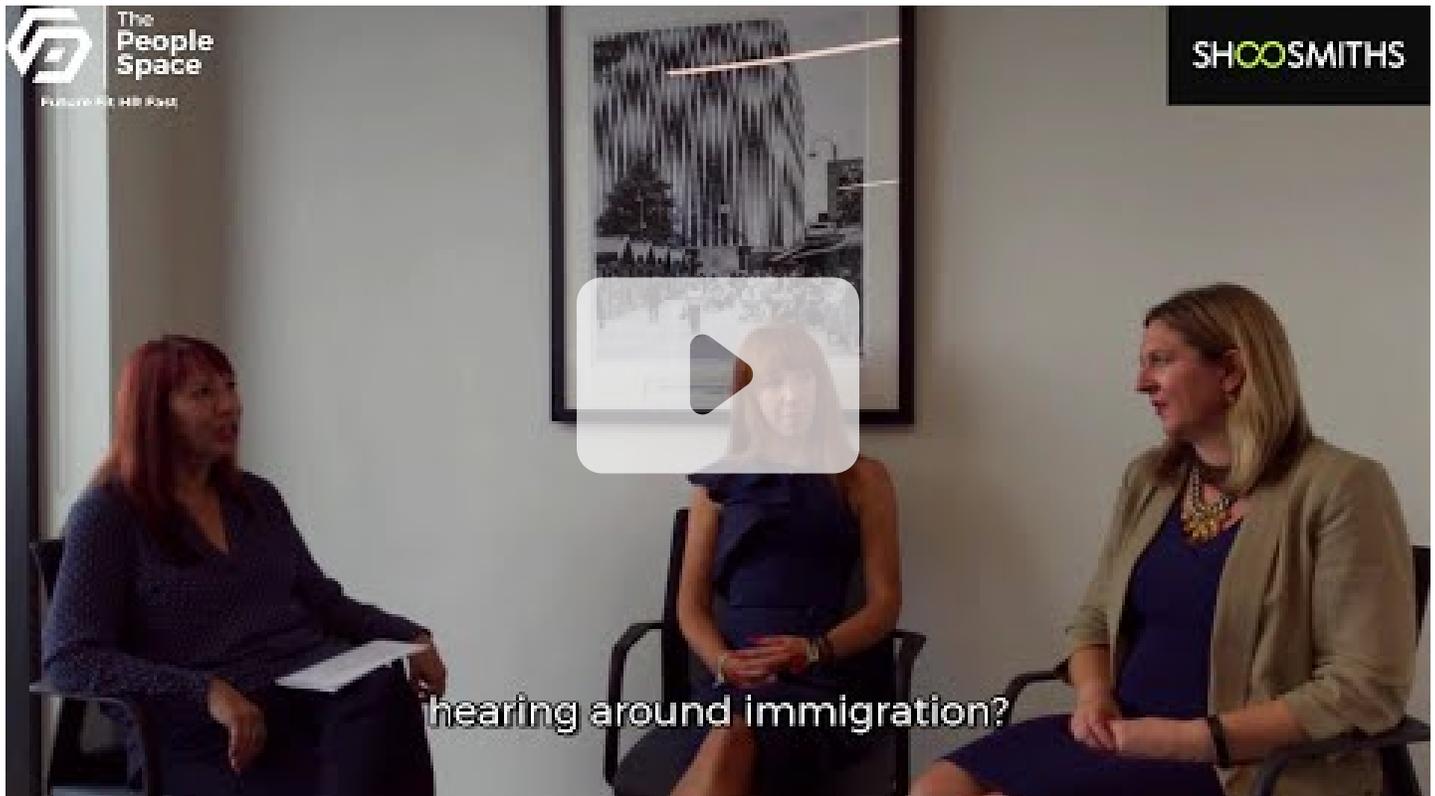


Busting the Myths of Immigration



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Siân Harrington, editorial director at The People Space, speaks to Emma Morgan, employment partner, and Rachel Harvey, senior associate at Shoosmiths about the UK's immigration system, implications of Brexit for employers and what needs to be done to simplify the rules



Below is an edited transcript of the conversation

Siân Harrington, editorial director The People Space: Today I'm in conversation with Emma Morgan, partner in the employment team, and Rachel Harvey, senior associate at Shoosmiths, the legal firm. Welcome.

We're going to talk about immigration, a very contentious subject at the moment and very much in the news, particularly in the United Kingdom and the United States. What we want to do today is to bust some of the myths around immigration. So, Emma and Rachel, you actually live and breathe immigration, your life is all about this. You must hear loads of myths. So, perhaps if I start with you, Emma, what are the typical myths that you're hearing around immigration?

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Emma Morgan: Well, unfortunately it tends to be along the lines of how easy is to get into the UK, which it really isn't. I think the main problem at the moment is that employers in particular are finding it very difficult to source the labour that they need, whether that's in the private or the public sector.

I think unfortunately what was intended to be condensed routes in, more facilitated routes into the UK, has now become so complex and difficult that employees are put off bringing people into the UK and, when they do actually bring people in, they're getting tripped up by the existing system. So, it really means that we're not getting the right people into the right jobs. And we're also just ending up with further shortages.

SH: Now isn't one of the salvations of this going to be the Australian point system? We keep hearing about it, and I know that throughout the world there are different ways, but the Australian point system is something we're hearing a lot about in the UK. Rachel, why is that a myth as well, in that we already have some form of point system, haven't we?

Rachel Harvey: So, essentially the Australian points-based system is similar to what we used to have for a Tier 1 system, which essentially looks at the individual rather than the job that they want to do. So, it looks at their qualifications, their age, their skills, their employment history and what they can bring to the country rather than specifically a role. What we have in the UK is a points-based system but it's slightly different to that. And the one that employers mostly use to get people to the UK is Tier 2 General, which in itself requires a sponsor license. So, they have to be licensed to be able to sponsor individuals from outside the EU currently. And then once they've got their sponsor license and they want someone who's not currently in the UK, they have to get a restricted certificate of sponsorship. which is based on a number of points, based on salary – PhD level jobs get more points – jobs on shortage occupation get more points. And then the migrant themselves, when they put their application in, have to get a number of points based on whether or not the job has had a resident labour market test done, the fact being that they're going to be paid sufficiently in accordance with government guidelines. They get points for having enough money in their bank account and for English language as well.

SH: So it's very complex. And how does the system we're hearing about now, the new proposals, differ too from what we've already got?

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EM: Well it's a good question because it's a bit of a sticking plaster. So what we ended up finding is that Boris and obviously the rest of the cabinet are talking about things that they want to try to bring in. So, they're talking about new routes, even in the last week they've announced a kind of an extension to the Exceptional Talent route to try to fast track people in science into the UK. So that's one of the routes they're looking at.

But if you look at the Australian points-based system as was and where our system was in 2008 there was this category of individual who doesn't necessarily have to have a job offer in the UK. So the idea being that if you were a sufficient talent or had qualifications in specific roles, you could be in demand and therefore have sufficient points in terms of your age, your experience, the job that you hold and therefore could come into the country without a job offer. But the government eight, nine years ago decided they didn't like that because the wrong people were staying and working in fast food restaurants and that kind of thing.

So, they didn't see this as a desirable route. When you look at the Australian system, what they do is they look at regions, they look at territories and they also look at roles, and they can cap those specific roles or target specific roles or sectors. So perhaps that is what they're looking at, but it's all up in the air because they've asked the Migration Advisory Committee to look at it once already and they've asked them to look at it again.

SH: So, I think the fact that it's been so complex, and they can't find a solution shows that it's a very difficult subject and our existing system is not fit for purpose. We hear that from employers all the time. What do you think are the core problems with the existing system, Rachel?

RH: I think if this system may be used to sponsor EU migrants after January 2021, it needs a massive overhaul. The process itself is really onerous, not only just to get your licence, but then to carry out a resident labour market test properly. Things such as doing screenshots at the beginning of the advert process, making sure that all of the relevant information is in the advert. Because sometimes what happens is you get to the end of your 28 days advertising and clients come to us and say, we want to sponsor someone, and they haven't done the advert properly, so they have to do it all over again. So I think it needs to be clearer. They are talking about maybe abolishing the resident labour market anyway. The actual sponsorship management system is really old fashioned. It's dated. It's not very easy to use. And I think that trips up a lot of sponsors.

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Sponsors don't really know what their duties are. They have a significant amount of duties and I think sometimes they fall short of that because they don't realise that if someone goes on maternity leave, that has to be reported through the system. Even the smallest change in the migrant's circumstances must be reported. And I think they don't know that. So if this is going to be rolled out for Europe as well, it definitely needs some kind of simplification.

EM: It really is a system which puts employees off. One of the things recently where clients have said to us, we want to bring in international candidates, we said right, well can we find a way outside the sponsorship system because it is so difficult as a startup in the UK or an international employer coming into the UK is a big expense.

So, it's not really the actual licence process in terms of the cost of it, but it's the preparation and infrastructure you need to have in place. But also, it's then maintaining it and making sure you have people in place, the processes in place. And then when you want to sponsor anyone you've got things like the immigration skills charge, got NHS charge, you've got the visa fees. So whether you or the candidate carry the cost of the visa fees and the NHS charges, you have still got the immigration skills charge, which in effect is a bit like the apprenticeship levy: the intention behind it was that with the funding that the employers need to bring in their skills, all those jobs would then in effect be paying a contribution to something that would be invested in the UK workforce. So, it's almost like another tax on employers every time they want to bring in overseas migrants.

So it's all down to the associated costs. You know, you're looking at seven to eight grand each time as a large employer you want to bring somebody into the UK and you maybe want to sponsor them through up to six years, basically.

SH: It sounds like a very tortuous process and for HR departments, obviously there's a lot of paperwork here, lots of complexity, they can come to a specialist like yourselves, but you know, even then this is a huge amount of work. Are there any pointers you could give to our government and perhaps to governments across the world in how to simplify some of these types of processes for immigration because we know that we do need immigration to enable workforce to grow, to enable employers to grow? We don't have enough home-grown people for an awful lot of jobs at the moment. We need to find a way through this that helps the employers while also addressing issues perhaps the general public have, even though they are often misinformed about some of this. So do you have any thoughts on how we might get to simplify some of this or where they should concentrate efforts to help the employer?

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EM: One of the things they need to look out for, looking at the Australian system, is this regional disparity, so it needs to be some kind of regional variation in terms of skills, shortages and problems. Because what you tend to find unfortunately is the migrants, I hate to use that word, but economic migrants who come into the UK will focus around big cities, particularly London. But what you want, nurses in Lincoln or chartered civil engineers in the Highlands, you're not going to get the same attraction of candidates.

So there definitely needs to be some system which allows for this regional variation. And that's certainly something they could take from the Australian system.

RH: I agree. I think as well, not setting up employers to fail really. The sponsored guidance is around 283 pages long and that's not even the right to work policy guidance, which again some employers don't even know exists and which they should be following to the letter. So, HR departments where immigration isn't their only role don't have time to go through all of that. And what they don't realise is that if they fall foul of any of that policy guidance or the rights work policy guidance, it can lead to a fine or losing your licence and if you lose your licence and your sponsoring of migrants, then those four migrants have their visas cut and they have to leave the UK.

So, I think it's definitely working with employers rather than going against them at the minute. Our government puts so much responsibility on employers, regardless of whether they're sponsoring people or not. They are immigration officers for the government, essentially, they are having to stop people from working if their Visa is expiring and they haven't renewed them, or not give jobs to people who don't have the right to work. It's not just employers, it's landlords as well. So it's an extension of the border force really. And what we find is that it's quite hostile between employers and the UK VI [UK Visas and Immigration] unless they pay for the £25,000 a year premium sponsor service where they get full access to someone in the Home Office. Otherwise it's very, very difficult to make contact with them or get information out of them, and if there's anything which remotely deviates from the policy, it's just completely banned.

What we would like to see I think is the government and our sponsors working together to try to find solutions to certain skills gaps and things like that.

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SH: It certainly seems like the Home Office and the government are making this particularly difficult and almost tripping people up, not necessarily intentionally, but you mentioned an example earlier about that and I think that we need to find a way so that some of this onus is taken back into government and to maybe Border Control and things like this, rather than the actual employers, who as you said, are being a sort of front because they're just trying to get on with the jobs, create money, pay their tax, help our service.

EM: The migration advisory committee has said that the process of licensing and the codes of practices does need to be slimmed down in terms of the bureaucracy around all that. So that's certainly something that's coming out of government. And when we look at things like the EU Settlement Scheme and we refer to lovely Brexit, which obviously is a topic in itself, the idea behind the EU Settlement Scheme was again to almost go with the candidate and to give them preferential treatment I suppose, in a sense to give them the benefit of the doubt when it came to things like proving settlement. So rather than trying to trick them up, it was almost like an intention that they would be given settled status or at least pre-settled status, because they need to get on top of this so they can't keep pushing back. Because the big scary thing that really comes up with the whole Brexit issue is to what extent people who have been here for 15-20 years but can't prove their right to work and don't apply for the settlement scheme, what does that mean for them – because we don't want another Windrush scandal.

So, there's this presumption I think that they're trying to work with candidates, they're trying to work with individuals who are applying for settled status. And the presumption being that they will get it. And that's not always the case – and you see a lot in the media about people who didn't get it and why they haven't got it. But it's certainly a step forward in terms of how they're working with employers, with the various agencies and being much more joined up.

SH: Whether we like it or not at the moment we are working within the system that there is. What advice can you give to employers? Are you finding any employers who are putting their head in the sand a bit and, particularly with the changes coming with the settlement scheme and with Brexit, perhaps thinking this isn't going to apply to them yet? What advice could you give employers that they should be starting to think about now or should even be definitely doing now, Rachel?

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RH: We've obviously got a lot of advice out there for our clients to get them prepared well in advance. What we did, at the beginning of Brexit, is to make sure our clients knew how much they might be affected, should they have a mass exodus of EU nationals leaving the UK after the referendum vote. So that was our first piece of advice. And then the next one, once they announced what was going to happen, the EU registration scheme, was to communicate that in a way which shows the staff that you really want to retain them, you really want to make sure that , they can stay here for the long term. And then now, it's almost positioning them for the post 20 21 new immigration system, whatever that may be. Before Boris Johnson came in there was obviously the white paper published and that's subject to a 12-month consultation period. So, it's almost taking what we can from that white paper and getting ready for a time when if they want to sponsor an IT programmer who's not already in the UK from Spain, they potentially have to have a licence. And if you're a large organisation, it's fairly easy to sponsor individuals. You've potentially got a dedicated team within your organisation who deals with it all the time. If you're a smaller organisation who relies on overseas European nationals, you need to be getting yourself in position now; putting your processes in place to make sure that you are carrying out right to work checks properly; ensuring you've got good sickness absence policies in place; so that if this does go live and everyone does have to have a Tier 2 sponsor licence, we are ready to give support with any application in the future.

EM: I think it is also looking at your existing workforce and working out who you've got and how you are going to retain them, because that's the positive thing about all this. One of the things that the Government has been grappling with is how do we find out how many people are actually here, because there's nothing in terms of Border Control regarding EU nationals coming in because the borders were open. So, I think it's getting a grasp of your own workforce. You never had to track nationality before and why would you, because it doesn't really matter – if you've got the right to work it doesn't matter where you're from. So it's then thinking about your workforce and how you're going to retain them. So in the face of some of what has been quite a backlash to this pre movement, how do we incentivise our existing European workforce to stay with us knowing they have to go through the settlement process; but actually it's not too bad and we'll help support you with that.

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But also, we employers want you to stay with it, we want to invest in you. So it's persuading people to stay in the UK and keep the best talent and as an employer you don't want to lose that talent and then struggle to find it somewhere else and obviously with free movement ending potentially when we leave, where are you going to get that labour from? You're not going to have that ability to recruit in the same way as you do now. So, it's thinking about the long term. It's not just thinking, okay, we are all right now. And I think some employers are genuinely putting their head in the sand and hoping it's not going to happen. But in terms of your workforce, what you want to be doing is sending the message that you're really important to us, we want to keep you, incentivise you, so think about that.

SH: And you think that there's going to be this D-day, in 2021 when suddenly people will be like, oh dear? A bit like at the moment when we potentially have a No Deal Brexit everyone's rushing in to try to do something, if we don't start preparing now?

EM: We're still going to have to do that now, I think. With the Government's stance at the moment in terms of the end of October, Halloween being 'we fall out of Europe day', there will be a rush in the next few months. I think people are starting to get worried again.

RH: Because if you have plans to recruit someone who may be arriving in November this year, if we have a No Deal Brexit, and if they're from Europe, potentially that could affect their future altogether. It may be that they'll come under the new temporary EU scheme, which is what they've decided will happen if we have a No Deal. Essentially what that means is people will only be allowed to stay here for four years and will have to meet the current immigration system which will be enforced. So, I think there could be an influx of people coming before the 31 October if we are looking at going down the No Deal way.

But it's one of those things that employers do little bits of when there's a lot of publicity around it but then when it quietens down, they don't do anything. And already 950,000 EU nationals have applied to the scheme. We have done applications for some of our clients and what I would recommend is, whoever is eligible now just get on and do it because it is a straightforward exercise that could secure your right to work, your right to live here going forward.

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EM: I think people are put off by the fact they've got to go through this process and ask the question 'why do I have to do it?' With the rights and wrongs of it, we may or may not agree with it, but ultimately if you've been here for five years or more and you have a record in terms of you've worked here full time, or whatever it might be for that whole time, and paid your taxes it's a relatively straightforward process. I appreciate that for people who have been self-sufficient or who have been out of work, some of it's a bit more complicated, but I think in the face of No Deal, the preference would be to go forward and get it. Because once this new regime comes in, we don't know what this temporary route is going to be until our new immigration system comes in, because it's a bit of a sticking plaster again until we get the new system.

So, if you're an employer and you're looking to recruit, you want to try to do it before the end of October. I know that sounds daft, it's not very long to do it, but at the moment in the face of No Deal and the loss of free movement, you know we have no transition and the whole point of transition was to make it easier for employers and for everyone to get used to the loss of free movement. But we're faced with that going.

SH: So, if you could sum up the type of things you're hearing from your own clients and employers about the system, what would be the one thing that they would like to see changed, do you think?

RH: I think that it's just to be made more favourable for employers. With all the guidance around, the sponsor guidance, I read a sentence in it the other day that having a sponsor licence is a privilege and not a right. Basically, employers are made to feel that they should be so honoured to have this licence and that as a result they have to abide by every single sponsor duty, which of course is right. But make it clearer what those sponsor duties are, make it simpler and work with employers rather than against them. That's what our clients would definitely like to say.

EM: The problem is that this code of practice has got longer and longer over the years. And if things change, what they often do is stick an addendum at the beginning, so they'll stick on an extra couple of pages. So, the latest thing is it's a duty to almost act against terrorism on employers, a very subjective duty and how on earth as an employee do you assess that? It's all about tracking new migrants and making sure to know where they are and that they're not involved in terrorism, but it's putting duties on employees that they find difficult to understand and for us to even explain to them.

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But also, when the nursing requirements came in, the OFSC requirements in terms of skills and qualifications were done as an addendum to the beginning of the code of practice. It was incredibly complicated. And again, the trusts and the private health employers felt like it was an extra hurdle to get over in terms of trying to bring migrants into the UK.

But ultimately all of it feels as though it is trying to trip employees up, which it shouldn't really be. Also, messages come from government, like a minimum of £36,000 pounds a year for you to stay in the UK. Most nurses are never going to get to that level, but then they're the roles that we need to fill in in the UK. So I think the mixed messages that employees are getting are that they're not really listening to what employers are saying and the system needs to work with employers so that we get the right people into the right jobs otherwise business is going to be strangled by it.

SH: Great. Well there's some really good advice there. That was an interesting conversation. If we have anybody with any questions after this video webinar, do get in contact with me at The People Space. You can get our details at the end of the video and we'll try to answer them and see if we can help out some of our HR director readers. So, thank you very much for your time and thank you for watching.

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ABOUT THE PEOPLE SPACE

The People Space creates and curates content and connections to help HR and people leaders save time and anxiety in this digital age of information overload. We provide insights and learning through [The People Space online magazine](#) and the [People Space Leaders Academy](#). Our vision is to Inspire People Leaders to Seize the Future of Work and our mission is to positively promote the value created by people in a digitally disruptive age when increasingly humans will work alongside machines.