**Undocumented migrants, employers and sanctions**

The presentation draws on the results of a two year research project (UndocNet) funded by the Economic and Social Research Council (ESRC)[[1]](#footnote-1) based at the University of Manchester and London Metropolitan University. The researchers conducted 55 in depth interviews with undocumented migrants and 24 with employers whose countries of origin were China, Bangladesh and Turkey. The aim of the research was to see how those without documents navigated their lives and in particular their access to work; to understand what networks they relied on and whether these served to advantage or trap them. This contribution focuses on employer sanctions, setting out how they work and what their impact has been on the employment conditions of those without documents.

**Overview**

**Who is undocumented?**

Undocumented migrants include, those who have never had permission to enter or remain in the UK; those whose leave to remain has expired (overstayers); those who have the legal right only to do certain types of work – for example domestic workers who can only work for the employer who brought them into the country; and those whose papers are incorrect or false. Migrants can also ‘become’ undocumented where the immigration rules are changed. There are no exact figures for the number of undocumented migrants in the UK, but the available evidence says that it is somewhere between 400,000 and 800,000.

**The sanctions regime**

Immigration law provides for sanctions, both in the form of fines and imprisonment, against those found employing undocumented migrants. There are also new sanctions against the migrants themselves, introduced under the Immigration Act 2016. Sanctions against employers found to have been employing migrants without a right to work or in breach of their work visas were first introduced in 1997. The penalty was £5,000 for each person employed and initially there were few prosecutions. In 2008 the fine was increased to £10,000 for each migrant found to have been employed in breach of the immigration rules. In 2014 the fine per worker was increased to £20,000. The Immigration Act 2016 went further by introducing prison sentences on employers (of up to five years) together with an unlimited fine in those cases where the employer was found guilty of employing someone whom they knew or had ‘reasonable cause to believe’ did not have the right to work in in the UK. Ignorance is no longer a defence. Immigration officers also now have powers to enter a business’ premises, search for and retain evidence and close a business for 48 hours.

The sanctions regime is generally activated by a raid on a workplace where the authorities believe undocumented migrants are being employed. Employers are said to be targeted based on intelligence gathering and raids, where they take place, should be accompanied by search warrants. However, a report by the Independent Chief Inspector of Borders and Immigration published in 2015 stated that many workplace raids had not been driven by intelligence and that some types of employers appeared to be more likely targets. It also reported that generally search warrants were not produced and there was evidence of an unlawful use of power of entry. The available data confirms that immigration authorities and the police appear to profile employers, based on their ethnicity and country of origins. The sanctions regime seems to focus on specific types of employer, in particular sectors. Looking at the available data suggests that some employers are more likely to be raided than others, although, given the numbers of undocumented migrants in the UK it is unlikely that these employers are the main or only offenders. But targeting minority ethnic employers with very visible raids encourages assumptions that they are more likely to break the law than other employers. As an example of the way that raids take place, in 2013 we analysed the available data at the time. It showed:

“Between July and the end of September 2013, 90 workplaces were raided of which 71 are identifiable by name as Indian, Bengali or Chinese restaurants or takeaways. Sanctions, in the form of raids on workplaces appear, in the UK, to be falling almost entirely on minority ethnic owned businesses.” (Bloch et al., 2014: 3)

The government argues that sanctions are justified on the basis that:

‘Illegal working often results in abusive and exploitative behaviour, the mistreatment of illegal migrant workers, tax evasion and illegal housing conditions. It can also undercut legitimate businesses and have an adverse impact on the employment of people who are lawfully in the UK.’ (Home Office, 2014: 3).

The latest statistics published by the Home Office (for July to September 2016) show that there were 662 raids, a total of 850 workers without a right to work were found; and the employers concerned were issued with fines amounting to £10.24m. This involved a enormous use of police and immigration personnel for very low results. But it did result in a very high level of financial penalty, although there is no evidence as to how many fines are paid, as employers can make deals with the authorities to avoid or reduce the penalty.

Employers in practice assess the risks in deciding whether to hire those without documents. This may include only employing a few undocumented migrants at a time; employing them for short periods only; or employing only for jobs where there is a clear skills shortage where taking the risk is worthwhile. But there are also obligations which employers recognise which drive them to employ the undocumented, despite the risks. This can include obligations as family members or to members of the same community in their origin country; or simply as human beings who have themselves suffered discrimination and lack of access to work, for whom offering work to those in the most marginal and vulnerable positions is a political imperative for them. Sanctions cannot obliterate these realities.

In 2009, and after the UK had introduced employer sanctions, **Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals was introduced. The Directive contained many provisions similar to those already in the UK legislation but the UK government decided that it would not opt into the directive. A number of reasons were given, including that it imposed additional administrative burdens. But a key argument against the Directive was that it obliged employers to pay for the work that undocumented migrants had done. The government gave the following as a reason for not adopting the Directive that it:**

‘guaranteed additional rights to illegally-staying employees, including provision of back payments where an employee has earned less than the minimum national wage, which would be difficult to administer and would send the wrong message by rewarding breaches of immigration legislation.’ (Written ministerial statement laid in the House of Commons, 24 May 2011).

**The impact of sanctions on workers**

From 2016 there are also new sanctions on workers (in addition to deportation). Someone subject to immigration control who is found working in the UK while disqualified and who ‘at the time, he or she knows or has reasonable cause to believe that he or she is disqualified from working because of his or her immigration status’ can be imprisoned for up to six months and/or have an unlimited fine imposed. Additionally any income earned as a result of illegal working may be seized as the proceeds of crime.

Undocumented migrants also use whatever strategies they have to try to avoid being caught. Examples include making sure that they always have an exit route from their work station or choosing to work in sectors where they believe the chances of raids are less severe, for example in mobile workplaces like construction or in domestic work where there is less likelihood of raids in private households.

The undocumented migrants whom we interviewed presented a different story from that of government. They do not feel that the law operates to protect them in any way. Sanctions add to the costs of hiring labour and employers include this in their calculation of labour costs. The result is that the higher the risk of workplace raids to the employer the lower their wages. The following statements from some of those interviewed in the research project show this:

‘Some of the employers were too afraid to employ you if you don’t have papers; others didn’t really mind. For the bosses who decided to hire me even though they knew that I had no papers, it was because they paid me less, that it was cheaper to hire me than some who has status’ (Fung, Female, China)

‘They know we are weak. We are different in all ways. Even with regard to hours worked. We do 14–15 hours every day with less pay … it is exploitation. We are weak … [the employer] … is getting cheap labour, saves him taking another’ (Fadi, Male Bangladesh)

**Increases in sanctions**

Since the change to the law in 2014 there has been a large increase in the number of penalties issued and it is clear that there is a disjuncture between the real impact of sanctions and stated policy aims, which are said to including protecting workers from exploitative conditions. Raids appear to fall disproportionately on some minority ethnic communities; there is little evidence that their impact has been either to reduce the numbers of undocumented migrants or to deter employers from employing them. What sanctions have done is drive down pay, worsening even further the working conditions of those who are undocumented. In turn they have become even more attractive to employers seeking to reduce labour costs.

Sanctions are now part of a growing arsenal of immigration tools which now include possible imprisonment of employers and of undocumented migrants. They extend beyond the workplace, for example, to obligations on landlords to check on the immigration status of prospective tenants.

**Why sanctions are unjust**

There is a strong body of opinion against employer sanctions. They do not work, migrants work without permission simply because there is no alternative. The things that have driven them to migrate do not disappear simply because there are sanctions. But it not just that they do not work - they promote community tensions; they associate some communities with ‘illegality’; they appear to endorse the unlawful use of powers by the police and immigration authorities and this then seeps through to how they deal with other communities and with those who are seen as ‘undesirable’ whether they be political activists, trade unionists on strike or minority groups fighting for the right to be treated equally and fairly. These factors damage society and affect us all. This has led to unions (as well as the main employer organisations) opposing sanctions. Research confirms that the very fact that sanctions exist results in more exploitative working relationships. It also finds that workers are less likely to report employment and health and safety violations when they are undocumented. They are also less likely to join trade unions. The experience in the USA (where sanctions were introduced in the 1980s) is that they have been used to bust union organisation. Employers can ‘report’ themselves to the authorities, have this taken into account when there is consideration of a sanction, but also they can have those they consider as ‘undesirables in the workplace, deported. Sanctions also push workers into ever more informal work, where it is based on just a few hours a week, often conducted during very unsocial hours. Undocumented workers need to work and whatever the conditions they may feel that they have no alternative but to accept what they are offered, even if it makes abnormally low wages or long hours. Workers fall further into exploitative working conditions with lowered wages and threats to report their presence on the territory, particularly when they stand up against their employer.

This paper therefore argues for the law to be changed and for sanctions not to be used, neither against employers and workers. It also argues for a change to both immigration and employment law so that undocumented migrants are no longer excluded from employment rights. The current system effectively challenges the rights of all workers, not just those who are undocumented as it encourages employer mal-practice and the avoidance of employment legislation. It creates fear and distrust both between migrants and non-migrants and also within migrant communities. It fosters the idea of the ‘good’ migrant and the ‘bad’ migrant and encourages the viewpoint that the ‘bad’ migrant (who is undocumented) should not have employment rights.

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1. Grant reference ES/I037490/2 [↑](#footnote-ref-1)