invigorate collective solidarity in the workplace and to overcome the negative impact of neoliberal individualism. This requires that the movement addresses the structural causes of labour abuse. Promoting the workplace as a collective entity is an essential step towards overcoming potential divisions between local and newly arrived workers generated by suspicion, race, creed and nationality.

• Recruiting migrant workers and defending migrant worker rights in the workplace remain a challenge to the trade union movement. However, addressing poor wages and endemic insecurity across various sectors of the economy provides an opportunity for the movement to both develop specialist provision for migrant workers, and grow trade union membership. Necessarily, trade union membership growth in this context depends on making specialist services available in specific non-traditional localities and sectors of the economy.

• Where there is no recognised trade union, a nominated employee representative in the workplace is an option to develop positive local relations between workers, supervisors and management. Where multiple nationalities are present, a representative group comprising individuals from each national group in the workplace, likely those individuals with language skills, could collectively represent the wider workforce.

Recommendation

Improved trade union access to workplaces remains the most efficient method of protecting workers' rights and ensuring workplace justice.

Trade unions have a role in helping to clarify whether an individual is an **'employee'** or a **'worker'**, an important legal distinction. The introduction of **early alternative** and **informal dispute resolution mechanisms** to promote and facilitate local and multi-tiered workplace dispute resolution is recommended. This approach would introduce a layer of mediation, conciliation or arbitration in the workplace – a shop-floor solution - before the onset of more formal processes without recourse to legal representation. Such an informal pre-tribunal stage, facilitated by personnel with employment rights knowledge (employer or TU side), with legal authority, in a **non-adversarial environment**, would focus on developing solutions to disputes, and protecting the employment relationship. If successful, this approach would free up resources and time for the IT/WRC.

(Migrant) Workers' Rights

• A return to an emphasis on collective, rather than individual, rights is required.

• The trade union movement needs to re-invigorate its recruitment drive to focus on sectors where migrant labour is prevalent.

• Workplace justice and migrant worker rights should be at the centre of employment rights.

• Workplace justice requires the de-coupling of immigration matters from labour rights.

Agency Workers

For agency workers, many of the issues highlighted in this report are compounded by the intensified precarity that results from the practice of flexible working arrangements and zero hours contracts . Agency workers remain fearful of raising any workplace issues for fear of losing work or being removed from a workplace. This precarity is intensified by the experience of racism in the workplace.

• For employers, agency workers are regarded as a temporary and disposable asset. To offset this vulnerability, workers tend to be 'on the books' of multiple employment agencies, often with differing pay structures, and with different information provided on pay slips, adding to the complexities faced by agency workers.

• For agency workers - employer clarification. Agency workers need clarification from day one as to whether they are employed by their agency or their workplace employer, and consequently with whom they should raise any workplace or issue.

• Short-term stays in a workplace ensure that agency workers tend to be unfamiliar with their contract or the statement of terms and conditions. In some cases, agency workers are not issued the requisite employment documentation.

• The absence of a contract re-enforces the vulnerability of agency workers, further promoting confusion over a range of issues including pay rates and leave entitlement.

• Contractual short-termism, combined with the language barrier, undermines any meaningful engagement with supervisors and management.

• The 'agency worker model' - instead of using agency staff to fill gaps in the production process, it has become the norm to have a section of the workforce composed of 'temporary' agency staff, often on poorer pay rates and terms of employment.

• Temporary agency staff can work for years in the same workplace without being made a permanent member of the workforce – the process for making temporary workers permanent should be clarified and amended to benefit long term agency workers.

• Protecting agency workers begins with the phasing out of zero hours contracts.

Recommendation

Employers, where practicable, should employ agency workers on equitable terms and conditions in line with their colleagues in the workplace, clarifying the grey area between 'employee' and 'worker', and clearly establishing the employer. Third-party support and advice should be made available, from a trade union, employee representative or third sector organisation. With support and guidance for workers, promoting early engagement with supervisors and management, many issues could be resolved in the workplace, either informally or via grievance or disciplinary procedures. In addition, employers could provide additional information on wages slips as standard, including working hours, rates of pay, and remaining leave entitlement.

Management of Migrant Labour

• Often the management of labour is devolved by employers and owners to their supervisory staff, many of whom are not trained in human resources or people management skills. This can be a source of conflict, magnified by language issues and cultural insensitivity.

• CBBB project experience suggests that the employer or owner is often not fully aware of workplace issues and tensions. Issues on the 'shop floor' may remain beyond the knowledge of management.

• With the full impact of Brexit and the UK's withdrawal from the European Union in January 2021, there will likely be fewer non-local workers available to employers, particularly in Northern Ireland. Employers therefore need to focus on promoting better employment practice in terms of the recruitment and retention of migrant workers, including agency workers.

Recommendation

The provision of bespoke training and support to equip human resource managers, employee representatives and trade union officials with the knowledge and expertise required for workplace dispute resolution, and improved recruitment and retention practices where workforces are comprised of significant numbers of migrant workers.

Labour Inspectors / Workplace inspections:

In both jurisdictions the shortcomings of the workplace health and safety inspection regimes have been compounded by the impact of Covid-19, exacerbating a perceived pre-existing reluctance by state to prosecute poor employer practice. The on-going impact of Covid-19 has highlighted the need to protect 'key' workers and ensuring the full implementation of their rights.

• Workplace inspection regimes continue to be under-resourced. There are inadequate numbers of inspectors available to identify and remedy workplace issues.

• Several serious weaknesses in the inspection regime have been identified, including the forewarning of an inspection given to employers, and the wholly inadequate, or non-existent engagement by inspectors with workers and their representatives. Workplace issues remain unresolved and prone to deterioration. Worker feedback reinforces the notion that inspections focus on the quality of produce, not the quality of the working environment.

• An efficient workplace inspection regime, addressing the full range of workplace issues, allied to health and safety issues, is required to ensure workplace malpractice is picked up in the earliest stages, and that recidivism by poor employers is negated. Part of this workplace mechanism would include the registration and inspection of all employment agencies.

• An independent workplace inspectorate, intelligence-led, operating without the provision of notice to employers, would be a major step forward in protecting worker rights.

• A re-focussed and more efficient workplace inspection regime needs to clearly identify the roles and responsibilities of the various state agencies involved in the regulation of workplaces. Information covering all aspects of the workplace inspection regime needs to be provided to workers as part of the induction process, ensuring workers know the appropriate agency to engage. In turn 'whistleblowers' need to be protected.

• One highly problematic aspect of the workplace inspection regime in ROI is the role of workplace inspectors checking work permits and the immigration status of workers, i.e. identifying 'undocumented' workers. The immigration compliance focus has taken precedence over workplace inspections focussed on employer adherence to employment rights legislation.

• For undocumented workers there is a real fear that if they instigate a case, they only expose themselves to immigration services. The tension between roles makes it unlikely an undocumented worker will come forward to highlight malpractice and exploitation. Case law has confirmed that that if a worker is undocumented, their employment contract considered

invalid, effectively stripping them of all employment rights, reinforcing their vulnerability to exploitation, and removing their right to residency.

Recommendation

Workplace inspection regimes need to be adequately funded to ensure sufficient personnel are available for the task. To ensure workplaces comply with health and safety regimes legislation, an employee or trade union representative should be appointed to liaise with an employer and the inspection regime. Where appropriate this representative needs to be drawn from within the migrant workforce. Employers need to be held liable for poor working environments - health and safety legislation is meaningless in the absence of enforcement. To fully understand the specific working conditions of migrant workers public bodies, including in public health and the top tier of workplace justice, need to collect and publish data in a format which enables the identification of each national group.

Reforming the Industrial Tribunal / Workplace Relations Commission / Labour Courts

The precarity of working life highlighted by the CBBB programme means that for an individual worker, or a group of workers, the pursuit of workplace justice can be fraught process, for fear of upsetting employers or recruitment agencies. Some workers engaging with CBBB staff would only discuss their issues in secrecy, and with a guarantee of anonymity, for fear they would lose their jobs, or that their employer would retaliate. The current employment rights infrastructure does not adequately support access to workplace justice, particularly for individuals outside the trade union movement. The current approach emphasises mediating relationships between employers and workers (settling disputes), rather than focussing on defending clearly defined employment rights. The focus needs to be on enforcing employment rights.

• The highly formalised and quasi-legalistic culture of the top tier of workplace justice acts both as a barrier and a deterrent to migrant workers. The tribunal system is now so formal, so complex and legalistic that all workers struggle to comprehend the system. For workers who don't have English as a first language the option of self-representing at this level is often simply not feasible. The current system needs reformed and simplified.

• The legal system as it relates to employment law is naturally focussed on the contract of employment. If they have a contract at all, migrant workers often don't know the details of their contract.

• Due to the complexities of addressing employment issues, the current time limits for lodging a case need to be extended, or at least to operate with greater flexibility. This would allow enough time for representatives to work with and support claimants.

• Equality proofing tribunal hearings is essential to ensure that a claimant has full access to advice, advocacy and representation. Consideration should be given to providing access to legal aid to workers in order to ensure parity in representation, an 'equality of arms'.

• Access for workers to specialist translation / interpreter services is required at all stages. Interpreters should have access to bespoke court-focussed training in order to facilitate engagement with the workings of the court and its often arcane, technical and legalistic language. The quality of interpretation services can be central to the outcome of a case.

• Due to the propensity of employers to engage legal representatives, workers require specialised support and representation at all stages, whether from solicitor or barrister, a trade union or a qualified third party. CBBB experience confirms that individual workers need bespoke representation in order to achieve positive outcomes.

• The officers of the court, including panel members, adjudicators, panel chairs and judges, need to be trained in order to both raise awareness of the requirements of claimants who do not have English as a first language, and the demands made upon interpretation services.

• The paucity of rights for undocumented workers and their limited access to any legal redress to

employment issues, need to be immediately addressed.

• There is insufficient connection between the IT/WRC outcomes and enforcement agencies i.e. the requirement to deal with poor employers, repeated employer offending and the non-payment of compensation.

• Comprehensive legal aid extended to include employment issues and representation at all levels up to and including IT/WRC is required to promote and extend access to workplace justice and 'equality of arms'.

Recommendation

Reforming the current employment rights infrastructure and reducing the complexities of the top tier of justice to better support migrant worker access to workplace justice necessitates, in the first instance, that the relevant tribunal systems in both jurisdictions are subject to an equality proofing exercise designed to generate a programme of practical steps. This needs to include a review aimed at simplifying the application process and providing application forms is multiple languages. Indicative steps include for example the extension of the current time limits for lodging a case, particularly for non-English speakers, and the provision of specialist interpretation services for claimants. To ensure 'equality of arms' claimants require access to bespoke advice, advocacy and representation. This access can only be guaranteed through legal aid provision. To highlight the specific requirements of non-English speaking claimants, and in effect change the working culture of the IT/WRC, an awareness raising training needs to be made available to officials. Finally, there needs to be a much stronger liaison between tribunals and enforcement agencies in order to deal with poor employer practice. The provision of bespoke training videos for claimants, in a range of languages, would be a step forward to ensuring that the operational culture the IT/WRC would be clarified and demystified for potential claimants, for example video which illustrates the procedures of tribunals and courts, the role of advisors and legal representatives, and the role of the claimant.

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