

The Experience of Vulnerable and Unorganised Workers

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The 'vulnerable' worker

The issue of 'vulnerable employment' has gained prominence in government discourse in the wake of tragedies, such as the drowning of eighteen exploited Chinese migrant cockle-pickers in Morecambe Bay in February 2004 (*Guardian* February 7 2004). It has become part of the public policy agenda since the 'Warwick Agreement' between trade unions and the Labour Party, which mentioned vulnerable employment as an area on which the government would take action and led to the 2006 parliamentary policy statement, 'Success at Work: Protecting vulnerable workers, supporting good employers' (DTI 2006). Tragedies like Morecambe Bay have led to an increasing awareness of the plight of migrant workers in particular areas of the economy. However, vulnerable employment is not confined to migrant workers (although they may be amongst the most vulnerable), but a pervasive feature of the modern British labour market and workplace. Neo-liberal policies have dominated the world economy since the 1980s, with financial performance, shareholder demands and private sector competition and values pervading every sector, including public service provision. British neo-liberalism remains committed to maintaining a 'flexible' labour force, with minimal interpretation of statutory employment protection informed by fear of placing 'burdens' on employers (Smith and Morton 2001; 2006).

Collective regulation of the employment relationship was steadily eroded in the 1980s and 1990s (Smith and Morton 1993), leading to the 'individualisation' of the employment relationship. But while the depth and scope of collective bargaining have weakened (Brown *et al.* 1998), unions retain an important role in maintaining statutory individual rights (Brown *et al.* 2000). Thus, although unionised workers have become more vulnerable to unilateral employer prerogative with the weakening of union power, such vulnerability is magnified for the non-unionised. For these workers, the inherent asymmetry of the capitalist employment relationship between individual employee and employer is mitigated only by statutory individual rights, without the benefit either of collective enforcement or a statutory enforcement body. Hence, the focus of this study is on these unorganised workers, who constitute the majority of British workers. UK union density, while appearing to stabilise in recent years, continues to decline: in 2006 28.4 per cent of employees were union members, down 0.6 percentage points from 2005. In the private sector, membership fell by the same amount to just 16.6 per cent (Grainger and Crowther 2007: 1). For the past decade, only approximately a third of UK employees have been covered by collective agreements on pay, and in the private sector, which comprises 80 per cent of employment (Labour Market Trends 2006), only 19.6 per cent (Grainger and Crowther 2007: 37).

The government recently defined vulnerability as a function of the risk of adverse treatment and capacity to defend ones self against it. A vulnerable worker is 'someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse. Both factors need to be present. A worker may be susceptible to vulnerability, but that is only significant if an employer exploits that vulnerability' (DTI 2006: 25). The position taken in this research is that the DTI perspective is too narrow, since it confines vulnerability to those already victims of abuse, rather defining it in terms of those exposed to unfair treatment because they are weak. Furthermore, it begs the question as to what predisposes one to the risk of unfair treatment and low capacity to defend oneself?

I argue that a more robust analytical approach to vulnerability must be based on consideration of power relations in the labour market and workplace: lack of union representation in the context of weak statutory employment rights is the first dimension of vulnerability. This can be narrowed to those who lack 'skill'¹ - a measure of weak labour market power associated with disposability. A proxy for weak bargaining power, both in terms of poor or absent collective representation and weak labour market strength, is low pay. Thus, a strong indication of vulnerability is absence of union membership combined with low pay (earning below median earnings). According to the Labour Force Survey, this reveals that around 40 per cent of the British workforce could be defined as vulnerable – a higher percentage than the 'one in five' defined as vulnerable by the TUC, which uses a narrower pay definition, of those in the bottom third of the hourly income distribution (TUC 2006: 7). The lower paid, non-unionised worker is thus the basis of vulnerability adopted here.

The research reported here comprised quantitative and qualitative studies. The first, *The Unrepresented Worker Survey* (URWS) gathered empirical evidence on the realities of employment problems for low paid, non-union workers, how they responded to them and the workplace outcomes to attempted resolution. The second, the Citizens Advice Bureau (CAB) Study, was based on semi-structured, qualitative interviews with vulnerable workers who sought resolution to their workplace problems with the CAB. The focus on problems provides evidence in terms of the DTI's concern with vulnerability as the result of unfair treatment.

¹ I use the concept of 'skill' as in descriptive labour market literature.

The Unrepresented Worker Survey

The 501 vulnerable workers who had experienced problems at work in the previous three years were interviewed by telephone by IFF (a survey organization) in 2004. The sample was drawn from a regionally representative sample of non-unionised, low-paid workers with problems at work. Respondents had suffered from any of ten problems, including being paid unfairly, being threatened with dismissal, being bullied or subjected to undue stress or being asked to work in an unsafe environment. Around half (49 per cent) of 1,971 workers, including the unionised and the better paid, who were screened to find the sample of low-paid, unorganised workers, reported one or more problems at work in the three years prior to talking to us. Of these 958 workers, half (52 per cent) entered our sample as both having problems and also being low-paid and non-unionised. The overwhelming majority of these 501 respondents (86 per cent) reported that they tried to do something to solve their main problem, but only 16 per cent reported a satisfactory outcome. These findings suggest not only that vulnerability is a pervasive feature of employment for lower paid, non-union workers, but also that resolution within the workplace is extremely poor.

The URWS sample tells us something about who the vulnerable unorganised are. It was compared to the whole Labour Force Survey (LFS) in 2004 and a sub-sample of the non-unionised who earned less than median earnings. To summarise, women were more likely to feature in the URWS than in the workforce as a whole, but had a similar percentage to their presence among the non-unionised, low-paid in the labour force – a finding of little surprise in view of the gender wage-gap of 17.1 per cent between full-time men and women's hourly earnings and the 38.4 per cent gap between part-time women's and full-time men's hourly earnings (EOC 2006: 20). While young workers (under 24 years) were more likely to be low paid and non-unionised in the LFS, they were less likely to feature in the URWS. This may be due to sampling error; with fewer young workers have a fixed telephone line. Ethnic minority workers were more likely to appear in the URWS compared to the workforce as a whole and all low paid unrepresented workers in the LFS. URWS respondents were also more likely to work in the private sector than the LFS in general, but had a similar representation to low-paid, non-unionised workers in the LFS. There were more retail, hotel and restaurants workers in the URWS than the LFS as a whole although not more than low-paid non-unionised workers in the LFS, and there were more health and social services workers than in both the LFS and the low-paid unorganised among them. Respondents were also more likely to work in smaller workplaces (below 25 workers), and in unskilled and semi-skilled manual and personal services occupations, to have non-standard employment contracts and to have been in their job for six months or less.

The key survey findings

The majority of the sample, 58 per cent, had never been union members, 34 per cent had been members at some time and 6 per cent were members when they had their problems, but had no union recognition or representation.

The most common problem areas were pay, work relations, especially stress and bullying, workload, job security and working hours. Most workers experienced multiple problems.

The majority (61 per cent) took advice about their main problem as soon as it started. Several sources of advice were sought, with a third approaching managers and friends and work colleagues. A significant minority sought help from the CAB (13 per cent), but few approached trade unions, ACAS or Law Centres (5, 3 and 1 per cent respectively). Interestingly, workers were most strongly influenced by the advice of friends or colleagues (20 per cent), followed by family and friends (16 per cent). Managers had greatest influence for only a tenth of respondents.

Eighty six per cent of workers with problems took action to try to resolve them – a finding which contradicts the common assumption that low-paid, non-unionised workers with problems at work simply leave or passively tolerate problems. Most attempted informal resolution within the workplace and very few used recourse to the law.

The most common form of action was to make an informal approach to a line manager or senior manager (69 and 43 per cent of the sample respectively). Only 12 per cent used the formal grievance procedure and a mere 2 per cent began Employment Tribunal application.

A noticeable and significant finding was that the second most frequent type of action after approaching managers was joining with co-workers 'who shared the same concerns to get together as a group' to pursue their claims (24 per cent of the sample, 28 per cent of those who took action). This figure rose to 55 per cent after respondents were later asked if their problems were shared by others. This result indicates that the social character of labour fosters worker collectivism, despite the emphasis on individualism at work through Human Resource Management and wider employment policies and ideology.

For most (79 per cent) of those who participated in informal collective action, this meant discussing what to do about the shared problem with co-workers. However, almost a fifth (19 per cent) went as a group to management, and a further 13 per cent arranged a 'group meeting to discuss what we could do'. Attempts by workers to exercise collective power, for example by withholding their labour, were very rare.

Only 6 per cent of respondents approached a union for help with their problem. Yet when asked about their views on unions, 52 per cent believed that a union could have helped them resolve their problem and 40 per cent would join one as a result of their problem.

Despite attempts at workplace resolution, almost half (47 per cent) had no conclusion at all to these endeavours. Of the 38 per cent who had any result, only half were satisfied. This meant that only 16 per cent of workers with problems at work and 18.6 per cent of those who tried to take steps to resolve them had a satisfactory outcome.

Within the previous three years of employment to which the survey referred, 58 per cent of the sample were still in the same job and 42 per cent referred to problems in a previous job (16 per cent to problems in the most recent job and 26 per cent in a job previous to that). Thus, labour turnover was generally high. However, quit rates were 65 per cent higher for respondents who failed to achieve a satisfactory resolution to their problem than they were for respondents who had achieved a satisfactory outcome.

Satisfactory resolution was more likely if the problem concerned pay or work relations. There was little relationship between the form of action taken and satisfactory resolution, although respondents who went to trade unions and CAB were less likely to achieve satisfactory resolutions. Problems where workers felt that their rights had been breached were also less likely to reach satisfactory resolution.

While the existence of workplace grievance procedures was not associated with a higher probability of satisfactory resolution to problems, they were associated with a lower probability of quitting. While causality cannot be inferred from this, the result suggests that grievance procedures serve managers better than they serve workers in that workers remain in their jobs despite poor problem resolution.

The CAB study

The 'lived experiences' explored in this study were based on telephone interviews conducted across England of low-paid, vulnerable workers who approached a CAB. Their problems include summary dismissal (Tina), forced redundancy and resignation (Chitra), prolonged bullying and victimisation (Pat), unpaid wages (Graham), no paid-holidays (Iqbal), sexual and racial discrimination (Penny, Lawrence), dismissal during sickness (Mark), unlawful changes of contract (Jean) and dismissal during takeover (Terry). Workers experienced frustration, anger and suffered financially, physically and psychologically. Many were forced to take time off from work through stress-induced mental illness and were unable to pursue their grievance until well enough, losing time as well as the mental stability to continue a fight. Experiences ranged from crude employer abuse of rights to sophisticated, protracted harassment. Industries and occupations with the worst problems included pubs, hotels, restaurants, care-homes, cleaners, security companies, small shops, hairdressers and small factories. However, several of the cases came from large companies, some of which had their own Human Resource departments.

According to the former DTI (2006), the absence of an HR department is a 'risk indicator' of vulnerability. However, this study found that for those unorganised workers facing isolation and vulnerability in large organisations, HR managers initially appeared to uphold 'good practice', but ended failing to challenge or discipline the lower-level manager who had perpetrated the unfair practice. In other words, management closed ranks against the vulnerable worker.

The study concluded that although the CAB worked hard to assist workers, many problems were not resolved, or settlements were low, with few reaching an employment tribunal. The stories illustrated workers' isolation, disorientation and weakness and the inadequacy of remedying problems without internal workplace union representation. Unfair treatment was nearly always part of wider, poor employment practices mediated through intimidation and workplace power politics, which an external organisation, such as the CAB, found it difficult to challenge because of problems of proof. To prevent the problem, the entire ensemble of working conditions required intervention. The outside, remedial approach usually selects individual employment breaches, and with limited resources and information, focuses on the simplest to confront, such as procedural breaches in unfair dismissal, or clear cases of unpaid wages. The more complex underlying bullying is far harder to challenge, which means that poor management practice as a whole is not contested.

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The CAB Study is reported in CESR Working Paper 6 and published by the Institute for Employment Rights (December 2007), *The unorganised vulnerable worker and problems at work: the weakness of individual external remedy and the case for union organizing*, ISBN 0-9551795-7-2.