**The UK migrant cap, migrant mobility and employer implications**

ABSTRACT

*Advocates of the ‘borderless world’ thesis suggest that migrant workers are able to benefit from employment opportunities available everywhere and anywhere, with workers simply migrating towards these opportunities. However, the policies and politics of migration are becoming increasingly evident and as global inequalities widen, and potential global mobilities develop, states are becoming increasingly pre-occupied with ‘managing’ migration. In this respect, individual migrant 'agency', its structuration through immigration and labour market policy and the subsequent experiences of both migrants and employers can restrict such mobility. Consequently, there is a need to describe and problematize the new strategies that are being devised to control human mobility at different scales. This paper considers these issues with reference to the emerging impact of the recently imposed migrant cap on non-European Economic Area (EEA) migrants to the United Kingdom (UK). In particular, it explores the links between immigration and employment rights and the subsequent implications for migrant mobility at both an international and sub-national scale. It is illustrated that policies of ‘managed migration’ frequently do not take into account i) issues of geography and intra and inter regional competition for migrants by employers operating in sectors with skill shortages; and ii) differential migrant 'agency' in the form of their skills and attributes. In turn, this may impinge on the effectiveness of such approaches but also issues of economic prosperity at a national, regional and local scale.*

**Key words:** ‘Managed migration’, UK, migrant cap, health and social care, diversion effects, economic prosperity

INTRODUCTION

Given the increasing integration and interdependence of national economies at a global scale, it is ‘fashionable’ among business gurus, international economists and liberal politicians to assert that the world is‘borderless’ (Yeung, 1998: 292). On this basis, national boundaries are perceived as no longer making a difference in the ‘borderless’ world (ibid: 292), with borders being effaced in order to facilitate greater economic mobility. Indeed, this has led some to claim that the activities of transnational capital has become increasingly ‘placeless’, with a diminishing role for the state in regulating such flows (Dunning, 1995).

Social theorists generally favour one of two broad approaches to theorizing borders (Rumford, 2006: 155). First, borders have been contextualized in terms of the ‘network’, with associated ideas of mobilities, flows, fluids and scapes (ibid: 155). Castells (2000: 381), for example, makes reference to a ‘network society’ consisting of “networks of production, power, and experience which construct a culture of virtuality in the global flows that transcend time and space”. Consequently, borders have been “rescaled by global networks and projected at a distance from the ‘old’ borders of national territory” (Rumford, 2006: 156). Arguably, the European Union (EU) offers a model of the network approach, with the ‘borderless’ internal market of the EU providing new boundaries for domestic economies.

Second, theorists have also debated the meaning of borders in the context of societal change, particularly in an era of terrorist attacks - such as 9/11, the Madrid bombings in 2004, and London bombings of July 7th 2006. While states seek to facilitate economic mobility, at the same time concerns about security have led to ‘re-bordering’ to control the flow of migrants; thus contemporary borders are increasingly differentiated (Rumford, 2006: 157). In the words of Andreas (2000: 2), “the celebrated de-bordering of the state is therefore far more selective than the inflated rhetoric of globalization would suggest”. De-bordering is being accompanied in many places by a partial ‘re-bordering’ in the form of enhanced policing. Thus, it is more accurate to say that the importance of territoriality is ‘shifting’ rather than simply diminishing – “far from disappearing, many borders are being reasserted and remade through ambitious and innovative state efforts to regulate the transnational movement of people” (ibid: 2).

But the ways in which this process is being undertaken – and the subsequent impact of such actions is rather uneven. It is increasingly apparent that certain groups of migrants are being privileged over others according to their individual ‘agency’ – frequently expressed in respect of their education, skills and economic status – as well as the ways in which states perceive their relative (economic) contribution (Pemberton and Stevens, 2010). Perhaps the most obvious and striking example of this relates to ‘investor immigrants’, where often the bestowal of immigrant status, and the rights associated with it, is premised on an ability to pay for those rights through guaranteed investment in the economy with substantial sums of money (Bauder, 2003: 69). Arguably immigration regulation therefore appears to target less privileged, working-class migrants, and particularly those from ‘third world’ or ‘developing world’ countries (ibid: 69). As we shall see, this is particularly the case in the UK through recent changes to the policies and practices of immigration. But it is also reflective of the situation in many other countries both within and beyond the EU that have introduced points-based systems to selectively regulate immigration (for example, Australia, Canada, New Zealand and the United States).

Within this context, governments are now grappling with key questions concerning how many migrants could or should be admitted to a particular country, and on what basis migrants should be selected. In many instances the economic benefits *vis a vis* costs of immigration have dominated policy-making processes (see Coats, 2008), although attempts to derive an optimal balance are notoriously difficult to define given conflicting evidence and the *ex*tent to which ‘on the ground’ impacts can be effectively captured. The aim of this paper is therefore to provide critical new insights in relation to the new strategies that are being devised to control human mobility at different scales, focusing specifically on the emerging impact of a recently imposed migrant cap on non-European Economic Area (EEA) migrants to the UK. In particular, the discussion that follows highlights the ways in which the mobility of such migrants is being increasingly restricted both in terms of coming to – and subsequently within – the UK, and that this can be related to the nature of immigration and labour market policies that have been introduced, and how these subsequently inter-relate with migrant and employer ‘agency’. The impact of such restrictions is subsequently considered – both with regards to the diversionary flows of migration that are emerging as a result, and the economic implications arising.

THE POLICY AND POLITICS OF ‘MANAGED MIGRATION’

According to Anderson and Ruhs (2009: 2) “the regulation of labour immigration is one of the most important and controversial public policy issues in high income countries”. Indeed, as migration has increased over the past few decades, public demands for ‘managed migration’ have risen (Chappell and Mulley, 2010). In a European context, over time – but especially since the opening of the internal market – the EU has focused on modernizing its immigration policy. The result has been intensified closing, fortifying and policing of external borders (van Houtum and Pijpers, 2007: 292). At the same time, the borders of member states are increasingly being selectively opened for various ‘third country’ nationals in order to meet labour needs. Thus, is it argued that the image of ‘Fortress Europe’ is not necessarily accurate given that the EU is open to ‘strategically selected’ migrants who can increase prosperity. Instead of Fortress Europe then, van Houtum and Pijpers (2007: 292) suggest that by implementing protectionist and selective immigration policy, the EU has come to resemble a ‘gated community’.

Despite the strongly founded interest of the EU to champion more mobility inside its borders, the enlargement processes which occurred during 2004 when the ‘Accession 8’ countries joined (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia), and 2007 (when Romania and Bulgaria also became members – the ‘Accession 2’) were accompanied by transitional arrangements, limiting the right of free movement to the labour market for a transitional period of time. A key factor that influenced Central and Eastern European (CEE) labour migration patterns (i.e. the ‘A8’ and ‘A2’) was the European Commission (EC) Accession Treaty (2003). This set out that for a maximum of seven years, the EU-15 (pre-2004 countries) would be able to continue to regulate access to their labour markets due to the uncertainty of the impact of CEE migrants on different sectors of employment and access to social benefits (Traser, 2006). Of the EU-15, only the UK (along with Ireland and Sweden) decided to fully open their labour markets to CEE migrants in 2004. This created significant ‘diversion effects’ in the post-enlargement flows of CEE migrants (Ruhs, 2006). For example, UK Worker Registration Scheme (WRS) figures highlight that by 2010 over one million registrations for work had been made since 2004 by CEE migrants (Home Office, 2010), whilst 531,140 also registered for work in Ireland during this period. However, only around 40,000 moved to Sweden given language issues / barriers and the availability of suitable employment (Hughes, 2011; Gerdes and Wadensjo, 2010).

In the UK, the arrival of increasing numbers of CEE migrants since 2004 led to the phasing out by the Government of a number of (traditional) low skill immigration schemes for individuals from other parts of the world (Home Office, 2006). In 2005 the government set out a five-year strategy for asylum and immigration, which made it clear that employers would be expected to fill all of their low-skilled vacancies with workers from within the enlarged EU (Home Office, 2005). Within this context, a new Points Based System (PBS) was introduced in February 2008 to manage migration from outside of the EEA (i.e. the EU-27 countries plus Norway, Iceland and Lichtenstein). In summary, the PBS consisted of five tiers:

* Tier 1: Highly skilled individuals to contribute to growth and productivity (18,780 admitted under this tier, 2009);
* Tier 2: Skilled workers with a job offer to fill gaps in the UK labour force (36,490, 2009);
* Tier 3: Limited numbers of low-skilled workers needed to fill specific temporary labour shortages (suspended due to influx of EU migrants to fill such posts);
* Tier 4: Students (273,400, 2009); and
* Tier 5: Youth mobility and temporary workers (applying to those travelling from Australia, Canada, Japan, Monaco and New Zealand; 52,500, 2009)

Source: Control of Immigration Statistics (2009) cited in Migration Advisory Committee (MAC, 2010).

A number of ‘tools’ are also of relevance to the imposition of the PBS. The first is the ‘Resident Labour Market Test’, which requires employers to demonstrate that they have filled vacancies from within the UK and the EEA before they are able to recruit from outside Europe. The second relates to the need for employers to register as a ‘Licensed Sponsor’, and indeed the concept of sponsorship lies at the heart of the PBS.

However, given ongoing concerns over the impact of migration on the UK, in June 2010 the new coalition government introduced a temporary cap on the number of non-EEA migrant workers allowed into the UK. They announced that this would be followed by a permanent cap to be introduced from 1 April 2011, “in order to restrict entry only to those who can make a real difference” (UK Border Agency - UKBA, 2010a: 4).

The Government took advice from a newly established and independent Migration Advisory Committee (MAC) – through a consultation – on where the permanent annual cap should be set, taking into account both the potential *economic* impact on employers (and particularly those in ‘migrant dense’ sectors) as well as *social* impacts; for example, pressures on schools, hospitals, social housing and other public services (MAC, 2010). Subsequently, a decision was taken in November 2010 that from 1st April 2011 the migrant cap would be set at 21,700 skilled non-EEA migrants per annum. Within this figure, 1,000 non-EEA migrants are allowed into the UK under a revamped Tier 1 – ‘*the exceptionally talented route*’. However, this now only applies to entrepreneurs, investors and ‘exceptionally talented individuals’ (in the fields of science, engineering and the arts) (UKBA, 2010b). This is a considerable reduction on the figure for Tier 1 workers in 2009. The remaining 20,700 migrants are allowed entry to the UK under Tier 2 – “*the skilled route*” – and this number of ‘restricted certificates of sponsorship’ will be issued. With regards to the remaining tiers, Tier 5 migrants looking for temporary work are now only allowed entry for a maximum of 12 months, whilst those in Tier 4 (Students) have had increasing restrictions placed on them since April 2012. This is an important point, given that currently the bulk of non-EEA immigration arises from students (see below).

Interestingly, under the new visa rules for investors, those who invest £5 million are allowed to settle in the UK after 3 years, and those investing £10 million+ are now allowed to settle after 2 years, as opposed to the minimum 5-year requirement that was previously in place (Pemberton and Scullion, 2010). Furthermore, there is no restriction on the number of Tier 2 (General) certificates of sponsorship that can be assigned to non-EEA migrants earning over £150,000, or who are already in the UK and either have permission to extend their stay or who are eligible to switch into this category from another. Again, what this shows is the ongoing privileging by the state of certain groups of migrants (‘investor immigrants’) over others, and particularly those who are deemed to be contributing to the economic prosperity of the UK.

Although there appears to be a degree of broad acceptance of the need to reduce net migration to the UK (Sachrajda, 2010), it has been argued that the migrant cap will actually have little overall impact. Indeed, a MAC report (2010: 13) suggested that closing all non-EEA *work-related* migration routes would not bring net migration down on its own, and would only contribute 20 per cent (around 40,000) of the Government’s target of reducing immigration from 196,000 in 2010 to ‘tens of thousands’ by 2015. It is therefore envisaged that the other 80 per cent will come from reducing student immigration and through restricting family reunification and long-term rights to settlement (around 150,000 in total).

Given such scepticism on the migrant cap, the next section of the paper focuses in more detail on the ways in which the cap has been implemented; its intended and actual effects – particularly from the perspective of employers using non-EEA labour; and the empirical and theoretical implications that emerge in the context of migrant mobility and the varying ‘structuration’ of migrant agency.

THE ‘STRUCTURATION’ OF MIGRANT AGENCY, EMPLOYER IMPLICATIONS AND ISSUES OF MOBILITY AND EMPLOYER IMPLICATIONS

While the restrictions on those being allowed into the UK under Tier 1 and Tier 2 of the PBS are seen to have little impact on reducing overall migration figures, the impact on employers reliant on these workers has been significant. Despite the UK government arguing that the non-EEA migrant cap would be imposed in a ‘flexible’ way to aid the country’s economic recovery from the recent recession, many employers have raised concerns about the detrimental impact this will have on their competitiveness (Eborall and Griffiths, 2008; Bach, 2010). Indeed, a recent MAC report (2010: 10) highlights widespread concern amongst employers, who have argued that “the restrictions could affect businesses’ ability to be competitive, stunt economic recovery, and lead to reduced investment”. Scepticism has also been raised in relation to the ability to train indigenous British workers to fill vacancies that become available (Anderson and Ruhs, 2009).

For example, King’s College London’s Human Resource Management (HRM) Learning Board has recently published its third annual report on *The State of HR* (cited in Clinton and Woollard, 2011). The survey highlighted that nearly half of the respondents worked at organisations employing non-EEA nationals; of these respondents over 40% reported a negative impact on their businesses due to the recent changes (ibid: 3). Furthermore, the authors of the report highlight that:

“One of the key challenges facing organisations in 2011 is a skills shortage which, coupled with the tightening of immigration legislation and the introduction of the interim cap on the number of non-EEA economic migrants employed by organisations, will serve to further exacerbate the problem” (ibid: 4).

In addition, the concerns over skills shortages have been noted by those sectors historically reliant on migrant labour. Taking the example of the health and social care sector, recent figures from the National Minimum Data Set for Social Care (NMDS-SC) show that more than a third of adult social care workers in England (35%) recruited in the 12 months to June 2010 were from outside the EEA (Lombard, 2010). Additionally, Labour Force Survey (LFS) analysis suggests that almost one third of medical practitioners and approximately one fifth of nurses, dental practitioners and pharmacists currently working in the UK were born outside the EEA – a large proportion of which were from India (MAC, 2010). While efforts are being made to increase the domestic supply of skilled labour in the medical profession, there are concerns about the length of time it takes to train people to the required skills levels. Indeed, a *Skills for Health* representative who took part in the MAC consultation on the migrant cap stated that:

“It is possible for the health sector to reduce its overall dependence on Tier 1 and Tier 2 migrants. However, to train and develop a health care professional can take years – and for those in consultant roles, sometimes decades” (MAC, 2010: 172).

Concerns have also been raised by National Health Service (NHS) Employers (2010), who argue for the need to ensure that the UK remains an attractive destination for highly skilled clinical staff. In particular, they have made reference to the global shortage of healthcare professionals and have also highlighted the active global recruitment campaigns of other countries (such as Australia and Canada). Consideration is needed, therefore, of the attractiveness of the UK compared to other countries – particularly as it becomes more difficult to enter. This is an important point in respect of the diversionary effects caused by the politics and policies of ‘managed migration’ and which we shall return to below.

From a social care perspective, the sector is reliant on non-EEA labour to fill senior care worker shortages. Evidence from the umbrella organisation *Skills for Care & Development* in the MAC consultation suggested that a number of employers would not be able to continue to provide care services safely and legally without the continued recruitment of migrant workers from beyond the EEA. Furthermore, employers indicated that increasing pressure on the social care sector could place further demands on NHS hospitals, as the closure of care homes may mean that vulnerable patients need to stay in hospital for longer.

The Association of Directors of Children’s Services has also urged ministers to rethink the migration cap, with concerns that they will be unable to recruit experienced practitioners (such as social workers) – particularly in London and other metropolitan areas. This begins to highlight the importance of geography and the need to take ‘regional variance’ into account when considering the need for non-EEA migrant workers and the roles that they are required for.

Given such perspectives, it was deemed important to generate a more detailed insight into the issues facing employers and non-EEA migrants alike as a consequence of the introduction of the cap in the UK and the impact it was having on migrant mobility and employer competitiveness. In this respect, and given the need to generate an overview of how recruitment and retention issues may have changed over time – in the face of the imposition of the PBS and the more recent migrant cap – employers of non-EEA and EEA migrant workers in the health and social care sector were targeted for more intensive analysis.

The research itself was undertaken in the North West of England during the latter half of 2010 and the first half of 2011. The North West of England was selected on the basis that the region has experienced over a three per cent decline in population over the last twenty years, which coupled with an ageing population and a suggested twelve per cent decline in those aged 16-24 by 2020, means that there is an increasing reliance on migrant workers to fill job vacancies (North West Development Agency, 2006).

A total of 16 health and social care employees were interviewed, representing 13 different organisations across the case study area. A pilot interview was also conducted which enabled us to understand / identify the correct interviewees (in respect of their roles and remit) within organizations invited to take part in the research. Consequently, the stakeholders who participated were primarily Human Resources or Equality and Diversity representatives. In most cases, the interviews were recorded and transcribed verbatim. Given the size of the sample, the findings are illustrative rather than representative and whilst we have tried to discern differences between health and social care providers, the majority of the findings presented relate to the sector as a whole. In addition to the interviews the research also involved a regional workshop incorporating a wide range of key stakeholders whose role involved working with migrant populations (‘on the ground’ and at a strategic level).

What emerged from the research were two fundamental issues that have arguably received less attention hitherto – by academics or policy-makers alike - in terms of the effects of policies of ‘managed migration’. The first relates to the geographical variation in the demand and supply for migrant workers within nation states; the strategic and spatial selectivity of state activity with reference to policies of ‘managed migration’; and associated systemic inertia in immigration / labour market policies that may compound intra and inter-regional mobility of (non-EEA) migrants. The second relates to the employer-migrant interface, the nature of migrant and employer ‘agency’ and the difficulties of implementing an immigration policy that lacks recognition of such agency and simply operates on the (inappropriate) basis of the substitution of one group of migrant workers for another.

Geographical variation, state ‘selectivities’ and systemic inertia

In simple terms, those employers seeking to employ a non-EEA worker under Tier 2 of the PBS (and given that the post study work route under Tier 1 has also now closed) have two different categories of certificates of sponsorship (CoS) available to them – ‘unrestricted’ and ‘restricted’. With regards to the former - which relates to individuals who are already in the UK - employers need to have a sponsorship licence and be ‘A’ rated in order to be given access to a Sponsorship Management System. This then allows them to issue CoS according to their annual allocation. In terms of restricted CoS, employers wishing to recruit a non-EEA worker currently outside the UK have to apply to a panel of the UK Border Agency which meets once a month, and which has a maximum of 1,725 to allocate. The decision-making process used by the panel is based upon points gained against three categories: 1) the job is on the shortage occupation list; 2) there is a minimum skill level of National Qualification Framework (NQF) 6; and 3) a Resident Labour Market Test has been conducted or the job is exempt. However, interviewees argued that such a system did not take into account geographical variations in labour market conditions and the supply and demand of both (skilled) domestic and migrant labour by health and social care providers. Indeed, they pointed out that geographical variation in relation to the outcomes of the migrant cap were inevitable, given that health and social care employers were increasingly competing with each other to fill vacancies. Indeed, it was argued that intra and inter-regional disparities in the recruitment and retention of non-EEA migrants were becoming evident across the UK, particularly between more remote (rural) areas and more accessible (urban) areas. For example, a more recent MAC report (2011, 58) noted that most audiological medicine trainees were based in and around London and were showing an increased reluctance to leave the capital. This point was further substantiated by a number of interviewees:

*‘The system doesn’t taken into account geography – areas like Cumbria [a rural area in North West England] should get exemptions as many employers are struggling to fill vacancies that have not been classified as in national shortage of supply. Generally individuals want to work in cities so if the rules were relaxed for rural care homes or NHS Trusts we would be more likely to recruit [non-EEA migrant workers] and maintain our competitiveness’* (HR representative 3, NHS Trust, North West England).

Nevertheless, such arguments are not clear-cut, not least because of the difficulties in accessing data that specifically identifies individual non-EEA migrant worker moves within the UK by employment position. What can be ascertained is that regional data indicates that foreign born workers arriving after 2003 in the UK have increasingly settled in different regions from where they have historically settled (e.g. North East England and Scotland) but with the highest proportion of non-EU workers still to be found in and around London and cities in the midlands (e.g. Birmingham; Home Office, 2010).

Consequently, in some instances it was claimed that the system was inflexible in the context of urban areas too. This can be related to the volume of demand for both health and social care services in metropolitan areas, and therefore a number of employers located in such areas had increasingly called for a relaxation in the number of permits / certificates of sponsorship that they could secure in order to ensure that they could employ enough skilled social workers / care workers from non-EEA countries to meet existing demands (also see related arguments by Lombard, 2010).

Geographical variation, however, also needs to be considered in relation to the so-called strategic and spatial selectivities of the state (Jessop, 2008). It is within this context that strategic-relational state theory can be drawn upon (ibid.) to highlight how the evolving form and nature of state activity can influence – and indeed are themselves influenced by – the types of political strategies, interests and ‘objects of governance’ that are promoted over and above others. In this way, we can start to discern how the state may be ‘strategically’ and ‘spatially’ selective with regards to the institutions, actors, policies / strategies, spatial and territorial scales of action and time horizons that are privileged (adapted from Jessop, 1997: 53).

In relation to the current imposition of the policies and politics of ‘managed migration’ in the UK, we can perhaps see further evidence of a ‘north-south divide’, not just in economic terms but in respect of immigration policy too. For example, despite the Government agreeing with MAC that individuals’ decisions to only work in certain areas of the country was not a reason for a job (such as nurses in care homes) to be on the shortage occupation list (MAC 2011, 56), concessions were made to certain sectors. Hence after intense lobbying from many companies within the City of London, as well as umbrella-organisations such as the Confederation of British Industry (CBI), a decision was made by the UK government to *exclude* non-EEA employees transferred by UK-based companies from abroad from Tier 2 of the PBS (MAC, 2010). Such individuals can now stay for up to 5 years in the UK if their salary exceeds £40,000 per annum. Furthermore, firms are also allowed to bring members of staff to work in the UK for up to a year if their job is in Information and Communications Technology (ICT) and their salary exceeds £24,000 per annum (MAC, 2010). Interestingly, an earlier commentary on managed migration by Amicus (2006) questioned the increasing number of intra-company transfers for ICT professionals, stating that “it is not obvious why many of these skills are not available in the UK from the resident labour force”, particularly when there were “around 10,000 redundancies per quarter amongst [UK] IT professionals”. Thus, concessions on the implementation of the PBS and migrant cap appear to be privileging certain territories and actors (businesses) operating in particular sectors over others, with London and the South East of England most likely to benefit from the above changes compared to other parts of the UK.

Compounding the above situation has been inertia in the operation and inter-relations of UK immigration and labour market policies. Employers who participated in the research highlighted that the imposition of the migrant cap was operating on a ‘one-size fits all’ basis and that the Shortage Occupation List upon which the PBS and migrant cap was based was out of date and inflexible to the needs of different employment sectors. These included those focused on health and social care, where it was claimed repeatedly that shortages were evident in ‘speciality areas’, but where such vacancies were deemed to be not necessary for inclusion on the Shortage Occupation List. As one interviewee highlighted:

*‘They’ve just dumped everybody in the same boat…I was talking to somebody from UKBA about trying to employ a [non-EEA] doctor and he said ‘well, we don’t just look at the NHS separately from chefs’…so there you are, a doctor is [now] in the same category as a chef who is coming to work in your local restaurant and it seems a bit bizarre’* (HR representative 5, NHS Trust, North West England).

Such feelings also mirror those encapsulated within a survey by the Greater London Authority (GLA) in 2011, which noted that the PBS needed to better meet the employment needs of the arts and culture sector as artists and academics fell into ‘borderline’ categories of the PBS, thus making it difficult to define whether these occupations should be included on the Shortage Occupation List (and thus allowing employers to apply for CoS for non-EEA workers) or not.

In addition, it was felt that definitions of occupations on the list needed to be more reflective of the diversity and specificity of roles within the health and social care sector, and that there should be a further system of review for ‘one-off’ situations, with greater flexibilities being granted for certain professions over others. Indeed, it has been noted in a recent Home Affairs Committee Report (2010) on migration that the social care and education sectors are most likely (in the medium term) to be adversely affected.

Moreover, such systemic inflexibility in respect of a lack of transferability of existing certificates of sponsorship within the health sector led to interviewees criticizing restrictions on the ability to move skilled non-EEA migrant workers from one ‘site’ in the UK to another, returning our attention to how this then further impinges on the uneven geographical variation of outcomes associated with such ‘managed migration’ policies. The specific statement provided below refers to the inability to fill a vacancy by one employer with an oversees doctor who had been working in another part of the country, but exemplifies more broadly the need for issues of geography, power and politics to be recognized when considering the impact of introducing restrictions on immigration:

*‘What we find is that if we have a [non-EEA] doctor who works in Southampton and we have a vacancy up here [North West England], he or she can’t just move because we have to sponsor them first’* (HR representative 5, NHS Trust, North West England).

Migrant and employer agency and the need to problematize migrant ‘substitution’ under the policies of ‘managed migration’

Many of the employers who were interviewed through the research appeared to be exerting some ‘agency’ of their own – although arguably based on a misconception / lack of understanding of the intricacies of the PBS and the migrant cap – and had thus become much more cautious about recruiting non-EEA migrant workers, even where fundamental skills gaps existed. Discussions in the regional workshop that formed part of the research also highlighted that there were a number of examples where employers – mainly those employing lower skilled workers – had ‘shedded’ non-EEA workers (employing EEA workers instead) for no reason other than uncertainty over their rules of employment.

But the overwhelming feeling of interviewees was a great degree of scepticism that EEA migrants – under the UK government’s current system of ‘managed migration’ – could simply replace non-EEA migrants as and where required given their differing skills sets and experiences, their linguistic capabilities and their propensity to seek work in particular sectors. This builds upon existing research on both the health and service industry sectors (for example see Bach 2010; Crisp, 2007; McDowell, 2009). However, our research sharply highlighted how the increase in EEA – and more specifically – CEE migration to the UK appeared to have had little impact on filling skills shortages. In the words of two interviewees:

*‘The types of training that doctors in Eastern Europe undertake is very different as they all work in small units and they don’t have acute-type hospitals. So it is very rare that you find somebody with the right skills…so it is far more appropriate to take people from Pakistan, India and Dubai as their skills are more transferable’* (HR representative 7, NHS Trust, North West England).

*‘We have had limited people from Poland and Romania, but not huge numbers. I think probably we had two or three at most, they didn’t tend to come for jobs in the NHS, so we didn’t really see much impact from that at all’* (HR representative 3, NHS Trust, North West England).

Additionally, what may compromise the government’s approach even further is that there is some evidence that contemporary levels of return migration of CEE migrants has increased since the onset of the economic downturn in the UK, due to rising wages and positive changes to tax regimes in CEE countries, as well as disillusionment with poor living and working conditions in the UK (see Coats, 2008). More broadly, the transitional arrangements that were put in place across the EU-15 member states restricting access of CEE migrants have also now come to an end (with the exception of migrants from Bulgaria and Romania respectively). This again, has led some to seek work elsewhere.

Coupled to this is the fact that migrant ‘agency’ changes over time as people re-assess their options (Scullion and Pemberton, 2010). For example, under the transition arrangements, A8 migrants in the UK became eligible for a range of welfare benefits following 12 months in continuous employment. Since May 2011 (the ending of transitional arrangements), the rights of A8 nationals have been brought in line with those of other EEA nationals, thus removing the 12 month continuous employment rule and providing immediate access to Jobseekers Allowance, Housing Benefit and Council Tax Benefit. Put simply, the welfare safety net provides the opportunity for some individuals to ‘take stock’, remove themselves from the labour market if they so wished without becoming destitute and / or find alternative – and often more skilled employment – commensurate with their skills or qualifications, or alternatively enter further / higher education (Pemberton and Stevens, 2010). All of this therefore means that the UK government’s current strategy of utilizing the employment of CEE economic migrants where relevant to fill both low skilled and some skilled occupations may be difficult at best and totally misguided at worst. Additionally, if a longer term perspective is adopted, the effects of imposing such restrictions need to be ‘scaled up’, as concerns have already been expressed by umbrella organizations such as NHS Employers in the UK that the UK needs to remain an attractive destination for highly skilled clinical staff, especially due to the fact the other countries – such as Australia and Canada – are currently running recruitment campaigns to attract the best qualified healthcare professionals (NHS Employers, 2010). Otherwise significant diversionary effects may make it even more difficult to attract such individuals and ultimately compromise the quality of care on offer to an increasingly ageing population, as well as the economic prosperity of both employers and the UK as a whole.

CONCLUSION

This paper has provided a number of important and crucial insights into the design, operationalisation and implementation of systems aimed at ‘managing’ migration within what many have defined as a ‘borderless world’. In this respect, we have highlighted that immigration, labour market and welfare policy need to be considered ‘in the round’ and that their inter-relations with both migrant and employer agency can shape the outcomes both within nation states as well as beyond. But perhaps the crucial issue that emerges from the study is that despite the ‘borderless world’ thesis, geography does – and continues to – matter, especially with regards to the types of individuals, groups, businesses / sectors, territories and policies / strategies that are privileged over others.

But what is also required is a much more detailed analysis of the nature and expression of migrant and employer agency. In particular, there is a need to focus on how this can change over time; the ways in which this then either facilitates or compromises attempts by national governments to restrict entry of some individuals / groups (for example, non-EEA migrants) over others (such as wealthy investors and CEE migrants); the relative effectiveness of such strategies; and the overall consequences that this may have for achieving both social and economic priorities. Indeed, the latter half of the paper highlighted the importance of such an approach with a need for a constant review of any system seeking to manage flows of people, assets, goods or services.

From a practical perspective, a key message that emerges from the research is a greater emphasis placed on planned recruitment and on enhanced (long-term) workforce planning that is linked to current immigration policies / procedures.

Furthermore, from the perspective of national governments, what also becomes apparent is a need to prepare for a potential increase in undocumented working or unofficial employment when imposing such restrictions. Whilst this is widely acknowledged to be taking place throughout the EEA (Markova and McKay, 2008), the PBS and imposition of the migrant cap in the UK may considerably exacerbate such issues and increase vulnerable or exploitative labour situations (for example trafficking and forced labour; see for example, Kalayaan, 2008; Dwyer et al., 2011).

To conclude, there needs to be an ongoing discussion in respect of the current merits of the PBS and non-EEA migrant cap given the former’s emphasis on controlling the quality of migrants arriving in the UK through different forms of selection criteria and the latter’s emphasis on controlling the overall quantity of migration. Any system based on selection alone cannot define an exact level of immigration, but setting a cap can be impossible in respect of defining an optimal number of migrants that should be allowed in (McNeill, 2011). This illustrates neatly the politics of migration and the need to carefully consider the differential requirements of employers, communities and governments alike, and how these may vary across time, space and by occupational sector.

**Policy implications**

* Immigration, labour market and welfare policy need to be considered ‘in the round’ and their inter-rerlations with both migrant and employer agency can shape the outcomes both within nation states as well as beyond.
* Geography matters, especially with regards to the types of individuals, groups, businesses / sectors, territories and policies / strategies that are privileged through policies of ‘managed migration’, and the subsequent outcomes that emerge.
* A more detailed analysis is required of the nature and expression of migrant and employer agency and how this facilitates or compromises attempts by national governments to restrict entry of some individuals / groups over others.
* A greater emphasis should be placed on planned recruitment and on enhanced (long-term) workforce planning that is linked to current immigration policies / procedures.
* There is a need for national governments to prepare for a potential increase in undocumented working or unofficial employment when imposing restrictions on (selective) immigration.

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