

UNION DECLINE AND THE LACK OF EMPLOYMENT ADVICE FOR MINORITY ETHNIC WORKERS IN THE UK: CAN COMMUNITY SUPPORT ORGANISATIONS HELP TO FILL THE GAP?

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INTRODUCTION

Since the 1970s, there has been little academic work on black and minority ethnic (BME) communities and their relationships with trade unions and/or other work-related organizations yet racism, discrimination in the labour market, migration and social exclusion are issues that have become increasingly central to social science and politics. Research has shown that tackling social exclusion requires that all members of communities have equality of access to work, housing, services and political participation but in the context of work, this remains an aspiration. Arguably, as major institutions of civil society and key agents of inclusivity in and beyond the workplace, trade unions are uniquely placed to work with BME workers and BME communities who are seeking to challenge social exclusion. Yet, although some unions have made inroads into forming alliances and coalitions with BME community groups, to date, these initiatives are few (and very new) and have been little analysed in the UK (for an exception see the work of Perrett and Martínez Lucio 2006). Trade unions are the most significant representative and collective organisations in the UK, representing some six and a half million members, of which six per cent are from BME groups - yet 69 percent of workers have no union representation. To whom do these workers turn to for problems at work and what advice is available to them?

Some seek help from Citizens Advice Bureaux and others from Law Centres or other local advice agencies, but others do nothing at all (Pollert 2007: 22). A survey of 501 workers with employment problems found that BME workers in workplaces where the majority of workers are from an ethnic minority, are more likely than others to seek help from friends and family (Pollert and Charlwood 2008: 45). Other research (Fitzgerald and Stirling 2004; Holgate 2004) has also noted, but not investigated, the importance of 'community' to different groups of BME workers and the steps taken by key actors to demonstrate mutual benefits of community and trade union joint working (Perrett and Martínez Lucio 2006). This paper builds upon this previous research by focusing on 'communities' (rather than trade unions) as places to access support for problems at work – an area that has, until recently, received little attention. The paper will question whether local community-based organizations can or do play a role in providing support for workers from minority ethnic communities who have problems at work.

METHODS AND DATA COLLECTION

This is an ongoing 3-year Economic and Social Research Council funded research project¹ and we will draw on data from the first 18 months of research from over 120 in-depth face-to-face interviews with key respondents and individual workers in 3 local communities. The key respondents include people working in third sector organizations such as Law Centres and other advice and advocacy organizations like Citizens Advice, local solicitors, community organizations; faith groups and local council representatives. Individual workers have also been interviewed to understand how they respond when faced with a problem at work and where they turn for help or advice. We are interested in exploring how workers navigate the way through social networks and the extent to which they use specific networks within their communities.

In an attempt to understand the social networks used and the context in which people live their lives the research focuses on three London boroughs. The boroughs provide a geographical research framework as useful contextual, quantitative data is collated at this scale (e.g. Census

¹ ESRC grant: Influences of identity, community and social networks on ethnic minority representation at work. RES-062-23-0464

and Labour Force Survey) and community activity and support networks are often found organised at the scale of local boroughs. We have chosen to conduct in-depth qualitative case studies of three locally based ethnic groups, Kurds in Hackney, South Asians (originating from the Indian sub-continent) in Ealing and Black Caribbeans in Lambeth. We have specifically chosen these for a number of reasons; in Ealing and Lambeth the ethnic groups represent the largest minority ethnic group in the boroughs with long-standing and well-established social networks. The Kurdish communities in Hackney, although not the largest, represent a significant under-researched ethnic group and are a new migrant and refugee community.

THE PAUCITY OF ADVICE FOR WORKERS WITH PROBLEMS AT WORK

There is substantial evidence that workplace problems among British workers are widespread. In 2001, the British Worker Representation and Participation (BWRP) survey found 38 per cent of respondents had problems at work (Gospel and Willman 2003). Other surveys suggests the figures are higher: in one study, 49 percent reported that they had experienced one of ten problems cited (Pollert and Charlwood 2008) and in another, 42 percent (Casebourne et al. 2006). Unionised workers can seek support with their trade union – but these are now a minority: in 2007, 28 per cent of employees were union members. In the private sector, membership fell to just 16 per cent (Mercer and Notley 2008). Collective bargaining coverage has plummeted from 85 per cent of employees in the mid-1970s (Milner 1995), to around 30 per cent and, in the private sector, which comprises 80 per cent of employment (Labour Market Trends 2006), it is only 20 per cent (Mercer and Notley 2008). The decline in unionisation and union recognition is especially marked in small workplaces with less than 25 employees (Brown and Nash 2008; Kersley et al. 2005). In the UK, if a worker is not a union member, he or she cannot approach a union representative for help with an individual grievance, even if their workplace is covered by a collective bargaining agreement. However, the majority of UK workplaces are now not covered.

Workers' poor knowledge and understanding of employment rights has been well-documented (Casebourne et al. 2006; Meager et al. 2002; West Midlands Low Pay Unit 2001). Information and advice is uncoordinated and spread across informal help, libraries, the internet (which has major problems, since it disadvantages poorer people without home internet access and printing facilities, (see Pollert 2005), the non-profit sector, telephone help-lines, equality bodies, the Advisory, Conciliation and Arbitration Service (Acas)² solicitors and other legal advisers. So where, in practice, do the non-unionised go? Many go to the CAB, a charity which provides free legal advice on a range of problems, including employment, and some research suggests that this is the first 'port of call' for the majority of workers with employment problems (Genn 1999; Meager et al. 2002). Its precarious and limited resources, however, belie this central role (Citron 1989) and while the CAB has wide coverage across Britain (in 2006/2007 there were 433 bureaux) only 144 of these had an adviser with specialist knowledge of employment law (paid and/or voluntary) – just 33 per cent. Thus, the majority of CABs do not have advisers with more than a general knowledge of employment rights and most advisers are part-time volunteers. Among 124 CABs with employment specialists included in a recent survey of advisers' work, only 12 bureaux had an immigration specialist (Pollert et al. 2008).

Another route is Law Centres. However, there are just 64 across the UK, 45 percent of which are in London. Like the CAB, they provide free legal advice, including employment law advice, and they employ specialist, professional advice (solicitors). The TUC COVE survey of advice workers' experience of helping workers with problems in the CAB and Law Centres has highlighted the resource crisis facing these voluntary sector organisations. Core funding, which came from either local councils, or the Legal Services Commission (LSC), was inadequate: over three-quarters of Law Centres had experienced cuts in real terms (including static funding) from the LSC and from local councils in the three years prior to interview and over half of CABs had also experienced cuts in real terms (i.e. both static funding and decreases) from the local councils and the LSC.

² While the role of Acas used primarily to be in conciliating in collective disputes, with the decline in collective disputes its work has become increasingly engaged with individual disputes. As well as giving individual advice it has a statutory duty to attempt conciliation before Employment Tribunal applications go to a hearing.

SO WHERE DO WORKERS GO WHEN THEY HAVE A PROBLEM AT WORK?

There is thus a paucity of advice for all workers who have problems at work. But according to a recent survey, minority ethnic workers (along with other groups, such as those with caring responsibilities and disabled workers) find it significantly harder to get advice than others. This is worrying, considering that only a little over half of all respondents reported that they found it 'easy or very easy to obtain advice' (Pollert and Charwood 2008: 2). This section will look at what action different groups of minority ethnic workers have taken when trying to resolve their difficulties. What resources do they use and where are these based? To what extent do workers rely on social networks within their local communities and what do they think of the employment advice they receive? Due to space limitation our focus in the paper will be primarily from the interviews with key respondents rather than workers themselves³.

Trade unions and individual employment advice

In interviews with advisors working for community organisations it became clear that there are very few links between advice agencies and trade unions. Those few links that there were tended to be over specific campaigns like organising against far right candidates in elections, rather than in longstanding and sustainable relationships. Few of the links, in any case, related to employment matters. Overall, it was the view of community advice workers that trade unions were failing their members on individual representation. While in some cases, the expectation of the ability of lay reps to deal with complex cases was perhaps too high, advisors were able to point to numerous cases where workers had simply felt 'let down' by their unions. As one CAB advisor in Lambeth noted:

It's on a weekly basis, we get people come in through the door with employment rights enquiries, and they're trade union members...perhaps they've lost confidence or don't trust their rep...sometimes there are complaints like the local reps are too close to the management, that's a typical one. Sometimes people will come to us because they have actually gone through all the stages with the union and the union have dropped their case and essentially they're on their own. (L13, employment specialist, CAB)

Unions representatives however respond to these comments by arguing that union members sometimes have unrealistic expectations about what can be done in their cases and that they tend to 'shop around' to see what different advice they are given. One interviewee, Maggie⁴, a black woman working for local government, had become a shop steward after having a problem at work and going to her union for assistance. Although her issue was not resolved and she was not happy with the way her case was dealt with, she became active in the union because she wanted to help people like herself. She explained how, since becoming a union rep, she now had a much clearer understanding of the difficulties reps face and how it wasn't always possible to resolve the issues in the way that members expect:

I mean I wasn't happy with Unison at the time [in dealing with her discrimination case]...I know it's not easy for them [union reps] but at the time...It's only now, because I'm more involved with the meetings, and stuff like that, I am a lot more aware of what they actually have got to deal with. And they do it voluntary as well. Do you know what I mean? It's like I have to take my cap off to them, but at the time I just felt that Unison really let me down, and I don't think that they advised me very well either. (L15, Maggie, Black British⁵ female, local government worker)

While it is likely that a percentage of union members will not be happy with the advice or support they get from their unions, there does appear to be a particular issue with regards to cases of discrimination. As a Law Centre Advisor explained;

It doesn't matter the size, trade unions in my experience just do not want to get involved in discrimination cases. Either there's a conflict of interest or they're very labour intensive. And I

³ For information on interviews with workers see: Holgate, J, Pollert, A and Keles, J (2009) 'The influence of identity, 'community' and social networks on how workers access support for work-based problems'. Paper presented at the International Labour Process Conference, Edinburgh, Scotland, 6-8 April 2009. Keles, J, Holgate, J and Pollert, A (2009) 'To whom do I turn when I am invisible? The experiences of Kurdish workers who have problems at work'. Paper presented at the British Sociological Association Annual Conference, Cardiff, 15-17 April 2009.

⁴ All names are anonymised.

⁵ In all cases we use the descriptions given by interviewees themselves to describe their ethnicity.

suspect their resources are more in terms of collective rights and bargaining rather than individual cases. (L5, employment solicitor, Law Centre)

Clearly unions, as most organizations, will have limited resources available to spend on legal cases, but it is also understandable that those groups of workers subjected to discrimination, should expect representation and that they are likely to be aggrieved if it is not received. Unions also have become much more 'risk averse' when it comes to employment tribunal cases, fearing they may be sued by members. At one time, local union reps would present cases at tribunals on behalf of branch members, but in many cases, unions now insist that these are only taken by union appointed solicitors:

So now, all tribunal representation is done officially through [the national union], it's done by solicitors. That's saved the union a very large amount of money on its insurance premiums. It doesn't save us any time because we have to prepare the case for [the solicitors]. It also means that the union is less likely to take marginal cases than in the past. I think a problem with discrimination cases is it's particularly difficult to gauge in advance whether you're gonna win a discrimination because so much depends upon what evidence will come out. If you take something simple like unfair dismissal, you can probably make a fair judgement is this a winner or not, but it's hard with discrimination. (L1, union branch secretary)

As this union branch secretary explained, while his union's policy of only taking employment cases where there is above 50 per cent chance of success, it will inevitably result in some members taking their cases themselves and winning. The result is that other workers facing similar discrimination cases may come to the view that their union is not prepared to put the resources into representing them, leading to bitterness and negativity towards the union.

Community-based organisations: what help can they provide?

All the advice agencies interviewed were working over capacity and many were finding it difficult to survive financially. Hackney, for example, had one Law Centre, which had been operating for over 30 years, but each month brought a crisis of whether there was enough money to pay workers' wages. Changes to the way funding is allocated by the Legal Services Commission had reduced its cash flow making survival precarious. Other than the Law Centre, there was little other employment advice provision in the borough. Although there was a CAB it did not offer employment advice other than at the most basic level (generally helping people to write letters to their employer). Few Kurdish workers we interviewed were aware of the Law Centre and indeed, the Law Centre's statistics showed they had few enquiries from people within the Kurdish communities (although some in relation to immigration cases). There appeared to be a number of reasons for this, firstly, lack of knowledge of the Centre's existence, secondly, a lack of interpreting provision and, thirdly, the tendency of Kurdish workers – many of whom work in local ethnic businesses with kinship networks – to leave their problems unresolved or to move on to other work. As a new migrant and refugee community, there are, as might be expected, numerous community centres where people gather for social, cultural and political events. Some of these provide drop in advice sessions on a range of issues such as housing, immigration, education, and some, but limited, employment advice. However, we found that workers had contradictory views about using community centres as places to help solve workplace problems. Some felt that they would turn to the community centres to ask for advice as to where they might be referred: 'it would be one of the first things I would use if I needed to', whereas others felt it was not the right place to go for such advice:

If I have a Kurdish issue, maybe yeah, but I don't feel I should come to the Kurdish community centre to discuss my private or employment life, although maybe this is the right place. (H25, Rojhan Kurdish male, IT manager)

Although the community centres were often viewed as being the 'heart' of the Kurdish communities and functioned very much as regular social gathering places for people, work related advice was not an important activity. This is perhaps explained by the labour market demographics in the area. Many Kurds work within the local communities, employed by family, friends or via kinship networks based on geographies from home. Interviewees talked about the levels of exploitation of workers, where people worked long hours, often unpaid, without contracts or statutory holiday pay and in some cases without paying tax or national insurance. In such

circumstances, there is a reluctance to complain about working conditions or any difficulties in which workers might find themselves. However, there was a mechanism for dealing with what were considered the most serious cases of conflict. The director of one community organization explained how a 'Peace Committee' was established, made up of respected elderly men and women who were elected by members of the community centre. As he explained this committee, which had considerable standing in the community, would be called on to arbitrate and their decisions were expected to be binding on the parties involved (although, of course, had no enforcement in law):

What they will do, they will just call the business owner, because the naming and shaming is a big issue [in the community], so this business owner will come over and they will say 'look this person says that he works for you and you do not pay him, why is that?' [He might say] 'Ok, he worked but he left early'. [The Peace Committee] they will find a consensus. So they will either make him pay, they will ask him to pay all the money he owes, or if the person that works for him has not fulfilled his promises, if he hasn't worked for four weeks, if he worked only for two and a half weeks, he will get two and a half weeks' pay. (H5, Kurdish male, Director of Halkevi, Kurdish community organisation)

Among the south Asian communities of Ealing, which are much longer established than the Kurdish communities in the UK, there is also an abundance of community-based self-help activity. Historically, its origins were similar to the Kurdish community – in fact to most new migrant communities. The lack of English language skills means that new migrants are often reliant on those in the community who can read, write and interpret for them, but in the case of the Asian communities of west London, particularly around Southall – a part of Ealing – the communities were also drawn together as a result of the level of racism they faced in the early years of migration – particularly in the 1970s and 1980s when the far right National Front attempted to organise provocative marches calling for the repatriation of black and Asian people (CARF/Southall Rights 1981). Today, some of the community organizations that were established in that period remain, still providing help and assistance, although on a much limited scale. Another London borough without a CAB, Ealing does at least have a number of organizations that provide advice and assistance for workers. The biggest, Law for All, is an independent Legal Service Commissioned funded organization with around 14 solicitors. They also work closely with other local advice organizations such as Southall Black Sisters, an organization primarily dealing with domestic violence, and Southall Day Centre, an advice agency providing assistance to the South Asian Communities of West London. Both of these organizations have been around since the 1970s. There are also organizations such as Southall Community Alliance, Ealing Race Equality Council, the Indian Workers Association, Southall Monitoring Group, all providing local community-based advice. In addition to these groups, local temples and gurdwaras have played an important role in supporting South Asian workers who have been on strike or involved in industrial disputes by supplying a daily food kitchen as well as their premises in which to hold strike meetings. In comparison to somewhere like Lambeth, Ealing workers have much greater access to initial advice and guidance should they find themselves with problems at work.

Lambeth at least has a CAB – unlike to two other boroughs, but finds it is completely overwhelmed with the numbers seeking advice and is only able to offer limited employment advice:

Because we're a generalist outlet, we are basically thin on the ground in terms of paid staff, we haven't got any caseworkers. It's mostly volunteers, so we will assist the people who are capable of running their own cases and then try to get them reps. (L13, employment specialist, CAB)

The CAB is only able to offer employment sessions a few times a week – one of these on Wednesday evenings so that people who work 'standard hours' are able to attend, but as they do not have any Legal Service Commission funding, there are unable to provide legal advice and instead refer people to other agencies, such as Lambeth Law Centre or Brixton Advice Centre. Even so, there is a limitation to what these organizations can provide. The Law Centre has a specially funded 'discrimination unit' but no funding for *general* employment cases. This means that a worker who has been unfairly dismissed will only get basic advice, but a worker who has also experienced discrimination is able to get legal assistance. This is one of the few places in

London where workers who have experienced discrimination at work can get full support (apart from trade unions), from initial advice, preparation of case and representation at employment tribunal and up to and including appeal. Yet in interviews very few workers had heard of any of the advice organizations in Lambeth, apart from the CAB. Other than these organisations we were unable to find any community organizations similar to those in Hackney or Ealing providing advice specifically for black Caribbean workers. A recent survey that was commissioned to look at the state of community organization in the black Caribbean community in the UK, concluded that it seemed that the government could not understand why Caribbean groups, as a long-established community, still needed funding. Indeed, the report warned:

To survive and maintain their identity as Caribbean organisations involved in service delivery...[this] may prove difficult unless they can convince their funders of the importance of culturally sensitive services. (Equinox Consulting 2008: 8)

Over the last few years, there has been a move away from the funding of stand alone ethnic minority organizations, as a result of the challenge to the idea of multiculturalism, to either combined/generalised black and multi-ethnic organizations or mainstream providers of service, which is considered by these advocates to be more 'inclusive'. Yet, the report by Equinox found that, 'Caribbean community organizations still have a useful role to play in service provision to deal with issues where identity is important to the users (Equinox Consulting 2008: 8). But in Lambeth, the heart of one of the largest Caribbean communities in London, we were unable to find any Caribbean community organization providing advice or assistance for workers who find themselves with difficulties at work. While it was the case the majority of the Caribbean workers we have interviewed so far are trade union members, and as such should be able to get the support they need, as we have already noted, many feel the level of support they receive is inadequate.

CONCLUDING REMARKS

As is clear from the literature and data present in this paper, un-unionised workers in particular have few places to turn when they find they are in difficulty at work. While union members are entitled to advice and representation, there are sometimes shortcomings in this regard, particularly in cases of discrimination. The resources available in local communities for example at Law Centres and CABs are limited. For non-unionised workers there is no right to bring in a friend, representative or solicitor into the workplace and even if workers are successful in finding an advice agency to assist, they are limited in the support they can receive. Also, due to the way legal aid is funded via the Legal Services Commission, solicitors and legal advisors are only able to provide support up to employment tribunal. If a case is to go to a tribunal, then applicants are forced to either represent themselves or withdraw the case. Although established by government as an informal means whereby workers could represent themselves in legally binding cases, employment tribunals have now become more formalistic and adversarial, with the workers without the best lawyers at a serious disadvantage (Leggatt 2001). Today, those without a complex understanding of the law are seriously disadvantaged when it comes to arguing legal points (Pollert 2005). Further, even if a worker is 'successful' there is no remedy at tribunal to enforce the 'legally binding' decision if an employer refuses to do so, meaning the applicant has to begin secondary proceedings in the county court (Citizens Advice 2004).

There are, of course, other organizations, while not specifically advice agencies, that are able to offer more general support for people experiencing problems at work. Although we have not had the space to discuss these in this paper, there are local organisations such as faith groups and community coalitions, like London Citizens⁶ are often able to provide 'safe spaces' for workers to discuss their problems. While these are no substitute for professional advice, there are cases where workers may need only basic information in order for them to resolve their difficulties, or they may just need signposting to find the detail they need, yet we found that there are few links between these types of general community-based organizations and trade unions or advice agencies. As we mentioned at the start of this paper, trade unions have over the last 30 years become detached from the communities in which they are based. The geographies of today'

⁶ London Citizens is a broad-based community coalition made up of faith groups, schools, universities, community groups, trade unions, housing associations, etc that come together to campaign on local and London wide issues such as the living wage campaign and issues of immigrant worker regularisation.

unions closely mirror those of employers' structures, but what has been lost is the attachment to local communities as labour markets have changed, meaning that non-unionised workers do not even have a sense that there are collective organizations of workers that may be able to operate on their behalf. There are perhaps opportunities missed by this disengagement of unions from their local communities, which could help to rebuild trade union organization in localities and thus providing better support for workers. For example, one interviewee, explained the synergies between the work as a result of broad-based community organizing and trade union membership:

In my role as Strangers into Citizens coordinator, I get a lot of people coming to me directly with problems related to work. But in fact we are not really set up to be able to deal with those problems and we have to develop relationships where we can refer people on. What we try to do with workplace issues is to really reinforce to people that we can't be a substitute for a trade union. And often what will happen is when people get involved with us, maybe through their community organisations, then they will get involved in perhaps the living wage campaign. And through that, become a member of a trade union, that's the ideal. Because we can't provide long term protection that the union can. (L7, London Citizens organiser)

London Citizens, which covers Hackney, Ealing and Lambeth, organizes around issues that communities feel are important. Whilst the campaign for a living wage has been its most prominent activity, it also has a 'strangers into citizens' campaign that calls for undocumented workers to be regularised so they are not exploited at work. There are therefore crossovers in the work done by this organization and that of trade unions. However, many trade unionists refuse to work with London Citizens on the basis that faith organizations are members of the coalition are they suspicious of working in conjunction with community groups, like London Citizens who have a different tradition of organising (see Holgate 2009 for a discussion of these difficulties). Yet, there have been examples of positive working from a small number of local trade union branches, but these are the exception rather than the rule (Holgate and Wills 2007; Wills 2004)

What is clear, however, is that, although not perfect, there are few organizations other than unions that can provide the level of support, both in terms of workplace representation and legal advice. According to the TUC, there are 200,000 lay representatives in UK trade unions who have received training in representing members in grievances and disciplinaries, many of whom do an excellent job in fighting for their members' rights. In addition, there are an estimated 3,500 full-time officers, who in theory, if not always in practice, have the skills and experience to represent workers at employment tribunals. And, for the most serious cases, unions are able to provide lawyers to represent members at tribunals and win compensation. Despite this, many workers, trade union members included, are unable to get a satisfactory resolution to their difficulties at work and the interviews we have conducted show that employers are often reluctant to intervene on the side of more junior workers, particularly if it is manager is the perpetrator of bullying, harassment or victimisation of a worker. The resources that currently exist for workers with problems at work are extremely limited and it is clear from our research in to three different parts of London that community based support organizations, although well intentioned, are not able to fill the gap that has grown since the decline of trade union organization. Government initiatives over the years have done little to redress the unequal balance in the relationship between employer and employees and consequently workers are left without places to turn should they find themselves in difficulty at work. Trade unions are much weaker than they were 25-30 years ago, but they still provide the best resource for worker with their ability to negotiate collectively and individually on behalf of workers. However, despite new organising initiatives over the last 10 years, they have still to develop a reach into communities where the most vulnerable of workers are located. There is perhaps potential to develop relationships and rebuild organising approaches whereby unions become visible in the community once more.

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