



100
YEARS
OF LEADING HR
INTO THE FUTURE

THE STATE OF MIGRATION EMPLOYING MIGRANT WORKERS

March 2013



CONTENTS

| | |
|--|----|
| Introduction | 2 |
| Overview – what are the trends in migrant worker numbers over the past decade? | 3 |
| What is the current state of play? | 6 |
| Factors affecting the recruitment of EU workers | 9 |
| Factors affecting the recruitment of non-EU workers | 12 |
| The role of recruitment agencies in the recruitment of migrant workers | 16 |
| Conclusions | 17 |
| Appendix 1: A guide to the UK’s immigration system – provided by Lewis Silkin | 19 |
| Appendix 2: Legal opinion about the use of English in the workplace – provided by Lewis Silkin | 22 |
| References | 24 |
| Respondent profile | 25 |

INTRODUCTION

One of the determinants of the UK economy's ability to grow and compete is the UK's flexible labour market and its ability to ensure that employers are equipped with the skills they need and that a diverse workforce is able to access jobs.

This report explores the impact on employment of one of the biggest drivers of change to the workforce over the last decade – immigration – and considers the implications for both employers and policy-makers.

The UK labour market has been affected dramatically by immigration during the past ten years, with migrant workers responsible for almost all of the growth in employment over that period according to the Labour Force Survey (ONS). Between 2002 and 2012, the employment of UK-born workers remained static, but overall employment has grown by 1.7 million with the proportion of non-UK born workers in the workforce increasing from 9% to 14%, as employers have benefitted from a ready supply of skilled and non-skilled migrant workers. This increase in the number of non-UK born workers has been underpinned to a significant degree by the expansion of the EU in May 2004, which saw the UK accept migrant workers from Central and Eastern Europe, Malta and Cyprus (so-called EU8 nationals).

The increase in the number of migrant workers has also coincided with attempts by the previous and current government to manage immigration from outside the European Economic Area (EEA¹) through the introduction in 2006 of a points-based system and, more latterly, a migration cap to limit the number of non-EU migrant workers to those with key skills.

The introduction of a temporary cap on migration in 2010, which preceded the permanent cap in 2011, was met with opposition from employers, business organisations, trade associations and trade unions. Specific claims that it would be damaging to the UK's growth prospects on the grounds that the UK would 'no longer be open for business' were made alongside claims that a cap on non-EEA workers would exacerbate the difficulty many employers would face in filling skilled or highly skilled vacancies (CIPD 2010). Yet, with take-up currently running at below the capacity of the cap on numbers set by the Government, the cap has not had as big a direct impact as many feared. The introduction of the cap has been accompanied by significant tightening of the criteria for non-EEA workers during the past two years, which has meant that non-EEA workers must now be qualified to NQF Level 6 (graduate level) to live and work in the UK.

The increase in immigration and changes in policy on immigration have been accompanied by a political debate over the future direction of immigration policy and how it dovetails with wider employment and skills policy. For example, in autumn 2012 Labour leader Ed Miliband highlighted the importance of ensuring that young people can compete on a more even playing field with migrant workers. He commented: *'Where there are sectors in which the migrant share of the workforce has dramatically increased, it can be a sign that we haven't done enough to equip young people with the skills they need to compete.'*² He called for Jobcentre Plus to be notified of organisations where more than 25% of the workforce is made up of migrant workers. In contrast, Prime Minister David Cameron identified failings in the welfare system as a key reason why migrants rather than UK-born workers are filling jobs. *'The real issue is this: migrants are filling gaps in the labour market left wide open by a welfare system that for years has paid British people not to work. That's where the blame lies – at the door of our woeful welfare system, and the last government who comprehensively failed to reform it.'*³

In order to inform this debate, and provide recommendations for policy development and employment practice, this report explores in detail how and why employers recruit migrant workers. It looks in detail at the reasons why and the challenges employers face in recruiting, on the one hand, typically low-skilled EEA workers and, on the other, higher skilled workers from outside the EEA.

It also sheds light on issues such as skills shortages, the availability of UK-born workers, as well as more intangible factors such as 'work ethic'. The report draws on a survey of 1,000 employers and 16 in-depth interviews with employers across different regions, sizes and sectors. Key sectors represented by the case studies include social care, retail, restaurants and hotels. The case studies also include examples from telecoms, cleaning, insurance, a business services consultancy and a major Internet booking company.

The report's purpose is to get to grips with the challenges employers are facing on the ground in filling vacancies and the role that migrant workers are playing in the workforce in order to make recommendations for practice and policy-makers to improve the functioning of the labour market.

Migrant workers are defined as non-UK-born workers who were not born in the UK but are working in the UK in this study.

¹ The European Economic Area (EEA) comprises the countries of the European Union (EU), plus Iceland, Liechtenstein and Norway.

² <http://www.labour.org.uk/to-deal-with-peoples-concerns-on-immigration-we-must-change-how->

³ http://www.conservatives.com/News/Speeches/2011/04/David_Cameron_Good_immigration_not_mass_immigration.aspx

OVERVIEW – WHAT ARE THE TRENDS IN MIGRANT WORKER NUMBERS OVER THE PAST DECADE?

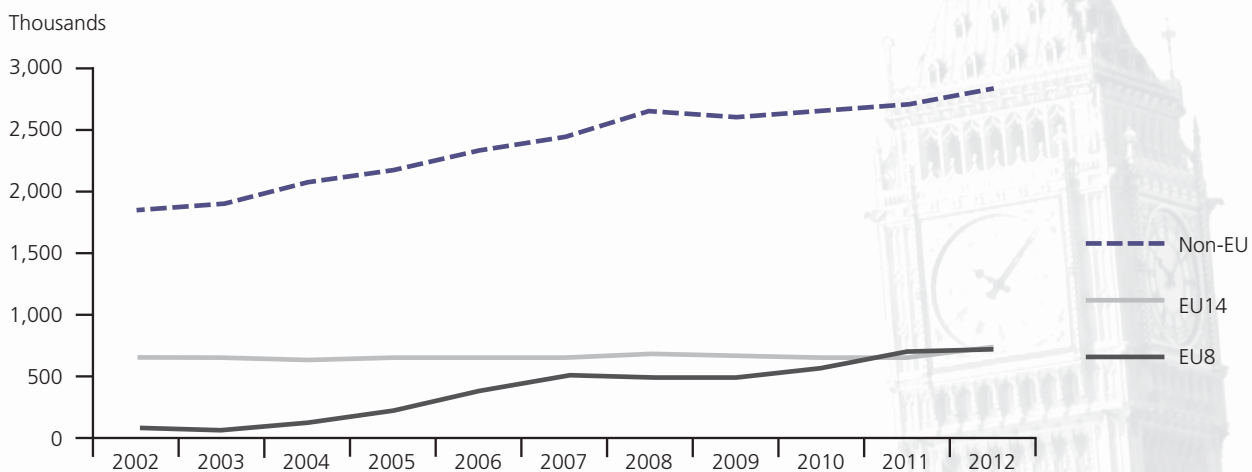
There is no doubt that migration has had a huge impact on the UK labour market over the past decade. The number of people in employment has increased from 28.1 million in the fourth quarter of 2002 to 29.8 million in the fourth quarter of 2012. However, over this period the number of UK-born people in employment actually fell very slightly from 25.6 million to 25.5 million. In contrast, the proportion of non-UK-born people in employment has increased by more than 60% during past the ten years. Non-UK-born people currently make up more than 17% of the UK workforce, which compares with around

10% in 2002. During the same period the employment rate for UK-born people has fallen to 72.5% from 74%. By contrast, the employment rate for non-UK-born has increased to 67.9% from 64.1%. Employment rates are highest among those born in South Africa (79.7%), the EU8 countries⁴ (79.4%) and Australia and New Zealand (78.7%).

These trends are illustrated by Figure 1, which shows that the accession of EU8 countries made a substantial contribution to the acceleration of the upward trend from 2004.

Figure 1: Employment levels by country of birth (2002–12)

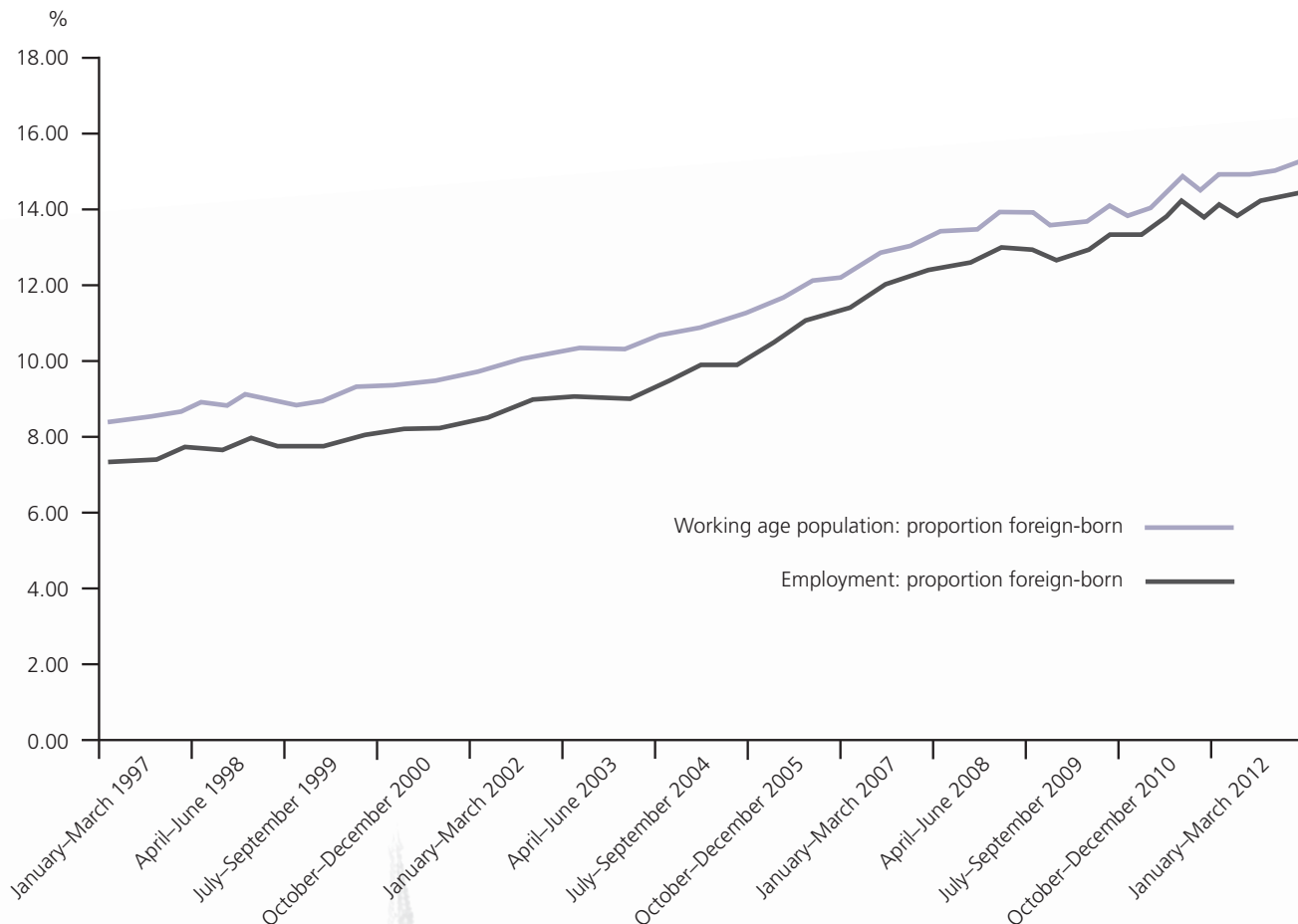
Source: Labour Force Survey (ONS)



⁴ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, Slovenia.

Figure 2: Relationship between the proportion of working age people that are foreign-born and the proportion of foreign-born people that are in employment

Source: National Institute of Economic and Social Research (NIESR)

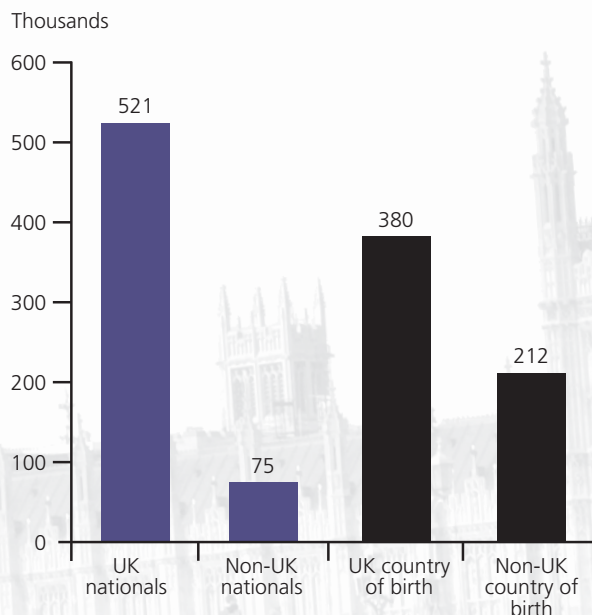


Growth in migrant worker numbers has slowed in recent quarters

However, it should be noted that the rate of increase has been slower during the past year. The number of UK-born workers has grown by 1.5% during the past year, which compares with a 5% increase in the number of non-UK-born workers in employment during the same period. However, with migrant workers accounting for more than a third of the rise in employment (Figure 3) during the past year, there is little doubt that the pace of growth is still considerable in relation to that of UK-born workers.

Figure 3: Employment by nationality and country of birth, changes between October and December 2011 and October and December 2012, not seasonally adjusted

Source: Labour Force Survey (ONS)

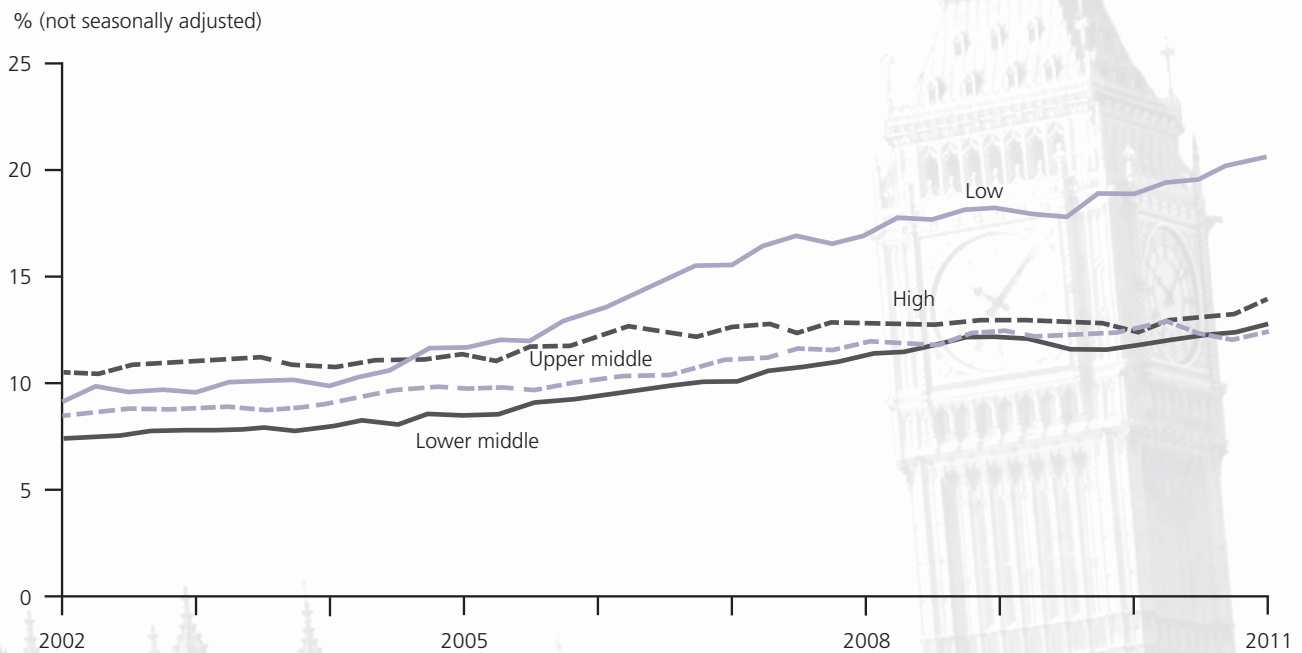


What skills are migrant workers bringing to the UK?

Much of the increase in migrant worker numbers over the last decade has to a significant degree been driven by demand to fill low-skilled roles. Over this period the number of migrant workers in low-skilled roles has risen sharply, especially compared with more highly skilled roles (Figure 4). This reflects, in part, the decision made by successive governments to incrementally restrict the supply of non-EU labour to highly skilled roles. It also reflects the growing numbers of EU8 nationals in employment, who account for a disproportionately large share of low-skilled employment. This may partly explain why the share of non-UK-born people in low-skilled roles has accelerated since 2004.

According to the latest Labour Force Survey (ONS), the increase in employment has been driven by low-skilled and high-skilled roles in recent quarters. Fortunately, the demand for low-skilled labour can be matched to a degree by a larger supply of EEA workers. By contrast, the restricted supply of highly skilled non-EEA workers may partly explain why recruitment difficulties for high-skilled roles have worsened during the past year (CIPD 2012).

Figure 4: Growth in number of non-UK-born workers in low-skilled roles



Percentage of workers who were non-UK born at each occupation skill level, 2002–2011, UK. Source: Labour Force Survey (ONS).

WHAT IS THE CURRENT STATE OF PLAY?

Growth in demand for migrant workers is slowing

The CIPD's quarterly *Labour Market Outlook* (LMO) survey, which tracks employers' demand for migrant workers, has mirrored official statistics and showed that growth in demand for migrant workers has fallen over recent quarters (see Figure 5).

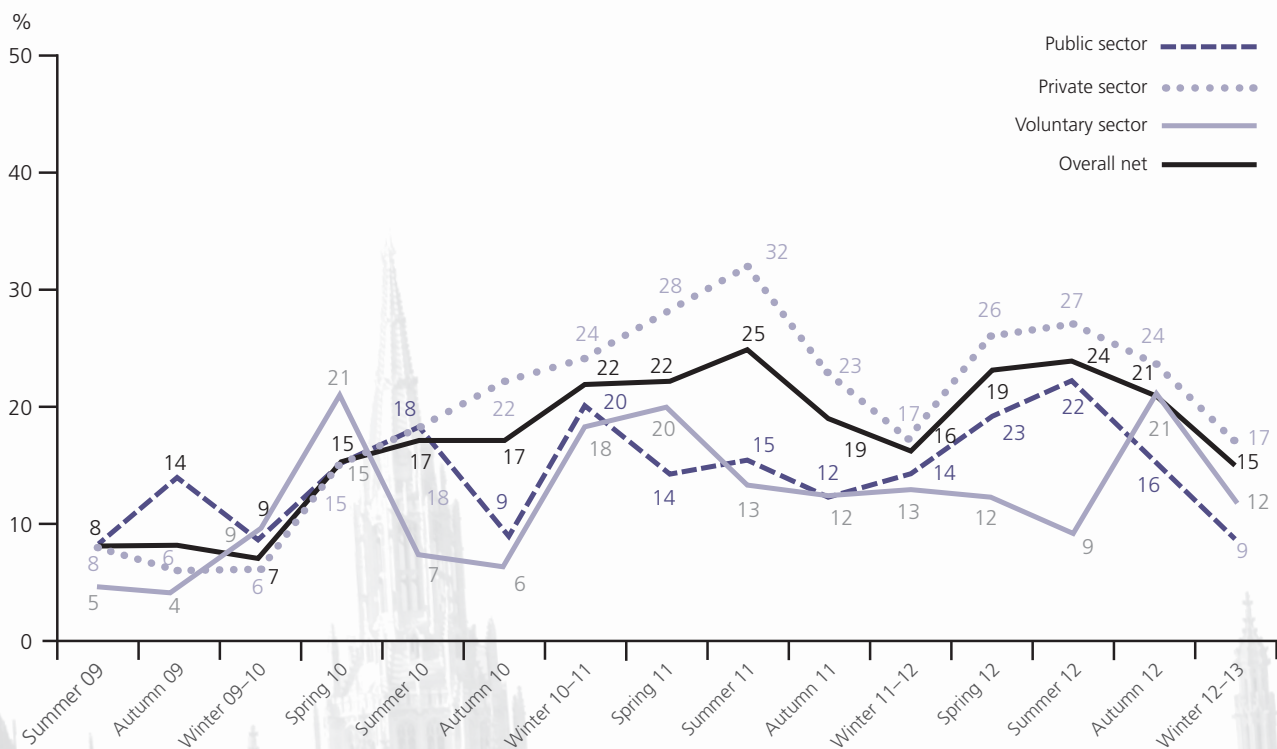
The winter 2012/13 LMO survey, based on responses from more than 1,000 employers, suggests this trend is likely to continue, with fewer employers saying they will be employing migrant workers in the next three months when compared with the autumn 2012 report (15% currently, compared with 21% in the autumn). In a continuation of recent trends (Figure 6), employers in the private sector are more likely to recruit migrant workers in the first quarter of 2013 (17%) than public sector employers (9%).

In line with the increasing numbers of migrant workers within the UK workforce, the proportion of employers that employ migrant workers has edged up slightly to 44% from 41% in the final quarter of 2012. From a sector perspective, the majority of employers in the manufacturing and production sectors (57%), education (55%) and the NHS (55%) say they employ migrant workers.

The survey also asks respondents whose organisations employ migrant workers to estimate the proportion of migrant workers within their workforce. On average, the share of migrant workers in private sector firms (11%) is higher than in public sector organisations (3%). Of the 459 organisations that currently employ migrant workers, around one in twenty private sector companies report that at least half of their workforce is made up of migrant workers. Overall, 14%

Figure 5: Proportion of organisations planning to recruit migrant workers in Q1 2013

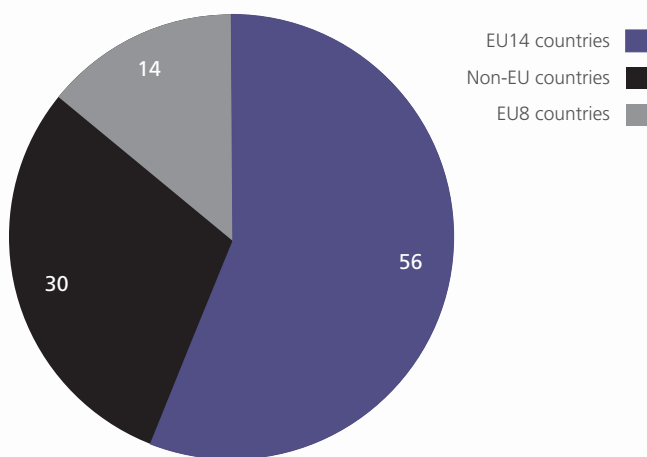
Source: CIPD *Labour Market Outlook* (LMO) winter 2012/13



of employers say that migrant workers comprise at least a fifth of their workforce. Organisations in the hotels, catering and leisure sector employ the highest proportion of migrant workers (33%), followed by those in the financial services sector (15%).

Figure 6: Approximately what proportion of migrant workers come from each of the following locations? Mean average (%)

Base: Winter 2012–13, LMO employers who currently employ migrant workers (n=385)



Where do employers recruit migrant workers from?

According to the latest LMO survey data, the majority of migrant workers employed come from inside the EU. Respondents whose organisations employ migrant workers estimate that seven in ten migrant workers they employ come from the EU. Of these, over half (56%) of migrant workers employed in their organisation come from one of the core EU14 countries and 14% come from the EU8 accession countries.

Employers report that three in ten (30%) migrant workers come from non-EU countries (see Figure 6).

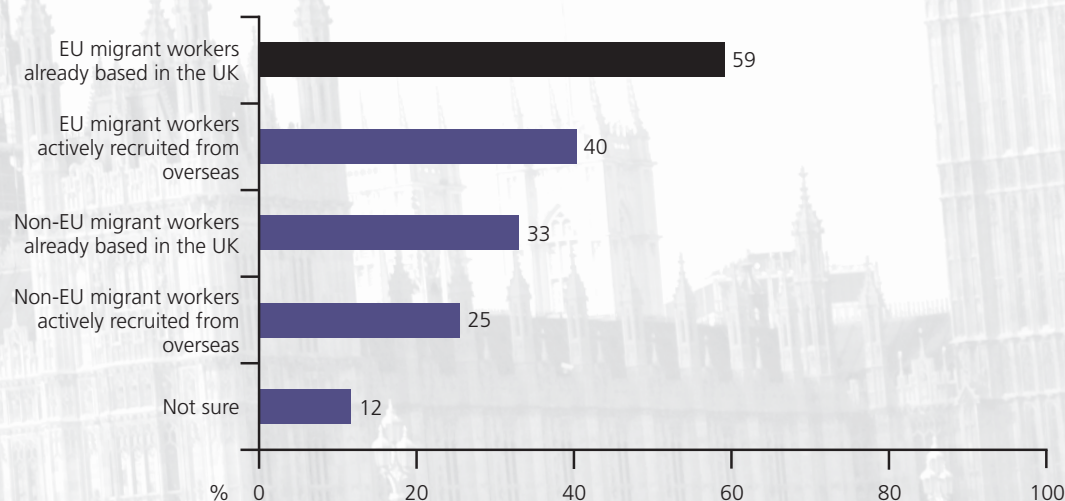
Employers from larger organisations estimate a significantly larger proportion of their migrant workforce come from EU14 countries (58% with 250+ employees) when compared with smaller companies (49% with fewer than 250 employees). Smaller companies remain most likely to attribute the largest proportion of their migrant workforce to EU14 countries, however they are significantly likely to grant a higher proportion to non-EU countries (37%, compared with 28% from larger companies).

Looking ahead over the next three months, among employers planning to recruit migrant workers, nearly six in ten respondents report they intend to recruit EU migrant workers based in the UK, while 40% intend to recruit EU workers recruited from overseas.

In terms of non-EU migrant worker recruitment, a third (33%) of employers planning to recruit migrant workers say they will recruit non-EU migrant workers already based in the UK, while a quarter will recruit non-EU migrant workers from overseas (see Figure 7).

Figure 7: Distribution of migrant workers

Base: Winter 2012–13, LMO employers planning to recruit migrant workers in the next three months (n=118)



Migrant worker job applications

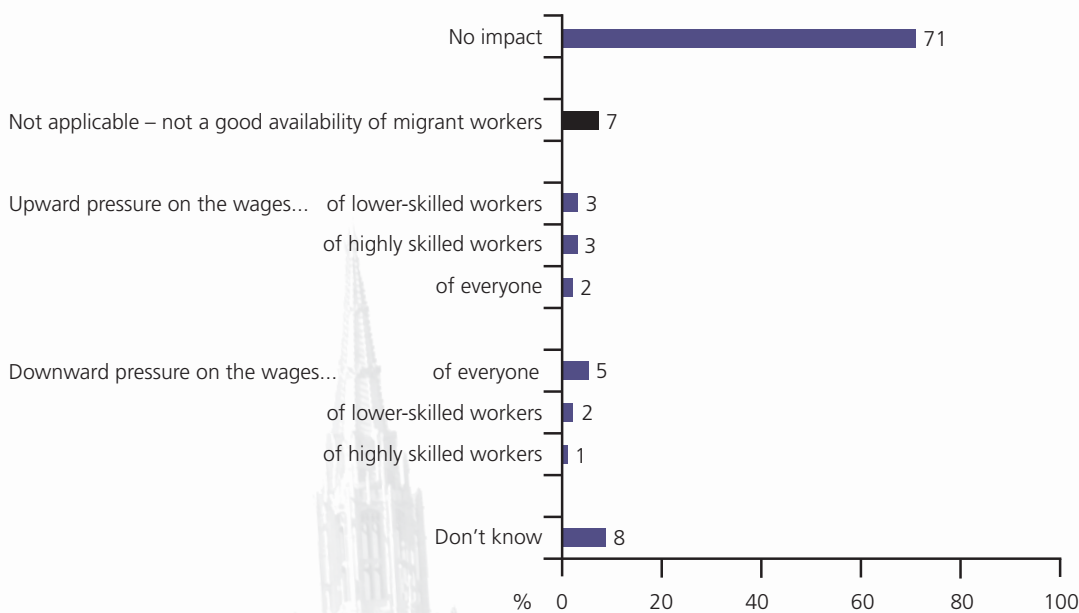
Consistent with the official labour market statistics (Figure 1), more than a quarter (27%) of LMO employers saw an increase in the number of applicants from EU countries in 2012. Respondents are most likely to cite Poland (57%) and Spain (35%) as the main contributors to the increase in applications from EU countries. Looking ahead to the next 12 months, a quarter of LMO employers (25%) report that they anticipate the number of job applicants from within the EU will increase in 2013. The range of countries expected to drive the increase in job applicants from within the EU are Poland (57%), Spain (53%), Greece (40%) and Portugal (37%). It is perhaps not surprising that employers anticipate an increase in applications from workers in the three southern European countries mentioned above given that their economies are gripped by recession.

What effect does the recruitment of migrant workers have on wages?

The majority of employers think that the good availability of migrant workers has had no impact on wages. Seven in ten (71%) employers feel the good availability of migrant workers has no impact on wages at their organisation. Among the 14% of employers who do feel the availability of migrant workers has an impact on wages at their organisation, 5% think it has a downward pressure on everyone's wages, 2% a downward pressure on lower-skilled workers and 1% on highly skilled workers. Just 3% think it will have had an upward pressure on lower-skilled workers, 3% on higher-skilled workers and 2% on everyone's wages. The remainder (7%) does not believe there is a good availability of migrant workers (Figure 8).

Figure 8: Does the good availability of migrant workers have an impact on wages at your organisation?

Base: Winter 2012–13, all LMO employers (n=1,041)



FACTORS AFFECTING THE RECRUITMENT OF EU WORKERS

In order to understand what factors have driven the employment of migrant workers in the UK, it is important to understand the different reasons that sit behind employers' decisions to recruit, on the one hand, EU migrants and, on the other, non-EU workers.

This section of the report explores the issues that influence employers' decisions to recruit EU migrants. The most commonly cited reason by employers planning to recruit EU workers is that they have better job-specific or practical skills, with more than half of respondents citing this.

The next most frequently mentioned issue for recruiting EU migrant workers is work ethic. More than a third of respondents planning to recruit EU migrant workers identify work ethic as a factor. This is an issue that came through strongly in our follow-up interviews with employers (see box below).

Work ethic consistently cited as a reason employers' recruit migrant workers

CIPD research has consistently shown that one of the key reasons for hiring EU workers is that some employers perceive they have a stronger work ethic than UK-born workers. Our case study interviews for this report reinforce this and show that this was a particular reason for recruitment decisions around low-skilled workers. Employer interpretations about the term varied among participants, but a common reason was migrants' willingness to work anti-social hours:

'When I open a new restaurant and when I look at our employees, where we struggle most is where we hire local people going into the local jobs because the work ethic and the loyalty is completely different from people who have changed their lives to go into a job role. That's why that sounds terrible. It's not that we don't offer these people jobs because, yes, we advertise everywhere.' (head of people, large restaurant chain)

'They are all the same. At the moment we are a night porter short, and we say to staff, "Do you mind?" Some of them say, "I don't want to do that." But a lot of the EEA staff will come out, "Yes, yes. I will try it for a week." They are quite happy to jump in and give their hand at anything. Sometimes other people are like, "It is not in my job description".' (HR manager of a hotel based in the north-west of England)

Other reasons include task completion, an ability to hit the ground running, punctuality and job status, all of which are reflected by the following observations from employers:

'I would say the benefit of employing migrant workers is that they are hard-working. They will do the job, they will work faster...they are willing to do jobs that other people would class as beneath them.' (HR manager of a high street retailer)

'When we do employ UK workers, they either don't stay or, worst-case scenario, it becomes a disciplinary issue, whether it is for lateness or something else.' (HR manager of a national hotel chain)

About a quarter of respondents report they plan to recruit EU migrant workers because they are better prepared for work (26%) and have more work experience (25%) (see Table 1).

Other factors influencing the recruitment of migrant workers

A significant proportion cite ‘other’ reasons for recruiting EU migrant workers. Our interviews with HR practitioners have given us some insight into what these other factors are. One issue that comes across consistently as a factor that influences

employers’ decisions in recruiting EU workers is that they have lower levels of attrition (they stay longer in the job) than UK-born workers (see box below).

Another issue that seems to be sustaining the hiring of EU migrants is job referrals (see box on page 11).

The prospects, therefore, of EU migrant workers becoming more deeply embedded in the UK workforce may increase.

Table 1: Reasons employers recruit EU workers (%)

Base: Employers that are planning to recruit migrant workers (n=132) Source: LMO, autumn 2011

| | |
|---|----|
| Better job-specific or practical skills | 56 |
| More work experience | 25 |
| Better prepared for work | 26 |
| Work ethic | 34 |
| More affordable | 18 |
| Better qualifications | 23 |
| Language skills | 18 |
| Better generic soft skills (for example communication, teamworking) | 13 |
| Other | 36 |

Higher attrition rates among UK-born workers

Many employers we interviewed for this report cited high turnover of UK-born workers as a reason for recruiting migrant workers and identified three major reasons for this. The first is the poor image associated with some of the sectors represented in the case studies, especially in retail, hotels and catering. The second is the apparent failure of these organisations to sell the training and promotion opportunities that exist in their organisation to those at job-entry level. The third is pay and employment conditions, and in one or two cases aptitude for the role in question.

‘Quite a lot of them [migrant workers] tend to want to come for a set amount of time. When you employ someone from the UK, they might leave within months, whereas someone who has come from abroad will tend to stay for longer. If we say the job is a minimum of six months, they are pretty much guaranteed to stay for six months.’

(HR manager of a hotel based in the north-west of England)

‘When we do employ UK workers, they either don’t stay or, worst-case scenario, it becomes a disciplinary issue, whether it is for lateness or something else. I don’t know whether it’s a stability thing. Once they [migrant workers] know that they’ve got a job then they do it well, and there are no concerns.’ (HR manager of a national hotel chain)

‘I guess one of the reasons [that UK-born young workers don’t stay as long as migrant workers] is the idea that perhaps retail is not good enough as a career. We are not good enough at getting that message out there yet, that retail is absolutely somewhere you can make a fantastic career and earn a lot of money actually, as a store manager.’

‘We have a large graduate programme and we’re increasing it hugely again this year. But even through your graduate programme, you can’t fill enough – because of the training that graduates need or the programme that they follow, they’re not going to be the source of most of your vacancies.’

‘Most of your vacancies are filled from progression within. If you’ve got talent and you’re a general assistant in a shop, we’re looking at you. We’re going to give you more responsibility, we want you to work as a team leader then we’re going to put you through as a deputy then you can be a store manager within two to three years.’ (personnel manager of a major UK supermarket)

‘When you look at the skill of a care assistant, it is difficult to compete with, for example, Tesco who pay £7 an hour down the road.’ (HR manager of Social Care company)

The use of job referrals or ‘network hiring’

The use of job referrals has increased recruitment of migrant workers in some organisations. According to CIPD research, job referrals are consistently rated as one of the three most effective recruitment methods. According to the case study interviews for this report, the practice seems particularly prevalent for low-skilled roles, with migrant workers referring friends and relatives to their employer.

‘We do a lot of referrals, it is by far our most effective recruitment method.’ (HR Director of a national online booking company)

‘There are referral networks that we’ll utilise as well, we have “refer a friend” schemes, we proactively market map competitors, and obviously we work with universities and local colleges so we’ll utilise those.’ (employee Relations Team Manager, national social care provider)

‘A lot of our recruitment comes through recommendation or referrals. We have a big programme at the moment of using connections within the business to identify the talent within the market and then introductions ... we are very busy on social media, LinkedIn, we are developing in partnership with another organisation a way of using LinkedIn to identify key skills and talent we are looking for.’ (HR Manager, IT consultancy in London)

‘Yes, some of them come from recommendations. Because we have a system of “recommend a friend” and things like that, in place. So some have come through that, whether it’s sisters or cousins or friends and things like that. So a recommendation like that from someone, who has got a reputation of being a hard worker themselves ... it sounds good.’ (HR Manager of a national hotel chain)

FACTORS AFFECTING THE RECRUITMENT OF NON-EU WORKERS

Many of the same reasons are in play when it comes to why employers recruit non-EU workers. As with the recruitment of EU workers, the top reason for recruiting non-EU workers is that they have better job-specific, practical or technical skills, with 38% saying this is the case.

However, employers recruiting non-EU workers are much less likely to identify work ethic as a reason for recruiting such workers. Just 16% of employers report work ethic as a reason for recruiting non-EU migrant workers.

'Better qualifications' is mentioned by 16% of employers as a reason for recruiting non-EU workers, while around one in ten employers say they recruit these workers because they are 'better prepared for work' (12%), have 'more work experience' (12%) or for their 'language skills' (10%) (see Figure 9).

Other factors that employers mention include the 'availability of qualified candidates' and that the skills they were looking for are 'not available' or are 'hard to find' in the EU. Furthermore, it may be that the person recruited was simply the 'best person for the job', particularly where there are 'hard-to-recruit posts or vacancies'.

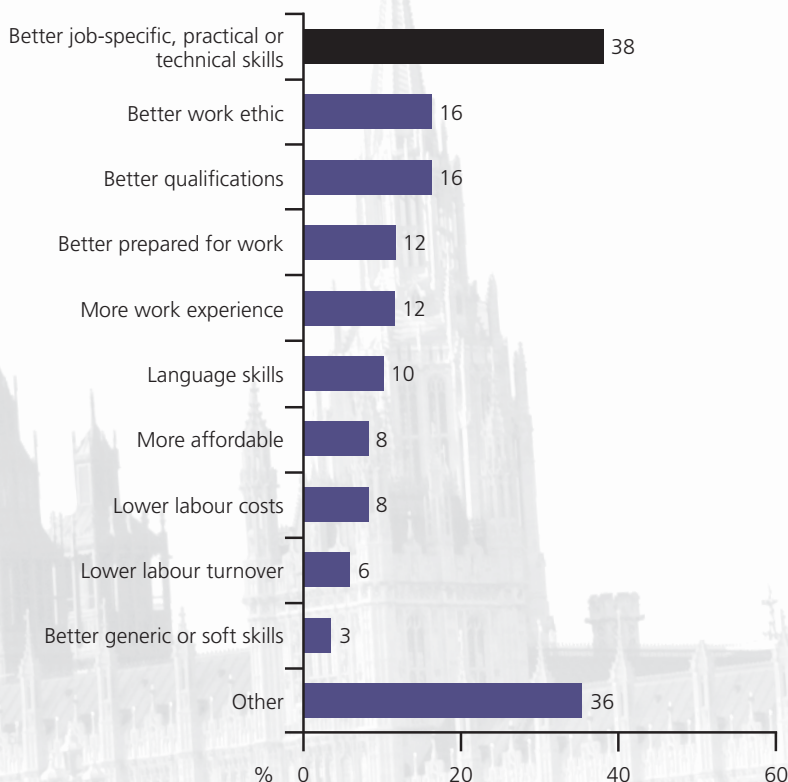
Our interviews with HR practitioners found no examples of employers that hire highly skilled non-EU migrant workers for 'work ethic' reasons:

'The standard answer is people always want to say that we've got a lower work ethic than other people. I would dispute that. I would dispute it on the basis of working in multinational environments and I do not see that people here have a lower work ethic than people in other parts of the world. In fact, I would actually say that from my own personal experience, we will stay and we will finish the job; we're not "jobs' worths". I have observed that you find in some other places, people can be a bit "jobs' worth".' (global HR business partner of a global telecoms company)

The case study interviews for this report highlighted that language and communication was an issue that needed to be managed carefully, in terms of communication between employees, as well as customers. The legal position on having a bi-lingual policy was also raised by some employers, including one employer who queried the legal position surrounding signage. Meanwhile, others queried whether it was appropriate or legal to enforce an 'English only' policy. See Appendix 2 for the legal opinion on these issues.

Figure 9: Why does your organisation employ non-EU workers?

Base: Winter 2012–13, LMO employers who currently employ non-EU migrant workers (n=300)



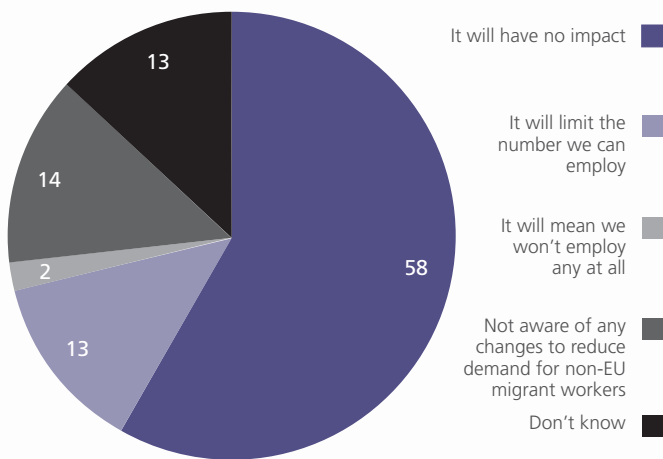
Employers' views on changes to immigration policy for non-EU workers

Another factor influencing employers' decisions to recruit non-EU workers is of course immigration policy. The UK Government has announced a series of changes to reduce demand for non-EU migrant workers. These changes to date have not significantly limited employers' ability to recruit high-skilled workers from outside the EU. The majority (58%)

of employers think these changes will have no impact on their organisation's plans for recruiting non-EU workers. Just 2% think the changes will mean their organisation will not employ any new non-EU workers, while only 13% will limit the proportion they do employ. It is important to note there is a relatively high proportion who are not aware of any changes to reduce the demand for non-EU workers (14%) or just do not know (13%) (see Figure 10).

Figure 10: What impact will these changes have on your organisation recruiting non-EU workers? (%)

Base: Winter 2012–13, all LMO employers (n=1,041)



Among those employers who believe the recent changes to immigration law will restrict their recruitment of non-EU workers, 32% report that they respond by up-skilling existing workers and 16% by up-skilling new recruits. Although in contrast 10% expect to reduce the amount they spend on training (see Figure 11).

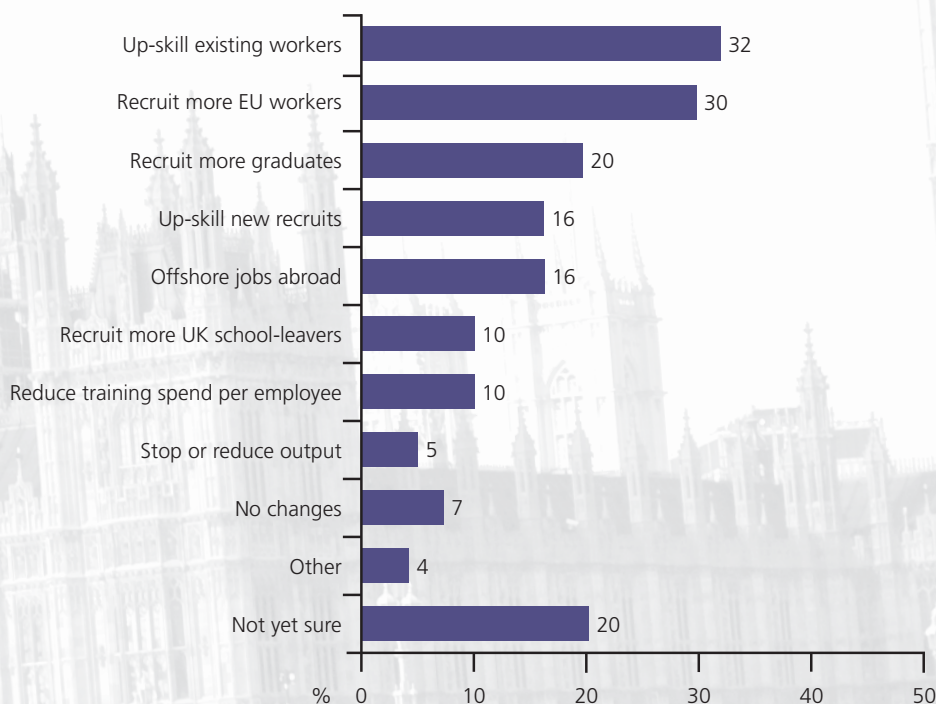
A fifth of employers say they will recruit more graduates in response, whereas 16% expect to offshore jobs abroad and 30% recruit more EU workers.

One in five employers (20%) are not sure how they will respond to the limits on recruiting non-EU workers.

The responses are consistent with findings to the same question asked in summer 2011, in which 34% said they would recruit more EU workers (30% in the current research). However, the likelihood to up-skill existing workers has increased from 23% in summer 2011 to 32% in the current research.

Figure 11: How will your organisation respond to the limit on non-EU workers?

Base: Winter 2012–13, employers who feel government changes will restrict migrant recruitment (n=126)



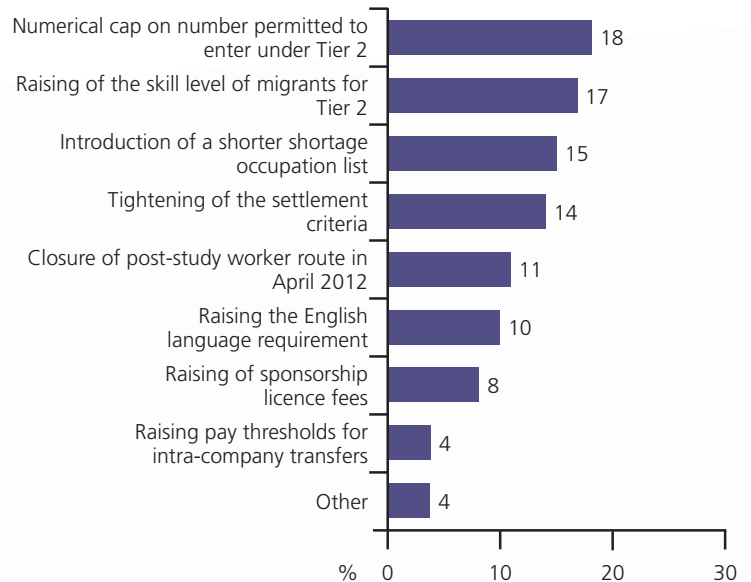
The majority of employers that recruit non-EU migrant workers (55%) report that changes already implemented by the Government have had an impact on their organisation's recruitment of migrant workers in some way.

Changes to Tier 2 have had the largest impact (that is, the introduction of a numerical cap on the numbers permitted to enter under Tier 2), cited by 18% of respondents saying their organisation has been affected by immigration policy changes – likewise the raising of the skill level of migrants under Tier 2 (17% of employers). Other changes and the raising of the pay thresholds for the intra-company transfer scheme have had the least impact (4% each) (see Figure 12).

To complement the survey, a series of interviews with senior-level HR practitioners also explored the impact of immigration policy and its implementation on employment practice (see box below) and the reasons for employing non-EU workers. Consistent with the survey research, skills emerged as the only reason for employing non-EU workers in the majority of cases.

Figure 12: Which of these changes has affected your organisation the most?

Base: Winter 2012–13, employers who currently employ migrant workers, excluding those answering 'none of these' (n=252)



Employers' views about government policy

Overall, employers seemed relaxed about some of the recent major policy changes (Figure 12). However, employers expressed concern about two policies in particular.

Employers were particularly critical of the 'cooling-off period'. This is largely where a Tier 2 visa-holder, whose period of stay has elapsed, must spend at least 12 months outside of the UK before he or she can be granted another Tier 2 stay unless they are earning more than £150,000.

'The fact you cannot return for 12 months is madness. You have to think what this means for existing recruits and before you make offers to intra-company transfer applicants.' (HR director of an online booking company)

'The cooling-off period is a challenge... it is not really working. So especially when it comes to managing projects, we have someone coming in on a short-term visa and then if they're needing to stay for just one more month because the project is running late, they can't.' (HR manager of a large supermarket chain)

In addition, some employers voiced objections to the requirement to advertise in Jobcentre Plus as part of the Resident Labour Market Test (RLMT), especially given that the skills threshold for Tier 2 has been raised to NQF Level 6. Our study found no examples of successful applicants via the Jobcentre Plus route. On the contrary, many employers reported that it had led to a rise in the number of unsuitable applicants.

'I rarely, if ever, receive applicants for our positions advertised in Jobcentre Plus.' (HR manager for a major accountancy firm)

'When you are looking at scientists, and there is nobody in the UK, you go through this farcical recruitment process, and that is the only way it can be described, to make sure you tick a box.' (HR manager of a technology firm in Wales)

Administrative impact of the Government's immigration policy

In addition, the interviews investigated the policy's implementation, especially the performance of the UK Border Agency. The study found that many employers were more critical of the administrative impact of the policy rather than the policy of the migration cap itself.

Common criticisms included the amount of time it takes to prepare for an inspection and the failure to provide a prompt response following inspections.

'We got a January (2012) visit from the UKBA; we have still had no response. We were given a short deadline to get an awful lot of information to them for review. It took six weeks to amass all the information from lots of different sources.' (personnel manager for a social care provider speaking in October 2012)

'The UKBA expects companies to have in-depth/expert knowledge to be up to date at all times but offers no training to assist. The employers' helpline is available but sometimes the people taking the calls do not know the answers to our queries.' (HR manager for a different social care provider)

Meanwhile others were critical of the frequency with which policy changes are being made and the poor or conflicting advice they receive from UKBA officials, which continues to cause confusion among employers. This may explain why all but one of the case study respondents said they only feel confident about the process because they have the support of a law firm. In addition, many employers highlighted the risks of making a mistake, which may partly explain why so many of our respondents use a law firm to help navigate the system.

'One of the frustrations is the lack of consistent response from UKBA and the staff, in terms of individual circumstances. So an employee might come to us and say, "Well my visa is expiring on this date and I've got two dependants with me and I want to do the following," and we obviously work with solicitors, the experts I suppose on immigration. Then we will give our response, then the individual will call UKBA and there's a different response, then they call UKBA again and there's a completely different response. So I'm concerned that the experts are supposed to look up – they don't sometimes even know. So it's a bit of an uncomfortable situation to be in.' (personnel manager of a major supermarket chain)

'The Home Office [website] isn't the easiest to manoeuvre around anyway. On top of that, the application forms from scratch are just not user-friendly. They are far too long, they are far too in-depth ... You daren't make a mistake on it, oh my word. ... well there are constant flags on it saying once you have pressed this, you can't go back, and once you have done this, don't hit this button'. (HR manager of a technology company in Wales)

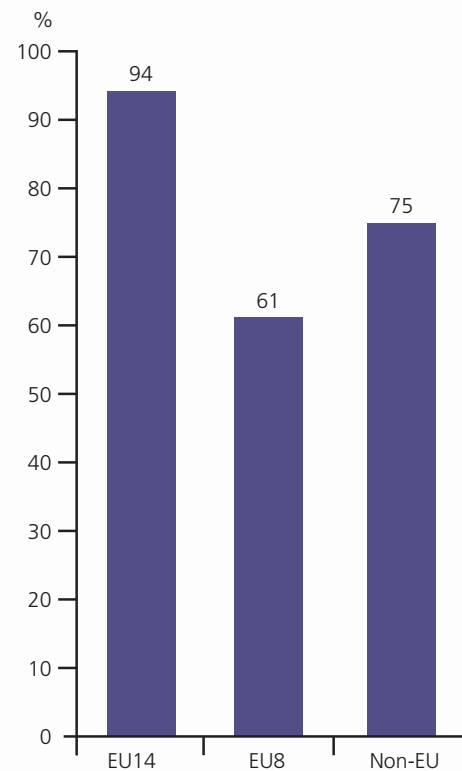
THE ROLE OF RECRUITMENT AGENCIES IN THE RECRUITMENT OF MIGRANT WORKERS

In all, a quarter of employers that recruit EU or non-EU workers use a recruitment agency to do so. Nearly a third (32%) of private sector employers used a recruitment agency to hire migrant workers, whereas just 5% of public sector employers do so.

Among employers that have used a recruitment agency, the majority (94%) recruit workers from the EU14 countries. Three-quarters (75%) of employers that use recruitment agencies recruit from non-EU countries and three in five (61%) from EU8 countries (see Figure 13).

Figure 13: Where employers recruit workers from, having used a recruitment agency

Base: Winter 2012–13, LMO employers who have used a recruitment agency (n=118)



The role of recruitment consultancies in the employment of EU migrant workers

Our case study interviews for this report highlighted the role of recruitment agencies in providing migrant workers, particularly for low-skilled roles. Among those employers that had a disproportionate number of migrant workers to UK-born workers, all had used a recruitment agency to source them.

For instance, almost all of the 200 agency workers at a retail warehouse in the Midlands were said to be migrant workers. Other employers, including a hotel and a manufacturer, reported that 25% and 50% of their workforces were made up of migrant workers and said that they relied on recruitment agencies to fill these vacancies.

Some of these employers said that recruitment consultancies were actively targeting migrant workers and were recruiting from the host country. In almost all of these cases, employers did not see it as their responsibility to query where candidates were sourced from.

'Managers who work in that area have been targeted over the years by agencies who just want to send migrant workers to us...the migrant workers keep coming back every year, the same ones...they would do a stint for 12 weeks, then they disappear or they go somewhere else to work for a limited period, and then they might come back.' (HR manager of a high street retailer)

'They [recruitment agencies] are exclusively there to recruit migrant workers... They have all sorts of EEA and a lot of Bulgarians and Hungarians as well... Generally, I do a phone interview with them. Otherwise we have learned in the past, you are not always guaranteed that you are speaking to the person that arrives.' (HR manager of a hotel based in the north-west of England)

CONCLUSIONS

How employers and policy-makers respond to the challenges and opportunities presented by migrant workers is central to the UK's economic success.

This response is not just about immigration policy but also about the UK's wider employment and skills policy and about employment practice on the ground. This is particularly the case given that a large proportion of migrant workers, that is, those from within the EU, are unaffected by immigration policy.

What is clear from this report is that UK employers value migrant workers for a range of reasons, including their availability, skills, work ethic and their commitment. Regardless of the economic backdrop, migrant workers will continue to play a very important role in the UK's labour market and economy.

However, it is important that more employers understand the business case for recruiting young people and for a more diverse workforce in general, in order to ensure that they are investing in their longer-term talent pipeline rather than simply recruiting for the here and now.

Evidence suggests that there needs to be the right mix of talent if organisations are to compete to their full potential. Businesses that rely disproportionately on migrant workers potentially miss out on the advantages of investing in home-grown workers and the opportunity to recruit and retain employees with the potential to become long-serving members of staff and future leaders.

For example, the CIPD's Learning to Work programme, which aims to achieve a shift in employer engagement with young people to help prepare them for the workplace and to make the labour market more youth friendly, highlights the strong business case for employing young people:

- growing talent and workforce planning, for example, to address the UK ageing workforce
- young people's unique skills, attitudes and motivation
- workforce diversity
- employer brand
- cost-effectiveness.

The evidence from the CIPD report *The Business Case for Employer Investment in Young People* suggests that young people who are given training and progression opportunities do remain loyal to their employers. Investment in the workforce of tomorrow is vital to counter the UK's ageing

population. Young people also bring new skills – for example, they are adept at social networking and the use of digital media technology. In addition, having a diverse mix of talent that reflects an organisation's customer base can improve innovation and customer service.

This *State of Migration* report highlights the value of ensuring that potential progression paths are set out clearly for employees to help address the issue of high attrition of UK-born workers in low-skilled roles reported by many employers.

The Government's employment and skills agenda also has a critical role to play. For example, its focus on improving the quality and quantity of apprenticeships will hopefully, over time, also help to ensure that young people in the UK are better equipped for the workplace and can compete on a more level playing field with migrant workers.

It is equally important that welfare reform efforts to help more disadvantaged groups in the labour market, such as the long-term unemployed, into employment start to bear fruit. The CIPD supports the aim of the Government's Work Programme to involve private and non-profit organisations in the delivery of bespoke training and work preparation to help those who find it harder to access the labour market get jobs. In addition, the CIPD is supporting the Government in the implementation of Universal Credit, which is designed to help people on benefits move incrementally into paid employment and make sure that work always pays.

Beyond employment and skills policy and recruitment practice on the ground, it is of course also important that immigration policy is fit for purpose and this report highlights a number of ways that employers believe current policy should be amended.

For example, a number of employers interviewed were unhappy with the impact of the Resident Labour Market Test and the requirement to advertise in Jobcentre Plus because it adds what they see as unnecessary bureaucracy and does not help them fill roles.

There are a number of other specific tweaks HR practitioners would like to see to policy (see below). However, their biggest gripe is the overall administrative burden created by immigration policy, with most employers having to employ the services of employment lawyers in order to ensure they are complying. Consequently, the CIPD would like to see the Migration Advisory Committee be given a role in overseeing the administrative impact of immigration policy.

Recommendations for employers:

- Explore the business case for investing in young people – and for a diverse workforce more generally.
- Consider your medium- and long-term resourcing needs – not just the here and now.
- Ensure that career progression opportunities are promoted for entry-level staff.
- Ensure you have effective workforce data so you understand the diversity of your workforce.
- Consider the risks associated with relying on too narrow a source of labour.

Recommendations for policy-makers

- Review the Resident Labour Market Test, including the requirement to advertise in Jobcentre Plus.
- Give the Migration Advisory Committee a role in overseeing the administrative impact of immigration policy.
- Freeze the current number of Tier 2 visas for the lifetime of this Parliament.
- Retain the shortage occupation route.
- Relax restrictions around extending visas, especially in relation to Tier 5 applicants by allowing them to switch to Tier 2.
- Re-open the post-study worker route for growth sectors, STEM (science, technology, engineering and maths) subjects.
- Remove the ‘cooling-off’ period for those earning £70,000 or more.

APPENDIX 1: A GUIDE TO THE UK'S IMMIGRATION SYSTEM

provided by Lewis Silkin

Overview of current and past UK immigration policy

The points-based system

The UK Border Agency points-based system consists of five tiers; each tier is devoted to a general category of migrant. Tier 1 is for migrants the UK Border Agency deems 'high value'. High-value migrants are not sponsored by any employer, but are authorised to work in the UK by virtue of their own skills and experience, talent, wealth or entrepreneurship. Tier 2 is devoted to sponsored skilled workers. Most UK employers are likely to engage with Tier 2 more than any other tier.

Tier 3 is not operational. It was envisaged for low-skilled workers. Student migrants to the UK fall under Tier 4. Student migrants must be sponsored by their academic institutions. Most students are able to work part-time during term time and full-time during holidays.

Tier 5 is for temporary workers. It encompasses schemes for migrants coming to the UK for up to two years, including schemes for employers to sponsor workers, for interns and exchanges, and for migrants coming to the UK under international law or agreements. Tier 5 also covers the Youth Mobility Scheme, which allows people under 30 years old from certain countries with which the UK has reciprocal arrangements to come to the UK and work without sponsorship.

Most dependent family members of points-based system migrants are able to work.

Several immigration categories fall outside the points-based system. EEA nationals and their family members, and settled migrants (those who have indefinite leave to remain) and their spouses or partners are not covered by the points-based system. These migrants are able to work in the UK, though Bulgarians and Romanians still need work authorisation.

Tier 1

The UK Border Agency has consistently narrowed the Tier 1 category – the category that authorises migrants to work without being sponsored by their employer – reducing the options for employment of non-EEA nationals outside of the Tier 2 category.

The main Tier 1 category was the Tier 1 (General) category, which initiated the UK Border Agency's rollout of the points-based system in June 2008. The UK Border Agency closed the Tier 1 (General) category to new applicants in April 2011. The Tier 1 (Post Study Work) category authorises non-EEA national graduates who studied in the UK to work without being sponsored by an employer. In April 2012, the UK Border Agency closed the Tier 1 (Post Study Work) category to new applicants.

Tier 2

The main immigration category for sponsoring skilled workers is Tier 2 of the points-based system. Employers must have a sponsorship licence in order to employ non-EEA nationals in the UK under Tier 2. A sponsorship licence enables an employer to issue Certificates of Sponsorship (COS) to non-EEA national workers. The workers use the COS to apply for their visas to the UK. A licensed sponsor must fulfil compliance, reporting and record-keeping duties.

Two main routes exist under Tier 2: Tier 2 (General) and the intra-company transfer route.

Tier 2 (General) is the route for migrants who are new to the company. A sponsor must meet the Resident Labour Market Test by advertising the role and ensuring that no settled UK workers are available to fill the role. Most jobs must be advertised via a government job search service and at least one other medium specified in the Standard Occupational Classification (SOC) code.⁵

The Migration Advisory Committee (MAC) is a non-governmental body sponsored by the UK Border Agency to advise on migration issues. In June 2012, the UK Border Agency put into effect the MAC's recommendation, of February 2012, that jobs with salaries of at least £70,000 and PhD-level jobs be exempted from the requirement to advertise the vacancy via a government job search service.⁶ Advertising in other media is still required to satisfy the Resident Labour Market Test for these jobs.⁷

A sponsor cannot reject EEA nationals for reasons not listed in the advertisement.⁸

Since April 2012, the Tier 2 (General) advertising requirement has been waived for Tier 4 student migrants with a UK degree switching to the Tier 2 category.⁹

⁵ Immigration Rules, paragraph 245GB(b) and Appendix A Table 11A; Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraphs 287–91.

⁶ Limits on Migration: Limit on Tier 2 (General) for 2012/13 and Associated Policies, Migration Advisory Committee, February 2012, paragraphs 9.35 and 9.38; Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraph 294.

⁷ Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraphs 290–92.

⁸ Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraph 298.

⁹ Immigration Rules, paragraph 245HD(d) and (f) and Appendix A Table 11A; Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraph 299(h).

The intra-company transfer route is for transferring employees from offices of the same company or a related overseas company. Advertising the role is not required.¹⁰ Since 6 April 2010, intra-company transferees have not been eligible for settlement in the UK.¹¹

In April 2010, the UK Border Agency split the intra-company transfer route into three subcategories: established staff, graduate trainee and skills transfer. The established staff route served to fill posts with established employees that would not otherwise be filled by resident workers.

On 6 April 2011, the UK Border Agency split the established staff subcategory further, into short-term and long-term subcategories. The subcategories of the intra-company transfer route are currently as follows:

- The short-term subcategory is for migrants who have worked for the company or a related company overseas for at least 12 months¹² and are staying in the UK for 12 months or less.¹³ The minimum salary is £24,000 or as per the SOC code, whichever is higher.¹⁴
- The long-term subcategory is for migrants who have worked for the company or a related company overseas for at least 12 months¹⁵ and are staying in the UK for up to six years total.¹⁶ The minimum salary is £40,000 or as per the SOC code, whichever is higher.¹⁷
- The graduate trainee subcategory is for graduates on accelerated promotion schemes. They must have worked for the same or a related company overseas for at least three months¹⁸ and can stay in the UK for a maximum of 12 months.¹⁹ The minimum salary is £24,000 or as per the SOC code, whichever is higher.²⁰ A sponsor can only bring five migrants to the UK under the graduate trainee subcategory each year.²¹
- The skills transfer subcategory is specifically for learning new skills from or transferring skills to the UK. There is no requirement to have worked for the same or a related company overseas for any duration. The maximum stay in the UK under this route is six months.²² The minimum salary is £24,000 or as per the SOC code, whichever is higher.²³

Certificates of Sponsorship and limits

The UK Border Agency imposed an interim cap on migration in July 2010 and a more permanent annual limit from April 2011. The effect of the limit was to split the COS into two kinds: unrestricted or restricted.

The UK Border Agency allocates a certain number of unrestricted COSs to each sponsor on an annual basis.²⁴ Unrestricted COSs can be assigned to intra-company transfer migrants, non-EEA nationals in the UK switching to Tier 2 from certain other immigration categories, new hires outside the UK with salaries over £150,000 and Tier 2 extension applicants.²⁵

Restricted COSs are called 'restricted' because the UK Border Agency has limited their availability to 20,700 per year.²⁶ A sponsor must request restricted COSs from the UK Border Agency as needed.²⁷ A sponsor is required to assign a restricted COS, rather than an unrestricted COS, for new hires from outside the UK with salaries under £150,000.²⁸

In a report published in January 2012, the MAC estimated that for every 100 non-EU migrants to the UK, there is a reduction in employment of 23 native workers.²⁹ The following month, the MAC published a report in which it backtracked slightly, stating that Tier 2 has become more selective in recent years and that the finding was based on all working-age non-EEA migrants, not just work-related migrants. The MAC also concluded that reducing Tier 2 migrants would not necessarily reduce the number of displaced non-migrant workers because Tier 2 migrants are authorised to come to the UK specifically for work.³⁰

The MAC recommended that the UK Border Agency maintain the existing annual limit of 20,700 on restricted COSs. The MAC reasoned that because only half the existing limit's capacity was being used, the limit would have to be reduced dramatically to affect migration. Such a dramatic reduction would adversely impact the UK's image as a business-friendly destination.³¹

The MAC also suggested that the UK Border Agency focus on the Tier 2 (Intra-company Transfer) route when seeking to reduce Tier 2 migrant numbers.³²

¹⁰ Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraph 331; see also Immigration Rules, paragraph 245GB(b) and Appendix A, paragraphs 73 to 75E.

¹¹ Immigration Rules, paragraph 245GF(d).

¹² Immigration Rules Appendix A, paragraph 74C.

¹³ Immigration Rules, paragraphs 245GC(a) and 245GE(a).

¹⁴ Immigration Rules, paragraphs 245GB(b) and 245GD(f) and Appendix A, paragraphs 75 and 75B.

¹⁵ Immigration Rules Appendix A, paragraph 74C.

¹⁶ Immigration Rules, paragraphs 245GC(c) and 245GE(c)–(f).

¹⁷ Immigration Rules, paragraphs 245GB(b) and 245GD(f) and Appendix A, paragraphs 75A and 75C.

¹⁸ Immigration Rules Appendix A, paragraph 74D(c).

¹⁹ Immigration Rules, paragraphs 245GC(a) and 245GE(a).

²⁰ Immigration Rules, paragraphs 245GB(b) and 245GD(f) and Appendix A, paragraphs 75B and 75C.

²¹ Immigration Rules Appendix A, paragraph 74D(b).

²² Immigration Rules, paragraphs 245GC(b) and 245GE(b).

²³ Immigration Rules, paragraphs 245GB(b) and 245GD(f) and Appendix A, paragraphs 75B and 75C.

²⁴ Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraph 243.

²⁵ Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraphs 240.

²⁶ Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraphs 237–9.

²⁷ Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraph 246.

²⁸ Tiers 2 and 5 of the Points-Based System – Sponsor Guidance, paragraph 238.

²⁹ Analysis of the Impacts of Migration, Migration Advisory Committee, January 2012, paragraph 4.43.

³⁰ Limits on Migration: Limit on Tier 2 (General) for 2012/13 and Associated Policies, Migration Advisory Committee, February 2012, paragraph 9.44.

³¹ Limits on Migration: Limit on Tier 2 (General) for 2012/13 and Associated Policies, Migration Advisory Committee, February 2012, paragraph 9.43.

³² Limits on Migration: Limit on Tier 2 (General) for 2012/13 and Associated Policies, Migration Advisory Committee, February 2012, paragraph 9.48.

Cooling-off and settlement

The UK Border Agency has instituted a cooling-off period for Tier 2 migrants: a Tier 2 migrant who leaves his Tier 2 employment in the UK, or switches out of Tier 2 from within the UK, is not eligible to apply to Tier 2 again until 12 months after the date that he can show he left the UK.³³ The cooling-off requirement was limited to Tier 2 (Intra-company Transfer) migrants when it was initially introduced on 6 April 2011. On 6 April 2012, the cooling-off requirement was extended to apply to all Tier 2 migrants.

An exception to the cooling-off restriction exists for migrants who have held a Tier 2 (Intra-company Transfer) visa in the short-term, graduate trainee or skills transfer subcategory, and who are applying to the Tier 2 (Intra-company Transfer) long-term subcategory. Also excepted are migrants who had Tier 2 (Intra-company Transfer) visas under the Immigration Rules in place before 6 April 2011, and who are applying to the long-term subcategory of the Tier 2 (Intra-company Transfer) visa.³⁴

The cooling-off requirement prevents a Tier 2 intra-company transfer migrant from switching to Tier 2 (General). The conjunction of the cooling-off period and the prohibition, discussed above, on Tier 2 (Intra-company Transfer) migrants settling in the UK, prevents a Tier 2 (Intra-company Transfer) migrant from settling in the UK without leaving and re-entering under another route. However, since 13 December 2012, long-term intra-company transfer migrants earning at least £150,000 have been eligible to extend their stay for up to nine years.³⁵

In April 2012, the Government imposed an annual salary threshold of £35,000 for Tier 2 (General) migrants to be eligible for settlement in the UK. The threshold applies to Tier 2 migrants granted leave after 6 April 2011 and applying for settlement before April 2018.³⁶ The threshold is set at the time of entry and adjusted for inflation and changes to average pay.³⁷

After six years in the UK, Tier 2 (General) migrants will have to either be eligible and apply for settlement or leave the UK.³⁸ This rule came into effect on 6 April 2012.

Required skill level

The UK Border Agency has consistently raised the minimum skill level required for a job to be eligible for sponsorship

under Tier 2. The minimum skill level for Tier 2 migrants was raised in April 2011 from National Qualifications Framework (NQF) level 3 to NQF level 4,³⁹ and was raised again from level 4 to NQF level 6 on 14 June 2012.⁴⁰

On the horizon: new salary and advertising requirements for sponsoring Tier 2 migrants

The UK Border Agency announced on 1 March 2013 that new salary thresholds will apply to Tier 2 from 6 April 2013. The Government intends to update the Practice Codes to reflect the new Standard Occupational Classification 2010 system. The following changes reflect the Government's intentions as of the date of writing.

New minimum salary rates will apply to each occupation. There will be one rate for 'new entrant' employees, including graduates switching from Tier 4 to Tier 2 and anyone under 25 years old at the time of initial Tier 2 application. A higher minimum rate will apply to experienced workers. New entrants will have to be paid the experienced worker rate if they extend their stay beyond three years and one month.

In addition to new minimum salary rates for each occupation, a new minimum threshold rate will apply to each Tier 2 category. Migrants must meet both the minimum salary rate for their occupation and the minimum salary rate for their category.

The new Tier 2 general salary threshold will be £20,300. The salary threshold for exemption from the requirement to advertise with a government job search service will be raised to £71,000. The salary threshold for exemption from the annual limit on restricted Certificates of Sponsorship and from the Resident Labour Market Test will be raised to £152,100.

The new Tier 2 intra-company transfer salary thresholds will be £40,600 for long-term staff and £24,300 for short-term staff, skills transfers and graduate trainees. The salary threshold for intra-company transfer migrants to be eligible to extend their stay in the UK for up to nine years will be raised to £152,100.

The threshold for settlement applications made by Tier 2 migrants on or after 6 April 2018 will be £35,500.⁴¹

³³ Immigration Rules, paragraphs 245GB(d)–(e), 245HB(g) and 245HD(k).

³⁴ Immigration Rules, paragraphs 245GB(e).

³⁵ Immigration Rules, paragraph 245GE(g).

³⁶ Immigration Rules, Appendix I.

³⁷ Immigration (Employment-related Settlement, Overseas Domestic Workers, Tier 5 of the Points-Based System and Visitors) – Written Ministerial Statement, Secretary of State for the Home Department Theresa May, 29 February 2012.

³⁸ See Immigration Rule 245HE(e).

³⁹ Statement of Changes in Immigration Rules HC 863, 16 March 2011, paragraph 150, changes to Rules 74B(a) and 77E(a).

⁴⁰ Statement of Changes in Immigration Rules, Cm 8337, April 2012, paragraph 5, changes to Rules 74B(a) and 77E(a).

⁴¹ Home Office Statement of Intent: Codes of Practice for skilled workers, 1 March 2013.

APPENDIX 2: LEGAL OPINION ABOUT THE USE OF ENGLISH IN THE WORKPLACE

provided by Lewis Silkin

Use of English in the workplace

Insisting that all staff speak English all the time could amount to indirect race discrimination. Indirect race discrimination occurs when an employer applies a general provision, criterion or practice which puts an individual and other people of the same race as that individual at a disadvantage when compared with people of a different race and the provision, criterion or practice is not a proportionate means of achieving a legitimate aim. In this context, race includes nationality and ethnic origin. So, to apply the definition to this situation would mean that a policy that everyone must speak English all the time would disadvantage people from countries where English is not the first language. In some circumstances a requirement to speak English might be a proportionate means of achieving a legitimate aim – which would mean that it is not a discriminatory policy. An example might be where staff are dealing with customers, such as on a reception desk. However, even in this situation an occasional comment by one receptionist to another in a different language is unlikely to be a problem for employers (and therefore a complete ban may be disproportionate) and a blanket ban on speaking other languages, even in social areas, is very unlikely to be a proportionate means of achieving a legitimate aim.

It should be possible to come up with a more nuanced policy which meets the employer's needs and is not indirectly discriminatory provided the employer is clear about its aims and whether what it is doing is proportionate. For example, for care workers in a home to speak to one another in a language other than English while they are assisting a resident who only speaks English is likely to be rude and distressing to the resident. It is likely that a requirement that workers speak English in this situation would be a proportionate means of achieving a legitimate aim – the aim being to ensure that residents are not distressed or marginalised. However, a policy that went wider than this might not be proportionate.

Requiring all staff to speak English all the time is clearly different from a requirement that staff can speak adequate English in order to enable them to do their jobs, which is likely to be a proportionate means of achieving a legitimate aim.

Dismissing a migrant employee

Immigration and employment laws are somewhat at odds in relation to dismissal. An employer trying to comply with immigration law and avoid fines by dismissing an employee who does not have the right to work in the UK, or cannot provide documentation of that right, can fall foul of employment law. Employers can minimise the risk of successful employment claims by following steps to ensure that dismissal is fair.

For a dismissal to be fair, the employer will first need to establish that the reason for the employee's dismissal was one of the five fair reasons for dismissal. Fair reasons for dismissal include breach of a statutory restriction, conduct and 'some other substantial reason of a kind to justify the dismissal' (Employment Rights Act 1996).

An employer may be able to rely on the 'breach of a statutory restriction' reason if it can show that the employee does not have the right to work in accordance with Section 15 of the Immigration, Asylum and Nationality Act 2006. However, this is a strict test and does not depend upon what the employer believes (whether reasonably or otherwise) but only on whether or not the employee actually has the right to work.

Alternatively, an employer might be able to dismiss for 'some other substantial reason' if it can show that it genuinely and reasonably believed that the employee did not have the right to work in the UK.

An employer may be able to rely on conduct as a fair reason for dismissal if the employer requests documentation of the individual's right to work in the UK and the employee fails to comply with this reasonable request. Failure to produce documentation of one's right to work in the UK may also constitute breach of contract if the employment contract includes a clause obligating the employee to provide the employer with documentation of his or her right to work in the UK.

In any event, the employer should conduct an investigation.

If, following a thorough investigation, the employer concludes that a fair reason for dismissal exists, the employer must carry out a fair procedure before dismissing the employee. The employer should follow any internal dismissal procedure that might apply. The employer should also write to the employee after completing the investigation. The letter should invite the employee to a meeting, set out the reasons why it is considering taking action and warn the employee that a possible outcome of the meeting could be dismissal. The employee should be given a reasonable opportunity to make representations and ask questions in the meeting. It would be good practice to allow the employee to be accompanied by a fellow worker or a trade union representative at this meeting. Following the meeting, the employer should inform the employee of its decision in writing. The employee should be given a right of appeal against the employer's decision.

An employer dismissing an employee in this situation should pay the employee in lieu of his or her notice entitlement (rather than asking him or her to work it) to minimise the risk of penalty under the UK Border Agency's Prevention of Illegal Working regime.

Discrimination laws relating to recruitment of non-EEA national migrants

To minimise the risk of breaching discrimination laws, employers should avoid asking about candidates' right to work in the UK until they have completed their recruitment and selection process. The employer should then ask its preferred candidate whether he or she has the right to work in the UK. The employer should ask every successful candidate this question and must not only ask this of candidates that look 'foreign' as this may give rise to a discrimination claim. If a candidate does not have the right to work in the UK, the employer can consider whether or not to sponsor the person to work in the UK. It is not obliged to do so if it needs to recruit someone urgently.

Employers must be careful to treat all candidates the same and not treat candidates differently because of assumptions based upon the applicant's appearance, accent, race or national origin. However, an employer could remind all candidates at an early stage that the successful candidate will need to have the right to work in the UK and be able to produce original documents to demonstrate it.

In any case, the employer should make the offer of employment conditional upon the right to work in the UK. The employment contract should also make it a requirement that the employee provide documentation of his or her right to work in the UK in accordance with the UK Border Agency's requirements. If the employer is a sponsor, the employment contract should include language relating to the migrant's responsibility to provide the employer with the information it needs to comply with its sponsorship duties, for example changes in contact details.

If an individual with restricted rights to work in the UK has been recruited, the employer must not treat him or her less favourably than any other employee when making decisions about training, promotion, benefits or anything else. An individual who loses their rights to work in the UK may be dismissed but the employer should follow a fair procedure (see above).

Communication and signage

Having signs only in English is potentially indirect race discrimination but in most cases this will be a proportionate means of achieving a legitimate aim because this will be the language that most workers are able to speak (see discussion of English in the workplace above for an explanation of indirect race discrimination). Putting in additional signs in another language might reduce the risk of claims from anyone who speaks the second language; however, there is a risk that it increases the risk of claims from nationals of a different country. For example, if a workforce is 60% British, 30% Polish, 5% Spanish and 5% other and the employer chooses to put up signs only in English and Polish, that might risk a claim from the Spanish speakers (and possibly others). The employer should weigh up the number of workers who speak the different languages (as first and second languages), the cost of the signs, how important the signs are (for example do they relate to health and safety issues or do they just point the way to the canteen?) and the feasibility of having signs in multiple languages before deciding what choices about signs it could defend as being proportionate means of achieving a legitimate aim.

REFERENCES

CAMERON, D. (2011) Speech by David Cameron on immigration in Romsey, Hampshire, 14 April. London: Conservative Party.

Available at: http://www.conservatives.com/News/Speeches/2011/04/David_Cameron_Good_immigration_not_mass_immigration.aspx [Accessed 11 March 2013].

CHARTERED INSTITUTE OF PERSONNEL AND DEVELOPMENT. (2010) *Labour market outlook: summer 2010* [online].

London: CIPD. Available at: <http://www.cipd.co.uk/hr-resources/survey-reports/labour-market-outlook-2010-august.aspx> [Accessed 11 March 2013]

CHARTERED INSTITUTE OF PERSONNEL AND DEVELOPMENT. (2011) *Labour market outlook: summer 2011* [online].

London: CIPD. Available at: <http://www.cipd.co.uk/hr-resources/survey-reports/labour-market-outlook-summer-2011.aspx> [Accessed 11 March 2013]

CHARTERED INSTITUTE OF PERSONNEL AND DEVELOPMENT. (2012) *Resourcing and talent planning: annual survey report* [online].

London: CIPD. Available at: <http://www.cipd.co.uk/hr-resources/survey-reports/resourcing-talent-planning-2012.aspx> [Accessed 11 March 2013]

CHARTERED INSTITUTE OF PERSONNEL AND DEVELOPMENT. (2013) *Labour market outlook: winter 2012–2013* [online].

London: CIPD. Available at: <http://www.cipd.co.uk/hr-resources/survey-reports/labour-market-outlook-winter-2012-13.aspx> [Accessed 11 March 2013]

HOME DEPARTMENT. (2012) *Statement of changes in immigration rules* [online]. Cm 8337. London: The Stationery Office.

Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2012/cm8337.pdf?view=Binary> [Accessed 11 March 2013].

HOME OFFICE. (2012) *Immigration (employment-related settlement, overseas domestic workers: Tier 5 of the points-based system and visitors) – WMS. This written ministerial statement was laid in the House of Commons on 29 February 2012 by Theresa May, and in the House of Lords by Lord Henley* [online]. London: Home Office. Available at: <http://www.homeoffice.gov.uk/publications/about-us/parliamentary-business/written-ministerial-statement/employment-related-settle-wms/> [Accessed 11 March 2013].

HOME OFFICE. (2013) *Statement of intent: codes of practice for skilled workers* [online]. London: Home Office.

Available at: <http://www.homeoffice.gov.uk/publications/immigration/soi-cop-skilled-workers?view=Binary> [Accessed 11 March 2013].

HOUSE OF COMMONS. (2011) *Statement of changes in immigration rules laid before Parliament on 16 March 2011 under section 3(2) of the Immigration Act 1971* [online]. (HC 863). London: The Stationery Office. Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2011/hc863.pdf?view=Binary> [Accessed 11 March 2013].

MIGRATION ADVISORY COMMITTEE. (2012) *Analysis of the impacts of migration* [online]. London: Migration Advisory Committee.

Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/27-analysis-migration/01-analysis-report/analysis-of-the-impacts?view=Binary> [Accessed 11 March 2013].

MIGRATION ADVISORY COMMITTEE. *Limits on migration: limit on tier 2 (general) for 2012/13 and associated policies: February 2012* [online].

London: Migration Advisory Committee. Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/limit-tier2-settle/tier2-limit-report?view=Binary> [Accessed 11 March 2013].

MILIBAND, E. (2012) Speech by Ed Miliband given with the Institute for Public Policy Research, 22 June. London: Labour Party.

Available at: <http://www.labour.org.uk/to-deal-with-peoples-concerns-on-immigration-we-must-change-how-> [Accessed 11 March 2013].

OFFICE FOR NATIONAL STATISTICS. (2010) *Standard occupational classification 2010* [online]. (SOC 2010).

Newport: ONS. Available at: <http://www.ons.gov.uk/aboutstatistics/classifications/current/soc2010/index.html> [Accessed 11 March 2013].

UK BORDER AGENCY. (2013) *Immigration rules* [online].

London: UK Border Agency. Available at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/> [Accessed 11 March 2013].

UK BORDER AGENCY. (2012) *Tier 2 and 5 of the points-based system: guidance for sponsors* [online]. London: UK Border Agency.

Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/guidancefrom31mar09/guidance-t251.pdf?view=Binary> [Accessed 11 March 2013].

RESPONDENT PROFILE

Data are weighted by sector, organisation, size and industry.

Table 2: Breakdown of the sample, by sector (%)

| Sector | Winter 2012-13 | Autumn 2012 | Summer 2012 | Spring 2012 | Winter 2011-12 |
|--------------------------|----------------|-------------|-------------|-------------|----------------|
| Private | 73 | 62 | 62 | 62 | 62 |
| Public | 21 | 31 | 31 | 31 | 31 |
| Voluntary/not-for-profit | 6 | 7 | 7 | 7 | 7 |

Table 3: Breakdown of the sample, by number of employees in organisation (%)

| Number of employees | Winter 2012-13 | Autumn 2012 | Summer 2012 | Spring 2012 | Winter 2011-12 |
|---------------------|----------------|-------------|-------------|-------------|----------------|
| 2-9 | 13 | 13 | 13 | 13 | 13 |
| 10-49 | 14 | 6 | 6 | 6 | 6 |
| 50-99 | 6 | 5 | 5 | 5 | 5 |
| 100-249 | 8 | 12 | 12 | 11 | 11 |
| 250-499 | 4 | 6 | 7 | 7 | 7 |
| 500-999 | 10 | 9 | 9 | 9 | 9 |
| 1,000-4,999 | 22 | 19 | 18 | 19 | 19 |
| 5,000-9,999 | 8 | 10 | 10 | 10 | 10 |
| 10,000-19,999 | 3 | 7 | 7 | 7 | 7 |
| 20,000 or more | 12 | 13 | 13 | 13 | 13 |

Table 4: Breakdown of the sample, by industry (%)

| | Winter 2012–13 | Autumn 2012 | Summer 2012 | Spring 2012 | Winter 2011–12 |
|--|-------------------|----------------|----------------|----------------|-------------------|
| Manufacturing and production | 14 | 14 | 14 | 14 | 14 |
| Agriculture, forestry and fishing | 0 | 0 | 0 | 0 | 0 |
| Manufacturing | 10 | 10 | 10 | 9 | 10 |
| Construction | 3 | 3 | 3 | 3 | 3 |
| Mining and extraction | 1 | 1 | 1 | 1 | 1 |
| Energy and water supply | 1 | 1 | 1 | 1 | 1 |
| Education | 5 | 5 | 5 | 5 | 5 |
| Primary and secondary schools | 2 | 2 | 2 | 2 | 2 |
| Further and higher education | 3 | 3 | 3 | 3 | 3 |
| Healthcare | 8 | 8 | 8 | 8 | 8 |
| NHS | 6 | 6 | 6 | 6 | 6 |
| Other private health care | 1 | 1 | 1 | 2 | 1 |
| Voluntary and not-for-profit sectors | 6 | 6 | 6 | 5 | 6 |
| Private sector services | 52 | 52 | 52 | 52 | 52 |
| Hotels, catering and leisure | 2 | 2 | 2 | 2 | 2 |
| IT industry | 3 | 3 | 3 | 4 | 3 |
| Transport and communications (including media) | 4 | 4 | 4 | 4 | 4 |
| Consultancy services | 15 | 15 | 15 | 14 | 15 |
| Finance, insurance and real estate | 9 | 9 | 9 | 9 | 9 |
| Wholesale and retail trade | 7 | 7 | 7 | 6 | 7 |
| Other business services | 12 | 12 | 12 | 12 | 12 |
| Public administration and defence | 16 | 16 | 16 | 16 | 16 |
| Public administration – central government | 5 | 5 | 5 | 5 | 3 |
| Public administration – local government, including fire services | 8 | 8 | 8 | 8 | 10 |
| Armed forces | 1 | 1 | 1 | 2 | 1 |
| Quango | 1 | 1 | 1 | 1 | 1 |

Table 5: Breakdown of the sample, by region in which LMO employers' answers apply (%)

| | Winter 2012–13 | Autumn 2012 | Spring 2012 | Winter 2011–12 |
|--------------------------|---------------------------|----------------|----------------|-------------------|
| North | 15 | 16 | 16 | 16 |
| North-west of England | 6 | 6 | 7 | 7 |
| North-east of England | 3 | 2 | 3 | 3 |
| Yorkshire and Humberside | 6 | 5 | 5 | 6 |
| Midlands | 13 | 13 | 15 | 12 |
| West Midlands | 4 | 4 | 5 | 4 |
| East Midlands | 4 | 4 | 6 | 4 |
| Eastern England | 5 | 4 | 4 | 4 |
| South | 33 | 37 | 35 | 30 |
| London | 16 | 17 | 18 | 14 |
| South-west of England | 6 | 7 | 7 | 4 |
| South-east of England | 11 | 13 | 10 | 12 |
| Scotland | 7 | 4 | 8 | 8 |
| Wales | 3 | 4 | 4 | 3 |
| Northern Ireland | 3 | 2 | 1 | 2 |
| Channel Islands | 0 | 0 | 0 | 0 |
| All of UK | 26 | 27 | 20 | 27 |



Chartered Institute of Personnel and Development
151 The Broadway London SW19 1JQ UK
Tel: +44 (0)20 8612 6200 Fax: +44 (0)20 8612 6201
Email: cipd@cipd.co.uk Website: cipd.co.uk

Incorporated by Royal Charter Registered charity no. 1079797