



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Filipino and Agency Workers: NICEM briefing

26 June 2012

NORTHERN IRELAND ASSEMBLY

Committee for Employment and Learning

Filipino and Agency Workers: NICEM briefing

26 June 2012

Members present for all or part of the proceedings:

Mr Basil McCrea (Chairperson)
Mr Sammy Douglas
Ms Michelle Gildernew
Mr Chris Lyttle
Mr Fra McCann
Mr Barry McElduff
Mr David McIlveen
Mr Pat Ramsey
Mr Alastair Ross

Witnesses:

Ms Helena Macormac	Northern Ireland Council for Ethnic Minorities
Ms Karen McLaughlin	Northern Ireland Council for Ethnic Minorities
Ms Elizabeth Nelson	Northern Ireland Council for Ethnic Minorities
Mr Patrick Yu	Northern Ireland Council for Ethnic Minorities

The Chairperson: I welcome Patrick Yu, executive director, and his team, who he will introduce. Good morning, one and all.

Mr Patrick Yu (Northern Ireland Council for Ethnic Minorities): Good morning. Thank you, Chair and Committee, for meeting us this morning to discuss the protection of agency workers and our Filipino research project.

Ms Elizabeth Nelson (Northern Ireland Council for Ethnic Minorities): I am the parliamentary and campaigns officer at the Northern Ireland Council for Ethnic Minorities (NICEM).

Ms Helena Macormac (Northern Ireland Council for Ethnic Minorities): I am the strategic advocacy project manager at NICEM.

Ms Karen McLaughlin (Northern Ireland Council for Ethnic Minorities): I am the legal policy officer at NICEM.

Mr Yu: You will be aware that the area of agency workers is not aligned to one single policy area but falls to different departmental portfolios. That is why we have a team to address the issue with the Committee. We have given you a copy of the research report and a briefing paper. Those look at how anti-discrimination law impacts on agency workers. Last week, I sent you a briefing paper that is

more relevant to the Department for Employment and Learning (DEL). It focuses on the area of employment rights. I will integrate those papers into the discussion.

Today, I will emphasise the importance of employment law and anti-discrimination law, which are two sides of the same coin, in protecting the most vulnerable groups in society, including the black and minority ethnic communities in Northern Ireland. Anti-discrimination law in Northern Ireland applies only to the field of employment and the provision of goods, facilities and services. Therefore, employment status is the key determining factor in ascertaining the rights of workers, whether they are local indigenous people, EU nationals or non-EU nationals, under current anti-discrimination law. Those rights include protection under employment law and anti-discrimination law based on the grounds of political opinion, religion, sex, race, disability, sexual orientation and age.

Anti-discrimination law protection is subject to exemption. For example, under the current anti-discrimination law that covers all grounds, the "contract worker" — the equivalent to the modern term "agency worker" — has limited protection. Contract or agency workers whose agencies are outside the UK have no protection whatsoever under anti-discrimination law or employment law.

I will highlight the importance of the concept of the agency contract. Currently, there are two types of agency contract: the contract of service and the contract for service. The first creates an employment relationship between the jobseeker and the recruitment agency. They are employed solely by the agency, which assigns a job or jobs to different end users. It can be the same end user or different end users within the hiring period. The second type is simply where the jobseekers declare themselves as self-employed and provide their skills and labour to the agency, which assigns a job or jobs to different end users. The former contract is, more or less, now being replaced by the latter, which is commonly used to serve industries that require a manual and cheap labour force. That is where the majority of migrants in Northern Ireland are working. There are exceptions, such as the highly skilled Filipino seafarers who work in our fishing industry and the Filipino nurses who work in our private nursing homes. Their pay is not necessarily reflective of their skills, but serves the purpose of exploitation between the wage differentials in their home country and the host country. I will come back to the point about exploitation and abuse.

The Employment Rights (Northern Ireland) Order 1996 gives rights to the "employee". "Employee" has a common law meaning, so the self-employed do not benefit from minimum or mandatory rights. Those include the right to a written statement of one's contract and the right to request flexible working time. Take the example of job security. After one month, employees have the right to one week's notice before dismissal. After one year, employees have the right to be dismissed fairly. After two years, employees have the right to two weeks' notice and redundancy pay. The notice period, which is always substitutable with a payment reflecting wages in lieu of notice, and the right to redundancy increase accordingly in line with the number of years the employee has been in employment. Those basic protections do not apply to any agency workers, whether they are local indigenous people or EU and non-EU nationals. It is true that agency workers do not enjoy equal pay for equal value of work.

Employment status is the key determining factor for protection under employment law and anti-discrimination law. The recent Bohill case in Northern Ireland exposed the vulnerability of an agency worker. Bohill is quite a notorious case in different aspects. He was a former RUC officer who was very experienced. Through the employment agency Grafton, former officers are brought in to work for the PSNI. Mr Bohill applied seven times for a job for which he was more than qualified. Each time, his name went forward for interview, but, unfortunately, he never got even one interview. As a result, he sued the employment agency on political opinion grounds. As usual, the case went to tribunal. The first question the tribunal asked was: do you have any employment contract? In this case, the answer was no. He was under a contract for service, not a contract of service. As a result, the whole case broke down. Very interestingly, in the Bohill case, the Court of Appeal confirmed that, in the absence of a contract either with Grafton, the employment agency, or with the PSNI, the tribunal did not have jurisdiction to hear the case. The need for legislative reform to protect vulnerable agency workers has been the subject of recurrent judicial comment in different appeal courts in the United Kingdom, which find themselves bound to apply the existing principle of the law of contract to limit agency workers' rights but can see all too clearly the unfairness that can result.

In the leading case of *James v Greenwich council* in 2007, the president of the Employment Appeal Tribunal made the following observation:

"We should not leave this case without repeating the observations made by many courts in the past that many agency workers are highly vulnerable and need to be protected from the abuse of economic power by the end users. The common law can only tinker with the problem on the

margins. That is not to say that all agency relationships simply have as their objective to defeat the rights of the workers. There are obvious benefits in flexibility for employers in hiring agency staff, and many employees, particularly those with specialist skills, may also benefit from the flexibility as well as giving tax and fiscal advantages. A careful analysis of both the problems and the solutions, with legislative protection where necessary, is urgently required."

In the Bohill case, the Appeal Court also made a similar remark:

"In the event that the appellant had been selected as a temporary worker by the respondent he would have signed a document constituting a contract for services between himself and Grafton limited to the period during which those services were supplied to the respondent. At no time would he have been employed under a contract of service either by the respondent or by Grafton."

Recognising that such an arrangement with an agency did not come within the jurisdiction of the Fair Employment Tribunal, the Appeal Court judge, Lord Justice Coghlin, suggested a need for legislative change. He said:

"For the reasons set out above this appeal must be dismissed but the case does seem to illustrate how an agency arrangement may deprive potential employees of important protections against discrimination. Northern Ireland enjoys a well deserved reputation for the early development and quality of its anti-discrimination laws and this is an area that might well benefit from the attention of the section of the office of OFM/DFM concerned with legislative reform."

That case highlights that anti-discrimination law will not apply to agency workers. The issue is not confined to agency workers from outside the UK; it applies to all agency workers who are subject to discrimination on any ground. Similar case law recently raised the same issue in England and Wales. I mentioned the Bohill case, and there is another case called Muschett, which I mentioned in the paper for the Committee. It is a similar situation. Muschett, who is a Muslim, was assigned by the recruitment agency to supervise the inmates in the laundry service within the Prison Service. He was working there for a few months, and was subsequently disciplined and dismissed. As a result, he sued for unfair dismissal and on the grounds of discrimination. The subject of that case had been working for the same end user for more than two years, unlike in the Bohill case. There was the same issue when the case went to the tribunal. The judges asked if he had an employment contract, but he did not have one, and the whole case fell, just like the Bohill case.

Agency workers whose agency is outside the UK have no legal protection under either employment law or equality law. Moreover, both the Bohill and Muschett cases were decided before the consultation on the Agency Worker Regulations (Northern Ireland) 2011, which were approved in the Assembly and enforced in November last year. It also illustrates the fact that the Governments in England, Wales and Scotland, as well as in Northern Ireland, intend to exclude the protection of agency workers for the protection of the £27 billion of employment agency business in Great Britain. That is in the opposite direction to the purpose of the EU agency worker directive. In Northern Ireland, most agency workers are recruited into low-paid jobs, for example, in the meat and poultry processing industry, which I draw to the Committee's attention today. The widespread abuse of new migrant communities by recruitment agencies is highlighted in the recent formal inquiry by the Equality and Human Rights Commission in Great Britain into recruitment and employment in the meat and poultry processing sector. The findings are shocking. Regrettably, I could not send the report to the Committee earlier. For that reason, I will just quote the remarks made by the chair of the commission in his foreword.

"Our evidence shows there are significant challenges facing the industry if it is to uphold ethical standards and effectively promote equality and inclusion. We found evidence of widespread poor treatment of agency workers, particularly migrant and pregnant workers, both by agencies and in the meat processing factories. Some amount to breaches of the law and licensing standards — such as coercing workers to do double shifts when they are tired or ill. Others are a clear affront to respect and dignity.

This mistreatment not only blights the lives of individuals, but damages good relations in the workplace and communities. Yet much of it remains hidden. Sadly, many of these agency workers endure even physical and verbal abuse without complaint, fearful that complaining will wreck their chance of securing stable employment."

I make the following three recommendations to the Committee, which relate to DEL's powers. First, it should rectify the current legal deficiencies by using the same method as in the Working Time Regulations (Northern Ireland) 1998

to put agency workers on an equal footing with "employees" or "workers" under the Employment Rights (Northern Ireland) Order 1996 and the Agency Workers Regulations 2011.

Secondly, we also ask the Committee to review the current regulatory regime for employment agencies under the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the Conduct of Employment Agencies and Employment Business Regulations (Northern Ireland) 2005, as amended. We need to do a very robust review of the current employment agencies and how they provide work for agency workers in Northern Ireland.

Thirdly, it is interesting that, at the moment, we have a two-tier system. We have gangmaster legislation, which creates a gangmaster authority to police all the agency workers in rural areas, whereas, in urban areas, under DEL, there is another inspection regime. There should be one regime to inspect all, rather than a two-tier system. Currently, we have only two main officials working for the gangmaster agency to police all agency workers in all rural areas in Northern Ireland. Under the law, we are talking about the meat processing industry, the packing industry and farm produce. It is a huge area. I do not think two people can inspect the whole area. The urban side comes under DEL. Therefore, it is time to review the two regulatory authorities and whether they fit the situation in Northern Ireland.

The Chairperson: How are you getting on, Patrick?

Mr Yu: I am finished. That was my last point. Thank you.

The Chairperson: I did not mean to cut you off. I know that members will want to speak. What you have told us is fairly comprehensive, and it is useful to have the matter on the record. I am sure that the Committee will want to forward it to the Department for comment, so it is useful to get that on the record. Will you highlight the most important thing that you would like us to deal with? What is at the top of the list?

Mr Yu: We would like you to remedy the current deficiencies in the law. At the moment, all agency workers who are under a contract for service have no legal protection. That applies to both the employment law side and the anti-discrimination law side. The only way to rectify the contract is through employment law.

The Chairperson: Are you suggesting that we do that by order?

Mr Yu: Yes. As I highlighted in the paper, all agency workers should be included under the 2005 working time regulations, whether their contract is a contract of service or contract for service.

The Chairperson: I know that David has expertise in this matter. He had me on one of his panels, and I think that he had some other members on the panels as well. David, which all-party group are you chair of?

Mr D McIlveen: The all-party group on ethnic minority communities.

The Chairperson: So, we have discussed this issue. David, if you could lead on some of the questions on the Committee's behalf, that would be useful.

Mr D McIlveen: Thanks, Chair, and thank you for the presentation. It is good to see you all again.

I want to focus on what is beneath the headlines. The case of Bohill v PSNI was very complex, and we have to remember that it happened in the context of 50:50 recruitment. There was more to it than just the fact that an agency employee was involved. We have to try to get beneath that.

The legal protection side is very important. What concerns me, though, and I made this point in the Chamber yesterday, is that, when you change legislation in one area, there is often a knock-on effect on legislation in another area, which may have to be changed to compensate for any financial costs that come on the back of that. I think that the issue of rights and protection is a no-brainer. There

must be rights and protection across the board. If there is something that the Committee can do in that regard, it has to focus on that.

The pay issue is always going to be a bone of contention. My concern is that, if we go down the road of completely equal pay, from a legislative point of view, some adjustment may have to be made to the points-based system for accepting immigrants from outside of the EU into Northern Ireland. I would be curious to know your point of view, as someone who works within the communities, and what you would see as a bigger loss. Would it be a reasonably high volume of people from outside the EU coming to the UK and getting the minimum wage or would it be the wages being balanced out but then potentially fewer immigrants coming into the UK and Northern Ireland, if the Government decided that, on the basis of cost and the burden being placed on employers, that is the approach they would have to take? What would you see as being the priority in that case?

Mr Yu: We completely agree with the general principle of the business case for the agency worker. We are not asking for either the Committee for the Office of the First Minister and deputy First Minister or this Committee to abolish the whole idea of the agency worker. We are working on the very important principle of the business case scenario. It goes back to the fundamental question of why the employer wants agency workers. It is about flexibility, particularly for new businesses, which might not know what the future holds for them. We all agree that there is that flexibility, but, as I said, the whole issue is about the basic principle of the contract of service. However, the new employment agencies are not now using the contract of service.

The end user pays a big lump sum to the recruitment agency, and, then, through the agency mechanism, the agency worker is paid by the employment agency. Under the old law or contracts of service, there is no problem whatsoever, because they stick to the local law. What we find unacceptable is the use of the contract for service. When jobseekers register at the recruitment agency, the first thing that the agency will ask the jobseeker to do is sign a form to declare that they are self-employed. Once they sign that form, it means that they have no legal protection under any law. Most of the migrant workers, whether local indigenous people or those from outside Northern Ireland or the UK who do not know our system, just sign a form, and that is it. No one tells them that they are surrendering all their employment rights as well as their anti-discrimination law rights.

The fundamental point is that, if I am an employer or end user, I will try to get an agency worker who will help my business in the longer term. Take, for example, the meat processing industry and companies like Moy Park. It is the largest chicken produce company in Europe. It needs huge numbers of agency workers. If you are in that position, you would like to use your own money to show loyalty to those staff. You see the exploitation through the contracts for service. I question whether there is a business case at all. Is there not another way to provide much better protection for everyone?

Mr D McIlveen: Outside of people from Bulgaria, Romania and the remainder of non-EU migrants, how many people are going down the self-employed route?

Mr Yu: More or less all agency workers. The Filipino example is a good example, with people working in private nursing homes. At the moment, I think that the majority of people from an ethnic minority work in the meat processing industry.

Mr D McIlveen: Is the reason for that not that it is very difficult to get a work permit if you are from outside the EU?

Mr Yu: No. At the moment, most industries use two types of agency workers: professional and non-professional. The majority of migrant workers, whether they are from within or outside the EU, are working in those low-paid industries; meat processing plants, the catering business and the hotel business. In the past, those industries employed local people. Increasingly, they employ more migrant workers.

The Chairperson: Are the numbers there? You said that, increasingly, migrant workers are used in those industries. What are the numbers?

Mr Yu: DEL has done research through Oxford Economics. My second briefing paper highlights the number. We are talking about some 20,000 agency workers. That was the estimation in 2009. We are talking about after the economic downturn.

The Chairperson: Moy Park is one of our bigger employers. Do you happen to know how many people work for Moy Park?

Mr Yu: I have no idea. Moy Park buys out other small companies. It is now a big player in the industry. It uses the name Moy Park, but different brand names are under its control.

We are talking about roughly 22,000 agency workers, as shown in previous research by DEL. There is no clear figure. In Great Britain, they are very clear about the numbers. We do not have that in Northern Ireland at the moment. That is why we have to ascertain the number and the cost and work out, as David rightly said, the burden to the end user or agency.

Mr Douglas: Thank you, Patrick, for your presentation. I go back to the whole idea of people coming over and maybe being told that they have to go down the self-employed route. You said in your paper that language is a big problem: they do not understand what they are signing. I might be wrong, but I assume that anybody who is self-employed has to look after their own financial affairs, such as tax, national insurance and so on. Is that the case for these people?

Mr Yu: Yes.

Mr Douglas: They have to cope with all that as well. That would include, I imagine, having an accountant or someone to do their accounts for them.

Mr Yu: Sammy, you raise a very important point. The whole thing was exposed in the formal inquiry in England and Wales. I mentioned that the employment agency industry is a £27 billion industry. It is very big business. There are employment agencies in Great Britain that also operate in Northern Ireland. We have case law that shows the problem. As workers are self-employed, they need to pay their own tax. That is why the employment agencies have another form of exploitation. Some of the bigger agencies set up a company to issue the pay cheque to individual agency workers. We dealt with a case in Coleraine in 2004-05. Many of the migrant workers are new arrivals to the country, and they find it very difficult to open a bank account, because of the anti-terrorism legislation. They must show that they have been resident in Northern Ireland for more than six months or that they have a permanent address. People from countries such as Poland and Lithuania are very smart. They go to the Electoral Commission to apply for an electoral card, which confirms their residency status. Without that, they cannot open a bank account. I know of a worker who has a pile of cheques so thick; he has not lodged any cheques over the past six months. When I brought this case to the attention of the gangmaster authority, the staff said that such cases are well known to them. It is not only a problem in Northern Ireland. People are in the bankruptcy process in GB at the moment, because operations are run from across the water. You can see how vulnerable these workers are.

The Chairperson: Patrick, we have some time to talk about the issues. I want to bring in some other members, as they have been waiting patiently. David, because I know that you have a special interest in this, I am quite happy for you to come back in at the end, if you wish to do so.

Patrick, I say this to you gently: the Committee just needs to know specifics. We need you to describe a bit more tightly what you want us to do on various issues. That would be helpful as we move on. I know that it is a huge issue, and you keep peeling back the layers of the onion for us so that we can get more and more information.

Mr Yu: As I said, we are focusing on recommendation 1, which is to include all agency workers as "employees" using the 2005 regulations.

The Chairperson: We will come back to that issue. This is quite difficult stuff, and this is meant without prejudice. Part of the issue is that a lot of people are being recruited into this type of agency working because it is less problematic for the employer to take on those workers than it is to take on local people. If you increase the protection to what it should be for everybody, not only is there the potential for the knock-on effects that David mentioned, but you might get substitution of work. You might have local people being recruited in preference, and you need to be alive to that discussion.

Mr Yu: As I said clearly, the whole issue is to put agency workers on the same footing as employees. I am referring to the old concept of the contract worker, under the contract of service. So, there is no additional cost for the end user.

The Chairperson: Patrick, I have interrupted myself; it is a little technique that I have. I want to bring in Barry, then Pat and then Fra. We will come back to some of the issues.

Mr McElduff: I want to ask about the figures. I am sorry to ask this, Patrick, but have you any idea of how many agency workers fall outside the protection of the legislation?

Mr Yu: We do not have any figures at the moment.

Mr McElduff: The Department is embarking on a wide review of employment law. Have you had preliminary contact with the Department? Did it emphasise your role? I know that it met seven or eight key groups at the early stages, when it was working out the terms of reference for the review. I would like to think that NICEM was one of those groups.

Mr Yu: No. We have never been consulted on that area. I mentioned the 2011 Agency Worker Regulations. We made a submission that made it very clear that we object to the proposal because of the Bohill case, which happened long before the consultation. I do not think that the Department took account of every deficiency in the current law.

Mr McElduff: I think that, as a Committee, we will want to make a recommendation to the Department that you are involved at the earliest possible stage in the employment law review.

Finally, the constituency of West Tyrone is very close to Donegal. I was contacted recently by a group of Filipino workers in Letterkenny. Can you give me referral advice? Who should I speak to? Is there an advocacy organisation that works in the Letterkenny or Donegal area?

Mr Yu: You can contact us. We have a partner there. At the moment, we are waiting for a final decision on Peace III so that we can get a big project in the north-west, including Donegal. We can tackle those issues alongside that.

Mr McElduff: OK. I will speak to you about that after the meeting. Thank you.

Mr P Ramsey: Good morning, Patrick. You and your team are very welcome. I agree with Barry that we have to have a discussion around having an informed opinion from the Committee.

The notion that there are no official figures concerns me, but, having said that, there are figures in some areas. For example, it is estimated that 160 Filipino fishermen are working here. How do you determine those figures when you cannot get figures for other areas? You also have some good figures for the hospitality, catering and health sectors.

In respect of contracts for service, how many migrant workers come through your door every year seeking guidance or counsel on poor employment practices?

Mr Yu: We have our own migrant centre, which provides advocacy, advice and support for all migrants, no matter which area they are from. We opened that in October 2010, so it has been operating for nearly two years. At the moment, our case load is more than 1,200 cases for the entire area. I do not have a breakdown of the figures with me, but I can give those to you after the meeting. They show how many cases are on the employment law side and how many are on the anti-discrimination law side.

As a small voluntary and community sector, we have monitoring data to ascertain how many people have been affected by different policy areas. It is outrageous. The Department does not have any figures. Yesterday, the Assembly debated race relation legislation and tried to ascertain the number of Filipino fishermen and the additional cost to the fishing industry. Officials do not prepare any official figures or data, and, if you read the Hansard report of evidence given to the OFMDFM Committee, you will see the frustration of Committee members. You have a role to scrutinise officials on whether standards are being complied with; otherwise you cannot decide whether or not you should pass a law. If a law is not passed in a set time, there will be a heavy penalty from the European Commission. However, if officials do not do the basic homework, how can elected representatives make the right decision?

Mr P Ramsey: This is the briefing paper that went to the Office of the First Minister and deputy First Minister. It is about anti-discrimination legislation and agency workers in Northern Ireland. There is quite a bit of detail on specific areas of work. Given that so many agency workers work in the healthcare industry and in the catering industry, I find it hard to understand why they cannot give us proper and accurate figures. It concerns me that nobody in government is taking on that role and responsibility.

The Chairperson: I just want to reinforce that for the record, because we will be sending a copy of the Hansard report to the Department. On the issue you have raised, I would like a response from the Department about why we cannot get details of migrant workers employed in our core companies. I just want to reinforce the point you are making by saying that we want that detail.

Mr P Ramsey: Clearly, it is a very complex area, Patrick. Some of us are out of our depth when it comes to even giving advice to people coming to our constituency office door. And we do get them coming. On occasion, I have referred some cases on; for example, to the Belfast Law Centre, and we have a centre in Derry now.

Turning to the allegations regarding Filipino workers in the fishing industry; do you have documented evidence about how accurate those reports are? I remember seeing a BBC documentary on the issue some time ago. Are people coming to your door giving witness or testimony to the abuse that is going on?

Mr Yu: That was prior to 2010. After 2010, certain laws were changed by the immigration side. At the same time, the fishing industry started hiring Filipino fishermen. We tried very hard to go to the harbour to talk directly to the Filipino fishermen, but without any success. It was not only me; there was a Catholic priest who supports the Filipino community and the chair of the Alliance of Filipino Communities. The three of us went to different fishing ports to try to make contact with the migrant workers. In the past, they have had our mobile numbers, and, occasionally, if they had a real problem, they would phone us. You will recall, last year, that we were informed of another case. One of the fishermen got pneumonia and passed away as a result. We were contacted by his fellow workers. Because we have no direct contact with the family in the Philippines, we could not talk to the family. That was another tragic case. The local fishing industry waited for the insurance compensation before they moved the body back to the Philippines. You are talking about waiting another six months before they can send the body home. I do not think that that is ethical. It is far, far below the standards set.

Mr P Ramsey: Just a final question. Clearly, we are looking at areas where abuse has taken place. Are there areas where there is compliance and where migrant workers are getting a good deal and are happy and content with the employment?

Mr Yu: I go back to our third recommendation. Currently, there are different regulatory bodies. Take, for example, the fishing industry. It is under the coastguard authority. You do not have a unified regulatory body to look at all agency workers and migrant workers. It is fragmented by different law. That is why, as we say in our third recommendation, we would like to see that reviewed and everyone brought into a single regulatory system. Now, we have a lot of austerity cuts. If you do not put all the resources together, it will be much more expensive to police the whole thing.

Mr F McCann: Some of the points I was going to raise have already been raised. So, I will try to be as brief as possible. Michelle had to go to the session across the way, but she has left her question with me.

When people come to work here, whether they are from within the EU or outside the EU, they should be afforded the same protections that we expect on a daily basis. I believe that some people look at agencies and see a group of firms that provide employment for people. In many ways, that could not be further from the truth. They are sometimes in it for the huge profits that can be made from bringing people in and putting them to work. This Committee will probably not be in existence when it happens, but an Assembly Committee inquiry into some of the practices that go on across the board is long overdue. It is disgraceful that, in many cases, people are being paid below the minimum wage, and they have the additional pressure of not being able to open accounts. The point that Sammy made was very valid, but it is about what we can effectively do to ensure that people are protected and to bring it to the next level. Over the years, millions of people have left this country and gone abroad to work in difficult times under difficult circumstances. You expect people to be treated the way that you would expect to be treated if you went abroad.

Michelle asked whether DEL can take action against agencies outside of here. What can be done to protect workers from exploitation by agencies outside these boundaries?

Mr Yu: For those working for agencies from outside the UK, we limit it to certain areas. It relates to basic protection under employment law and, to a certain extent, anti-discrimination law in areas such as equal pay and under the basic principles of equality. That includes treatment in the workplace, especially in respect of harassment and discrimination by fellow workers or by the end user.

Mr F McCann: Last week, when we were talking about employment law and migrant workers and other workers, I noticed that there was mention of the British Government talking about opt-out clauses that protect employers rather than employees. We need to comment on that. I forget what the other question was, but I will come back to it.

Mr Lyttle: I will start by offering my apologies for my absence, but I was required to chair the Committee for the Office of the First Minister and deputy First Minister, which received a briefing on historical institutional child abuse this morning. I want to check that you have been given an opportunity to speak on the Race Relations Order and the differential in the rates of pay for seafarers.

Mr Yu: I already raised it.

Mr Lyttle: OK. I can pick that up then.

The Chairperson: It occurs to me that the fundamental tenet is that, if you are legally allowed to be employed in Northern Ireland, you should have the same protections as anybody else who is employed in Northern Ireland. Is there general agreement on that?

Some Members: Yes.

The Chairperson: That seems to be a positive thing, and we have to look at it. There seems to be an issue to do with agencies getting people to sign self-employment declarations. We need to look at how we will deal with that issue. I could see there being an order that would require the agency to prove that the person understood what they were signing. That might be something that the Department would like to pick up on. Patrick, you may not be able to answer Fra's point, but we will put it on the record for the Department to look at. At the moment, we only have jurisdiction over agencies that are based in Northern Ireland. So, we want to know how we can do something. Although we can refer the matter to other jurisdictions, we need to make sure that anybody employed in Northern Ireland is subject to Northern Ireland law.

Although there will be no compunction on people to respond, I thought that we might write to Moy Park asking for some details of its employment processes regarding agency workers, not just for the company but for its supply chain, too. Is there agreement on that?

Mr McElduff: I wonder would we want to strengthen that by asking Moy Park to give evidence or make a presentation — maybe not, but it seems to be such a meaningful employer.

The Chairperson: It is, and I know that it is an employer that will take its civic responsibilities seriously. In the first instance, Barry, we will just write and see what it does. If Moy Park wish to bring in others, that would be fine. Given that the CBI came to talk to us about agency workers, we might write to it as well for a comment on the matter.

There was one final issue. We did not really deal with the tier 1 and tier 2 issue, which was in your paper. Do you want to give me a quick rundown on that? I seem to recall thinking that that was wrong, but I cannot remember what the exact details of it were. You said that you had to have £800 or something like that.

Mr Douglas: Chair, while Patrick is looking for that, can I ask you a question? It goes back to the whole issue of self-employment. I am not quite sure who we should ask for this information, but surely there must be an onus on somebody to advise people coming into Northern Ireland about their responsibility to pay tax. There is also the issue of filing returns. It is a big legal thing. A lot of people get into debt because they have not paid their tax. They end up with a huge tax bill. Someone must have responsibility there.

The Chairperson: In places like Sweden, for example, you are required to register, and everything is put down on that register. Here, as I understand it, one person comes along to work in a factory, and they then bring their family over, who all start to work here. We have no idea who is living in a house or doing whatever, and the only time you get any handle on the situation is when, suddenly, a load of children appear at a primary school and people ask, "Where did they come from?"

We lack official statistics on this. Nobody is recording the information. If the Department can tell us that we are wrong about that and that it has some handle on this matter, I would like to know what that is. We need more information. I note that there was a DEL survey in 2009. It may be that we need to take a more comprehensive look at the statistics on that.

Patrick, have you found the bit about tier 2 that I was talking about?

Mr Yu: I am a little bit confused about what you are referring to in tier 1 and tier 2. Is it the immigration status?

The Chairperson: Yes, it is. It is about the immigration service and what you have to do.

Mr Yu: The general principle at the moment is about the immigration status of those working in Northern Ireland. They are allowed to work over here. At the moment, there are different tiers for the different needs of the workforce.

The Chairperson: It is on pages 56 and 57 of your pack.

Mr Yu: Of our research?

The Chairperson: Yes.

Mr Yu: We have a two-tier system at the moment because successive Governments, at different times, changed the law. In the past, we had only a two-tier system. Under the new Labour Government, the majority of the workers were under the tier two system. Then the coalition Government changed the points-based system that they had inherited from the Labour Government. It is a little bit complicated. It does not matter which system people are in, they all have the right to work in this country. It also means that, in most cases, employment law and equality law should apply to these people, unless they are under an agency contract. That should give you an idea of the kind of protection that I am talking about.

Mr F McCann: I want to make a couple of brief points. Care homes were mentioned. Obviously, the Assembly has control over the tens of millions of pounds that go to care homes in respect of benefits and things like that. If we had evidence of abuse in those care homes, surely we could take up the mantle and deal with that. I would not like to think that we are paying money to a home in which people are being abused.

The Chairperson: We could write to the Committee for Health, Social Services and Public Safety.

Mr F McCann: We need to gather the evidence. There is information there that will allow us to do that.

Mr Yu: In 2006, the Department did a big piece of research on the experience of agency workers in the healthcare system. At that time, about 48% of workers had experienced discrimination or racial harassment in the workplace. That is higher than the figure for 2011, which is 42%. So, our research shows that the figure has dropped a little bit, but a figure of over 40% is not acceptable in any society.

Mr F McCann: I notice that quite a number of people from the Filipino community work for the health service. If you have any information about people being abused, we could maybe deal with the Department on that, too.

Mr Yu: We can forward those cases to you.

Mr F McCann: Those are two effective ways for us to start to deal with the issue.

Mr Yu: Can I clarify one last point about the cost issue? The arrangement for agency workers is a little bit complicated and always causes confusion for elected representatives. The idea of employing an agency worker is that you have an end user who will pay a big lump sum to an employment agency to try to get rid of all the regulations. Those lump sums are given to the recruitment agency. At the moment, under the current regulatory regime, it is not mandatory to disclose how much the agency pays the agency worker. The end user has no idea how much the worker is paid. They could be paid the minimum wage, but, it might be the case that, when a worker goes to an employment agency, they are given a contract for service and the agency then tries to pay below the minimum wage. There is no additional cost to the end user. That money is already there.

The Chairperson: OK. We take the point about the lack of transparency around the wages that are paid to the agency worker in the end. We have had a fairly fulsome discussion on the issue. It is now a matter of sending the information to the Department for comment and waiting to see what it has to say. Having looked around the Committee, I can tell you that there is no dissent from the view that any inequality needs to be addressed. We need to see what can be done about certain procedural things. We are putting certain things on the record. If the Department does not want to legislate on this issue, the Committee, if it is still in place, might look at introducing an order or some way of dealing with the matter. That is probably a matter for when we come back in September, although, as Fra said, it will depend on whether the Committee is still here. However, we will put it on the record for whoever is picking up these issues. I am quite sure that some of us at least will be on whatever body is looking at things in the future.

Patrick, I thank you and your team for coming along and talking to us. We talked about some of these issues with David's all-party group on ethnic minority communities, but this is a more serious issue than people imagine. There is a feeling that only a modest number of people are involved. However, the impact on overall employment in Northern Ireland is quite significant. I notice that the research says that agency workers make up about 4% of the total workforce, which is quite a lot. The knock-on effect on skills and skills development is also quite profound. Let me reassure you that your timely presentation has been noted. The Committee will see what it can do. When we have some information from the Department, we may call you back again so that you can then respond to whatever the Department has responded to.

Thank you all very much.

Mr Yu: Thank you.