

Re-claiming Mobility and Equal Treatment:

Countering the Erosion of Social Citizenship for EU Free Movers and Precarious Workers

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Gabriella Alberti , Liz Oliver and Chris Forde University of Leeds Business School, UK

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Paper overview

- Focus: restrictions of EU nationals' entitlements to social benefits in the UK: what is the impact on migrant employment relations and their labour market mobility?
- Theoretical background: links between migration, welfare and precarious work (Anderson 2016; O' Brien 2016, Alberti 2014); importance of equal treatment in social protection and collective rights (Schiek 2015)
- **The point of view of the employment relation: the role of "mobility bargaining" for migrant workers** (McGrath and Strauss 2016)
- Evidence from **"Migrant Access Project" in Leeds and Brexit & Labour mobility Roundtables**: migrants precarised by welfare reform and Brexit process
- **Counter-strategies** by workers and trade unions?
- New Challenges to (im)mobility and settlement in the UK

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Tensions in EU legal framework

- Larger piece of research funded by the European Parliament in 2013: **EU Social and Labour Rights and EU Internal Market Law** (IP Dagmar Schiek 2015)
- Looked at the relationship between Fundamental rights for EU citizens (CFREU) e.g. **equal social protections for all free moving workers, and economic freedoms as part of internal market (e.g. freedom to provide services)**
- Despite Fundamental social and labour rights became legally binding in 2009 they are in contradiction with some of the economic freedoms and principles of free market competition (e.g. posted worker and social dumping).
- Qualitative research key finding: stakeholders interviewed in our research highlighted **ongoing restrictions on the enjoyment of social protections** limiting individual and collective rights at work across **4 EU member states** (Sweden, Spain, Ireland and Poland)

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The UK context: creeping erosion of social citizenship for EU migrants (before Brexit)

- **2006:** «**right to reside**» additional to “habitual residence test” in order to access Non-Contributory Benefits for EU claimants
- **2013:** NO access to Job Seeker Allowance **for the first three months** of arriving in the UK. After 6 months **jobseekers have to take a stronger, more robust Habitual Residence Test** to claim income-based JSA.
- March 2014: “**Genuine Prospect of Work test**” whereby migrants need to meet an **earning threshold to £150 a week (£157 in 2017)** (also for self-employed earnings) to prove that their work is «genuine and effective» (vs marginal and ancillary)
- From April **2015 no entitlement to Housing Benefits** for jobseekers who have not retained worker status
- **From March 2015 new EU migrants** who have arrived in the UK **prevented from claiming benefits under Universal Credit** (reformed welfare system) **until they have started work**

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Social insecurity *and* vulnerability in work

- While free movement constituted one key target of the Leave campaign during the Brexit referendum, **EU citizens in the UK have encountered increasing barriers to claiming non-contributory benefits**, through increasing conditionality and harsher tests
- “welfare –to- work” reform in the UK centred around the notion of the **‘deserving’ citizen-worker** (Anderson and Hughes 2015)
- Research on the links betwmigrants social curtailments in the UK and workfare reform shows the emergence of a mechanism of **welfare and migration controls based on the conditionality of retaining worker status** (and proving habitual residence) for the purpose of claiming social benefits, entrenching precariousness in the labour market (Alberti 2016)
- “The insecurity and fear that stem from lack of social protection take a serious toll upon physical and mental health. **They also have a dramatic impact upon autonomy – locking people into situations for fear of the effect of loss of worker status and right to reside.** Workers subject to exploitative, or otherwise unlawful, working conditions, might not feel empowered to challenge their treatment or conditions, given the risk of unemployment” (O Brien 2016: 19)

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Principle of complementarity of economic freedoms and social protections

Importance of **complementing economic freedoms such as free movement of labour for EU citizens with equal treatment in the sphere of social security and assistance to counter** potential abuse in the labour market

*“Depending on the development of the case law, the insecurities of free movers and their limited access to the accepted social minimum will deter some of them from moving abroad and **have a negative impact on the bargaining position of those who are not deterred from moving**” (Schiek 2015, p. 52)*

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The point of view of the employment relation

- While the transnational dimension and the realities of labour mobilities in the EU today are paramount to re-think regulation and social standards, it is important to put migrant worker voice and representation in trade union centre stage (esp. in light of politicisation of FM)
- **Emphasis on the social experiences of migrants in the EU beyond sole focus on their legal rights: subjective perception and awareness of their entitlements also shapes precariousness**
- Focus on what happens in the employment relations and the relationship between legal rights to move and bargaining power of migrants
- Need to develop stronger argument to dissuade trade unions from EU Lexit beliefs (e.g. free movement guilty of social dumping)

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“Mobility Bargaining”

- Concept originally developed by Strauss and McGrath 2016 understood as a mix of «market place mobility» and «associational power» (Silver 2004)
 - employers look for a supply of labour which is largely *prevented* from exercising «mobility bargaining power»
 - Migrants’ free movement and mobility strategies are important precisely because of this
- Currently migrants’ mobility bargaining appears **constrained** by the institutionalisation of **forms of unfree labour relations** endogenous to precarious migrant status: via tying international migrants to an employer (or to employment more generally) and through time restriction to their permits migrants are **limited in their «ability to exit the employment relations in a tight labour market »** (Strauss and McGrath 2016: 6).

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Mobility bargaining in the EU: worker counter-strategies

- Research on Accession countries migrants: acquired mobility rights allow them to “vote with their feet” **to increase the bargaining power with employers back home** (Meardi 2012; 2007) and to quit their poorly rewarded and hard jobs in the country of immigration (Andrijasevic and Sacchetto 2016, Alberti 2014)
- Free-movement regime not only has offered new employment opportunities but also a new set of «flexible working pathways» and «lifestyle choices» to free movers, from the boom times into the recession (Krings et al., 2013).
- The extent to which the **mobility capacities** elicited by the EU “free movement regime” are being curbed by changes in the regulation of welfare, residence and mobility rights for free movers ...needs further investigation (Alberti 2016)

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Qualitative research in Leeds and UK

- **Migrant Access Project and the listening laboratories** (*Impact Acceleration- Responsive mode Fund/ESRC Industrial Strategy and Brexit 2016-17*): how EU nationals in precarious/volunteering work are affected by Universal credit reforms and Brexit vote
- **CERIC Brexit and labour mobility Roundtables (2017-19)**: there are already felt effects of “Brexit before Brexit” for EU nationals (mapping points of consensus and differences between IR actors and stakeholders)

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Emerging issues: housing and work precarity for new arrivals in Leeds

- Some communities such as Slovakian- Roma providing mutual support and advocacy, more vocal about benefits sanctions or refusals
- Stricter rules on JSA and **conditionality of staying put (habitual residence) to obtain benefits created problems for transnational families** (see Migrant Voices of Leeds booklet) (mobility and fixity)
- Concerns specifically on the **link between right to rent, housing and Jobseeker Allowance**: “in order to be able to rent, landlords tend to ask if you have a contract of employment” (what will happen now with lack of settled status certification?)
- Differences also between different cities and jobs centres- **experiences of discretion by decision makers and forms of discrimination.**
- **Fear that both will worsen under Brexit**: landlords and employers suggest migrants cannot give guarantee on long term residence: **“because of Brexit you may not be able to pay your rent”**
- Perverse links between lack of **housing rights, joblessness and destitution**

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Further exclusion under Universal Credit (disenfranchisement before Brexit?)

- Recent in the news: **the benefit system’s very own “hostile environment”**
- “universal credit is now wrongly penalising EU citizens who have earned permanent residence though years of work or family connections” (The Guardian, 5 August 2019)
- Law centres and welfare advisers denounce malpractice where **thousands of EU nationals are refused their application for universal credit despite their residency rights**
- Even though they may appeal and win this takes 40 weeks , **in the meantime EU nationals are made destitute and pushed sleeping rough, incur debt and have to rely on food banks**
- Single people, women, and those who are disabled or in **low-paid work** disproportionately affected

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‘Brexit before Brexit’: evidence from CERIC roundtables Roundtable 2: July 2019

By 2019, increasing precarity could clearly be seen

- **EU nationals also feeling pushed to take low paid low skilled jobs due to the welfare regime in the UK** (the Workfare model pushing people to take jobs, particularly after three months of claiming benefits, even if with little opportunities/pathways to develop)
- **Concerns of stakeholders over likely rises in informal labour and trafficking, with increased vulnerability for those from EU**
- Also concerns that if social security coordination and employment access are linked to future (bilateral) trade deals this will lead to further fragmentation and complexity in the labour migration and welfare system

Alberti, G., Bessa, B., Ciupijus, Z, Cutter, J., Forde, C. and Roberts, M. (2019) Brexit roundtable, University of Leeds

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‘Brexit before Brexit’: evidence from CERIC roundtables Roundtable 2: July 2019

Stakeholders Views on new policies:

- Concern of all stakeholders about the £30k income threshold for working in the UK. **Most EU workers earning below that threshold, some individuals and families already left the UK**, those remaining still feeling ‘othered’ - there has been a de-humanising effect
- Settlement scheme: 25% of EU nationals have registered to date; risk of undocumented workers
- **Rising proportion of applicants for settled status being granted the more precarious “pre-settled status”** (34% in March 2019: 42% in July 2019) (Guardian 2019)

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Counter-strategies by (some) trade unions representing migrant workers

- Small independent unions (e.g. IWGB; TESSA) rather than large ones, explicit about positive effect of FM **and EU membership**: e.g. use of EU law and CJEU to defend vulnerable contract workers in employment tribunals
- **Free movement as “worker power”** (Unions against Brexit Meeting, Spring 2019)
- Internationalist argument, expansive nature of rights beyond EU citizenship: many new comers being actually from outside the EU originally
- New representative bodies for migrants in unions structure independently of their EU/non-EU status: unity building in the midst of growing divisions?
- Missing argument: Free trade (or custom union) vs unfree movement of labour?
- Challenges of new attacks on social citizenship –more destitution/more informality/less union power?

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Main arguments

1. Counter to preoccupations about social dumping effects of labour mobility, we suggest that the end of free movement with equal treatment guarantees rather entrenches precarity in the labour market for EU migrants
2. Free movement may reinforce rather than weaken industrial relations and worker leverage
3. The further precarisation of migrants in the UK through the settlement status application process (replacing the EU permanent residence) shows even more the attempt to curb migrants mobility bargaining by locking migrants in the UK for longer periods of time)

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New challenges: Mobility *and* immobility

- **Residence status uncertainty:** EU nationals being “locked in” until they turn their pre-settled status into a settled/permanent one:

“People granted pre-settled status have the same rights to work, study, receive healthcare and benefits as those with settled status, the official said. **However**, in order to successfully upgrade the status they will have to remember to reapply by the deadline, **ensure they don’t leave the UK for long stretches and not breach the criminality requirements**” (the Guardian 30 August 2019).

- A clear example of constraint to mobility bargaining?
- Government/employers fear of ‘EU Exodus’ prefer to maintain EU nationals in limbo/waiting room to cope with shortages in labour supply and reduce labour turnover...

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