



FLEX

Working Paper: 01

PREVENTING TRAFFICKING FOR LABOUR EXPLOITATION

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FOCUS ON
LABOUR
EXPLOITATION

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Focus on Labour Exploitation (**FLEX**) works towards effective responses to trafficking for labour exploitation that prioritise the needs and voice of victims and their human rights. **FLEX** seeks to achieve this vision through research and analysis that promotes greater accountability and a stronger focus on victims' voiced needs.

FLEX is an international organisation based in London, UK.

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PREVENTING TRAFFICKING FOR LABOUR EXPLOITATION

Summary

Experts in the field of human trafficking place central importance on the 'three Ps' first set out in the UN Human Trafficking Protocol (2003) as an effective framework for combating this global problem: **prevention, protection and prosecution**. Of these measures prevention is considered the foundation of any anti-trafficking response. To reflect this two of the UK's own 'four p's', Pursue, Prevent, Protect and Prepare, as set out in its Modern Slavery Strategy (2014), are centred on prevention: Pursue and Prevent. The UK Human Trafficking Centre (UKHTC) states: 'Prevention efforts are [...] a key component of the UKHTC's proactive strategy to reduce harm and protect victims of human trafficking'.¹

However, UK efforts to prevent trafficking to date have been patchy and prevention work has largely been left to the **Gangmasters Licensing Authority (GLA)**. The GLA is the UK's only pro-active labour inspectorate working to prevent and identify incidences of trafficking for labour exploitation and yet operates in just a small number of labour sectors. **Since 2010, the GLA has seen its resources, remit and scope greatly reduced**. The remainder of the UK's labour inspectorates have also seen reductions in budget and scope, limited to 'high-risk' areas, leaving increasing elements of the UK labour market unregulated and ripe for exploitation. **Both documented and undocumented migrant workers are placed in danger of exploitation as immigration measures intensify isolation, state protections are weakened and all migrant workers are increasingly marginalised.**

¹ See <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/prevention-protecting-victims-and-prosecution>

Recommendations

To prevent human trafficking for labour exploitation the UK should:

'I would like people to talk to my employer about how much they pay, how much holiday they're giving, how much time we're working for them [...] Because otherwise we don't tell anyone, we are scared because we are foreign [...] I wish someone talks to them who has a responsibility'²

Trafficked person's testimony.

'Labour inspectors in particular are well placed to provide early warnings before instances of forced labour and trafficking become entrenched practices of abuse'³

The international Labour Organisation

'The "Gangmasters Licensing Authority" [...] provides an example of an effective framework against exploitation and abuse.'⁴

Council of Europe Secretary General, February 2014.

1 Monitor labour standards and strengthen the labour rights of vulnerable workers

- a) The GLA must not be diverted from its primary function of licence monitoring as a means of ensuring compliance with labour standards and preventing trafficking for labour exploitation.

2 Enforce employment law where flouted

- a) The reduction in scope and powers of UK labour inspectorates should be reversed - employment law must be enforced to prevent trafficking for labour exploitation.
- b) Cases of trafficking for labour exploitation should be prosecuted and punished in a manner commensurate with the severity of the exploitation suffered.
- c) The GLA should be enabled to enforce payment of unpaid wages and other payments due to exploited workers through 'repayment orders'.

3 Regulate high-risk labour sectors

- a) The GLA should be expanded to include 'high-risk' sectors, at a minimum, construction, care, cleaning and hospitality. An expanded GLA should be re-situated under the Department for Business, Innovation and Skills (BIS).

4 Ensure immigration responses do not contribute to trafficking for labour exploitation

- a) To prevent domestic servitude, the Overseas Domestic Worker Visa abolished in 2012 should be re-instated.
- b) To prevent trafficking for labour exploitation, all migrant workers should be entitled to employment law protections regardless of immigration status.

² Interviewed by FLEX in 2014

³ ILO, 2010, Labour Inspection in Europe: undeclared work, migration, trafficking. p.31. Available at http://www.ilo.org/labadmin/info/pubs/WCMS_120319/lang-en/index.htm

⁴ 17 Feb 2014, *Not For Sale – Joining Forces against Trafficking in Human Beings*. Available at <http://www.coe.int/en/web/secretary-general/speeches>



Monitor labour standards & strengthen labour rights of vulnerable workers

Labour inspectors can monitor and engage with workplaces on labour standards and labour rights in a way that law enforcement and immigration officials cannot. The success of the Gangmasters' Licensing Authority (GLA) in preventing and identifying trafficking for labour exploitation in the UK demonstrates the effectiveness of pro-active, intelligence led, labour inspections as a core prevention measure.

The GLA observes the application of labour rights in practice, by monitoring adherence to its key licensing conditions. The GLA's eight licence standards set it apart from the Health and Safety Executive (HSE) or National Minimum Wage Inspectorate with respect to the scope of its investigations: standard two addresses payment of wages; standard three the prevention of forced labour; standard five working hours; and standard seven recruitment arrangements, including fee charges. Its role is supported by strong engagement with workers, contributing to a process of trust building. Such trust enables GLA officers to understand specific vulnerabilities and forms of exploitation, informing intelligence and enforcement activity. Importantly, the GLA has the power to revoke licenses with immediate effect in extreme cases, to prevent exploitation.

The core licence monitoring role of the GLA that prevents labour abuses from occurring is threatened by its diversion towards organised criminal operations, as laid out in its 2013-2016 *Strategy for Protecting Vulnerable and Exploited Workers*.⁵ This narrowed focus was brought about, in part, by heavy cuts to the GLA's resources since the 2010 Spending Review. It also sees the GLA becoming increasingly linked to the National Crime Agency and to immigration control, which is a deeply worrying trend. If the GLA ceases to be viewed as a labour inspectorate and is seen instead as an extended arm of law enforcement or border security, workers will no longer place trust in GLA officials, severely threatening its intelligence gathering function.

The GLA must not be diverted from its primary function of licence monitoring as a means of ensuring compliance with labour standards and preventing trafficking for labour exploitation.

GLA upholding labour standards through licence monitoring

On 5th March 2014, the GLA labelled DJ Houghton Ltd the 'worst UK gangmaster ever' for their 'prolonged and disgraceful' exploitation of workers.⁶ After lengthy efforts to clear its name, the gangmaster finally withdrew its appeal against the decision to revoke its license dating back to October 2012. At that time, 29 Lithuanian men were found to have been 'treated like slaves'⁷ when put to work as chicken catchers by DJ Houghton Ltd, which provided migrant workers to Noble Foods, one of the UK's largest processors of eggs and chickens. The men gave evidence detailing: physical and mental control through beatings and the use of dogs to intimidate; excessive recruitment fees; wage deductions and withheld wages; poor and cramped living conditions; confinement in a transit van for days without washing or toilet facilities; movement around the UK from job to job, paid only for the time that they were working; and a lack of health and safety equipment or training. Upon uncovering this exploitation, the GLA immediately revoked DJ Houghton's license for failing 18 separate GLA Licensing Standards, including: 2.2 Paying wages in accordance with National Minimum Wage; 3.1 Physical and mental threats to workers; 3.3 Withholding wages; and 4.1 Quality of accommodation.

⁵ See <http://gla.defra.gov.uk/PageFiles/1027/Gangmasters%20Licensing%20Authority%20Strategic%20Plan%20F.pdf>

⁶ GLA, 5 March 2014, DJ Houghton Ltd – 'worst UK gangmaster ever' <http://gla.defra.gov.uk/PageFiles/1532/DJ%20houghton%20final.pdf>

⁷ *ibid*.



Enforce employment law where flouted

Labour inspectorates: Common employment law contraventions in the UK include: unpaid wages, excessive working hours, lack of contract, bogus self-employment, harassment, unfair dismissal and discrimination. Many of these are included in the license standards of the GLA. However, as the GLA only regulates a small number of sectors, workers in non-GLA sectors must seek assistance from alternative regulators. Three alternative regulators offer some assistance in employment law oversight:

- **The Health and Safety Executive** monitors health and safety and working time but has had its funding reduced by 35% and has reduced its proactive inspections by one third.⁸
- **The National Minimum Wage Inspectorate** has the power to investigate individual workers' complaints, and where there is a perceived high-risk can extend investigations to the whole of the workforce. However, figures for investigations completed have fallen annually over the past four years: from 2,904 in 2010-11 down to 1,455 in 2013-14.⁹ There are also very few criminal prosecutions for failure to pay minimum wage: just two in 2008-09, one in 2009-10 and one in 2010-11 with none thereafter.¹⁰
- **The Employment Agencies Standards Inspectorate** enforces the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003. In July 2013, resources from EAS were diverted to the National Minimum Wage Inspectorate, leaving a skeleton EAS team in the Department for Business Innovation and Skills.¹¹ Three of the nine staff who were seconded to HMRC have now been reinstated and resources have been increased, the Government say that increased resources will be invested in recruiting more staff, seemingly reversing their 2013 decision.¹²

The reduction in scope and powers of UK labour inspectorates should be reversed - employment law must be enforced to prevent trafficking for labour exploitation.

⁸ See Department for Work and Pensions, 2011, Good Health and Safety, Good for Everyone. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66745/good-health-and-safety.pdf and APPG on Occupational Safety and Health, 2011, Health and Safety and the Health and Safety Executive, available at http://www.ucu.org.uk/media/pdf/t/0/hsecuts_allpartygroupreport.pdf

⁹ See parliamentary answer, HL Deb, 22 December 2014, QHL3596.

¹⁰ See parliamentary answer, HC Deb, 16 October 2014, Q209683

¹¹ Written Ministerial Statement, 12 July 2013, C50WS. Available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130712/wmstext/130712m0001.htm>

¹² Written Ministerial Statement, 12 July 2013, C50WS. Available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130712/wmstext/130712m0001.htm>

GLA 'disappointed' with dairy farmer sentencing decisions

In 2013, Christopher Blakeney, an unlicensed gangmaster, was found guilty of supplying between 60 and 70 Filipino workers to dairy farms across the UK. The workers had been subjected to serious exploitation –receiving up to £500 a month below the minimum wage, and housed in sub-standard farm accommodation. Workers were tied to the gangmaster through a debt bond, deducted from their wages. Marden Management Ltd Director, Christopher Blakeney, was charged with four counts of acting as an unlicensed gangmaster. On conviction he was handed a 12-month suspended sentence, and ordered to pay £45,000 in compensation over three years, despite having made over £700,000 through his exploitation of the workers. 15 farmers that the GLA argued were part of an 'exploitative enterprise' with Marden Management, receiving workers at suspiciously low rates, were charged with 'using the services of an unlicensed gangmaster'. Whilst this resulted in convictions, all were released without further penalty. The GLA responded: 'This was by far the most serious example the authority has tackled [...] in terms of the intentional, well-organised and systematic financial exploitation of workers, but the punishment does not fully reflect that.'¹⁵

Sentencing: Enforcement of GLA license violations is undermined by light sentences awarded in many labour exploitation cases. The GLA has found employers and gangmasters paying very little and housing workers in appalling conditions, yet when such cases are referred to court the offenders only receive small fines, convictions without punishment or suspended sentences. The GLA believes that small penalties are regarded as a 'hazard of the job'¹³ by abusive gangmasters and employers and therefore do little to deter severe exploitation. While many of these cases should be prosecuted as 'forced labour', carrying a maximum sentence of life imprisonment, prosecution agencies can be reluctant to take this route.¹⁴ Additionally, there are no sentencing guidelines for GLA license offences, as there are for crimes such as assault and burglary, that can guide magistrates in the sentencing process. As a result, exploitative employers and gangmasters often escape serious punishment.

Cases of labour exploitation should be prosecuted and punished in a manner commensurate with the severity of the exploitation suffered.

Compensation: The EU Directive on Trafficking emphasises the right of victims to compensation.¹⁶ However, the link between unpaid wages and exploited workers' compensation is unclear both in government procedures and statistics. The UK government provides for compensation of victims of trafficking through the Criminal Injuries Compensation Scheme (CICS). However, CICS only records information relating to trafficking for sexual exploitation and does not record compensation for victims of trafficking for labour exploitation.¹⁷ Victim support agencies suggest that it is extremely difficult for victims of trafficking for labour exploitation to claim compensation under CICS and that few have received compensation by this means. For those claims that are pursued, victims have found the procedure is long and complex, often extending beyond legal aid or pro-bono assistance.

In its Modern Slavery Strategy the Government has set out a new role for a 'Modern Slavery Strategic Lead'¹⁸ in HMRC which could help with wage recovery for workers identified by the GLA. However this role is at an early stage with no information on the work of this individual yet published. Currently the GLA may only 'advise an employer to repay money to affected workers as the GLA does not have the power to recover any arrears of

13 The Independent, 'It pays to use slave labour, says watchdog', 23 June 2013, <http://www.independent.co.uk/news/uk/home-news/it-pays-to-use-slave-labour-says-watchdog-8669797.html>

14 See draft Modern Slavery Bill Joint Committee Evidence Session, 25 February 2014, DI Keith Roberts evidence.

15 Gangmasters Licensing Authority, GLA 'disappointed' with dairy farmer decisions, 12 February 2013. Available at <http://gla.defra.gov.uk/PageFiles/1491/marden%20dairy%20farmers.pdf>

16 See Directive 2011/36/EU available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

17 See, parliamentary answer, HC Deb, 6 February 2014, c340W. Available at http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140206/text/140206w0002.htm#140206w0002.htm_spnw35

18 UK Home Office, 2014, Modern Slavery Strategy. P. 33 Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf

19 See parliamentary answer, HC Deb, 6th January 2014, c157W. Available at http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140106/text/140106w0006.htm#140106w0006.htm_spnw43

pay on behalf of workers'.¹⁹ Where it does identify breaches of minimum wage legislation the GLA notifies the National Minimum Wage Inspectorate, which may choose to investigate the matter further. Alternatively where the GLA conducts a criminal investigation a court order for repayment may be sought following a successful prosecution, though such orders are rare and can involve long delays between the criminal proceedings and the receipt of compensation.

Whilst the National Minimum Wage Inspectorate identified £3.6M in wage arrears for 17,000 workers in 2011/12²⁰ the amount paid in compensation was just £320,259 to just 579 workers²¹ suggesting that many workers are not receiving unpaid wages. In 2012 the Government announced that the remit of the GLA would be reviewed, including the introduction of a power to impose a 'Repayment Order'.²² However, shortly thereafter the Government limited the ability of regulators to impose financial sanctions on small and medium sized enterprises(SME).²³ In a debate on civil fines and the GLA the Government stated that since the majority of businesses regulated by the GLA were SMEs financial penalties should not be applied.²⁴ Without proper enforcement of employment law through sanctions and the repayment of owed wages there is little to prevent employers exploiting workers, particularly migrants, with limited perceived or actual access to justice.

The GLA should be enabled to enforce payment of unpaid wages and other payments due to exploited workers through 'repayment orders'.

Lack of pay, underpayment and employment tribunals, commercial cleaners, as reported by the Latin American Women's Rights Service

Cleaners commonly face underpayment of wages, as companies may pay for significantly fewer hours than those actually worked. Some employers refuse to provide workers with contracts and payslips, which makes it harder for them to make claims and, in some cases, even identify their employer. Given the amounts of money involved, taking a case to an employment tribunal is considered a lengthy and expensive process. Cleaners who are known to be undocumented by an employer are often asked to work unpaid for a month or more as a 'trial period', after which they will be told that they cannot be employed without papers. New employment tribunal fees and cuts to law centres' budgets leave workers with little access to justice.

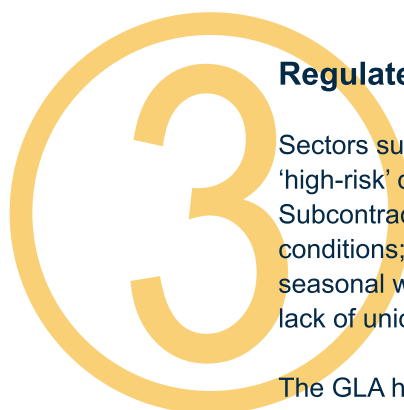
20 See BIS, 2013, Delivering Results National Minimum Wage Compliance & Enforcement. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/49986/13-280-national-minimum-wage-compliance-report-for-2011-12.pdf

21 See parliamentary answer HC Deb, 8th Oct 2013, c154W. Available at <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131008/text/131008w0006.htm>

22 DEFRA, 2012, Written Ministerial Statement, Gangmasters Licensing Authority: Outcome of the Red Tape Challenge. Available at www.parliament.uk/documents/commons-vote-office/May_2012/24-05-12/11-DEFRA-Outcome-of-Red-Tape-Challenge.pdf

23 See Written Ministerial Statement, Thursday 8th Nov 2012, Official Record c43ws. Available at <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121108/wmstext/121108m0001.htm>

24 See Westminster Hall Debate, Gangmasters Licensing Authority (Civil Fines), 11 Jun 2013, c68wh. Available at <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130611/halltext/130611h0002.htm#13061163000003>



Regulate 'high-risk' labour sectors

Sectors such as construction, cleaning, care and hospitality are rendered 'high-risk' due to the prevalence of key risk elements, including: Subcontracting / agency labour; migrant labour; isolated working conditions; accommodation on site; flexible or insecure arrangements; seasonal work; low wages; limited power because of ease of replacement; lack of unionisation; formal and informal economies.

The GLA has proved itself effective in identifying trafficking for labour exploitation in high-risk sectors currently within its remit - in 2013, other than the block paving/tarmacking industry, the industries in which the most trafficking for labour exploitation was uncovered were those in which the GLA operates – agriculture and food processing.²⁵ The importance of extending GLA operations into other high-risk sectors has been recognised by many civil society organisations and parliamentarians for some time.²⁶ The Council of Europe Group of Experts on Action against Trafficking in Human Beings recommended GLA extension in its 2012 report on the UK, which advised that the GLA's 'scope of competence could be further extended to other sectors such as hospitality (including catering companies and hotels) and construction.'²⁷ An expanded GLA should be re-situated as a Non-Departmental Public Body under the Department for Business, Innovation and Skills (BIS) where it would be best placed to exercise its primary role to protect vulnerable workers by upholding labour rights and UK employment law.

False self-employment of construction workers leaves opportunity for extreme exploitation²⁸

In 2008, the subcontracting company Produm was found to have recruited 12 Lithuanian workers to work on a Government private finance initiative hospital building site. The workers were enrolled without their knowledge on the Construction Industry Scheme as self-employed, absolving Produm of any responsibility for their pay and working conditions. The workers were charged excessive amounts for rent, tools and utility bills and some were paid just £8.80 for a 40-hour week. No insurance protection was provided. Conditions deteriorated yet further until some of the workers were left without pay all together, destitute and entirely dependent on the accommodation provided to them by the company. Whilst the construction workforce has been falling, the construction union UCATT reports the numbers of self-employed workers has risen from 740,000 in 2009/10 to 777,000 in 2011/12 – it estimates around half of these are 'falsely self-employed'.²⁹ This precarious employment status leaves construction workers extremely vulnerable to abuse.

The GLA should be expanded to include 'high-risk' sectors, including at a minimum, construction, care, cleaning and hospitality. An expanded GLA should be re-situated under BIS.

25 Serious Organised Crime Agency, 2014, UKHTC: A Strategic Assessment on the Nature and Scale of Human Trafficking in 2013, p14.

26 See for example, Commission on Vulnerable Employment, 2008, Hard Work Hidden Lives: Short Report. P.4. Available at <http://www.vulnerableworkers.org.uk/cove-report/short-report/>

27 CoE, 2012, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: First evaluation round. P.30. Available at http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf

28 See UCATT, 2008, UCATT Uncovers Appalling Systematic Abuse of Vulnerable Workers on PFI Hospital. Available at <http://www.ucatt.org.uk/ucatt-uncovers-appalling-systematic-abuse-vulnerable-workers-pfi-hospital>

29 Elliot, J., 2013, The Great Payroll Scandal, UCATT, UK. p.11



Ensure immigration responses do not contribute to trafficking for labour exploitation

Visa restrictions: In April 2012, the UK government changed the overseas domestic worker visa so that migrant domestic workers were no longer allowed to change employers or renew their visa beyond 6 months. The domestic worker support organisation, Kalayaan has observed that 'in tying workers to their employers, all protections have been removed; workers can in no way challenge their conditions of employment, which have worsened correspondingly'.³⁰ During the debate on the Modern Slavery Act (2015) the Government overturned a successful amendment that sought to give overseas domestic workers the right to change employers.

To prevent domestic servitude, the Overseas Domestic Worker Visa abolished in 2012 should be re-instated.

Exploitation with limited access to justice, the tied overseas domestic worker visa. Kalayaan case

'Mira', a Filipina domestic worker, was brought by her employers from the Middle East to the UK. She worked 16 hours a day with no time off, shared a room with the families' children and had no private time or space for herself. Mira's employer retained her passport and paid her nothing whilst she was in the UK. She only ate leftovers and if the family ate out, she went hungry. One day Mira found her passport and sought help from Kalayaan. However Kalayaan advised her that she only has a 'tied overseas domestic worker visa'. This visa allows an employer to bring a worker to the UK, but ties that worker to the employer, leaving limited scope to challenge abuse. Kalayaan found Mira legal assistance and referred her to the UK National Referral Mechanism.

³⁰ Kalayaan, 2013, Slavery by another name: the tied migrant domestic worker visa, p.2. Available at <http://www.kalayaan.org.uk/documents/Slavery%20by%20another%20name-%20Briefing%207.5.13.pdf>

Immigration status: Immigration status is commonly used as a means of retaining workers in a position of vulnerability or of adding weight to threats against them. A recent two-year research project into undocumented migrants' labour market experiences found that undocumented migrants' 'working arrangements are governed by precise and clearly understood norms, which regulate pay and working conditions but which are not based on recognised labour law standards.'³¹ Such 'norms' can commonly lead to general employment law infringements and in extreme circumstances lead to extreme exploitation including worker captivity, forced labour and dangerous working conditions. In the UK, in practice, immigration law supersedes employment law, meaning that migrants without status effectively have no recourse to labour rights.

To prevent trafficking for labour exploitation, all migrant workers should be entitled to employment law protections regardless of immigration status.

USA: workers must be paid for work done, regardless of their immigration status

In the USA exploited undocumented workers may bring claims against their employers for unpaid wages or other violations under Federal employment legislation, including the Fair Labour Standards Act. Additionally, legislation in some States prevents a persons' immigration status from being raised or used against them in court, ensuring that an exploited worker's immigration status does not exclude them from the protection of labour law. New legislation in California also protects migrant workers from employers who retaliate by threatening to report them to immigration authorities. Under the California Labor Code § 244(b) (SB 666), it is prohibited to report or threaten to report an employee's immigration status because the employee has exercised his or her labour rights, and employers can be penalised by suspension of their business license or criminal sanctions in some circumstances.

31 See, City University and London Met University, Undocumented Migrants, Ethnic Enclaves and Networks at www.undocnet.org

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