

**Labour Exploitation Advisory Group (LEAG)**

**Good Work Plan: establishing a new Single Enforcement Body for employment rights' consultation**

**Submission to the Department of Business, Energy & Industrial Strategy and the UK Home Office**

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**About LEAG**

The Labour Exploitation Advisory Group (LEAG) is a group of experts from ten organisations supporting people in, or at risk of, severe forms of labour exploitation, such as human trafficking, forced labour and slavery. LEAG members<sup>1</sup> represent a range of issues that are crucial for preventing labour exploitation, including migrants' rights, women's rights, labour rights and victim support. Members work together to assess the impact of formal and informal responses to tackling labour exploitation by both government and non-governmental actors; and to identify barriers and develop joint strategies for improving the relevance and effectiveness of local and national responses to tackle labour abuse and exploitation.

**Summary**

LEAG welcomes the opportunity to contribute to the Department of Business, Energy & Industrial Strategy and the Home Office's call for evidence on establishing a new Single Enforcement Body for employment rights in the UK. LEAG members' extensive experience on the issues surrounding the current employment rights enforcement system, including specific recommendations for the proposed new Single Enforcement Body, are covered in members' individual submissions to this call for evidence.

This submission focuses on LEAG's concerns around the new Single Enforcement Body's proposal to work more closely with other enforcement bodies, more specifically immigration enforcement. It describes how fear of immigration consequences currently acts as a major barrier to reporting and seeking help when migrant workers face labour abuses and exploitation. This collaboration is seen to negatively affect labour inspectorate's ability to support workers and identify employers in breach of employment law in the UK. It recommends that UK labour enforcement activities abide by article 3(2) of the International Labour Organisation Convention 81 and recommendation by the former Special Rapporteur on the Human Rights of Migrants, and protect the rights and interests of *all* workers, irrespective of immigration status.

*Workers' names have been changed to protect their right to anonymity.*

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<sup>1</sup> LEAG members are: Focus on Labour Exploitation (Secretariat), Latin American Women's Rights Service (Chair), Kalayaan, Unite the Union, Equality, East European Resource Centre, Ashiana Sheffield, British Red Cross, Bail for Immigration Detainees, Praxis Community Projects. For more information see <http://www.labourexploitation.org/about-us/labour-exploitation-advisory-group-leag>

## Main issues and recommendations

- i. This submission focuses on the current system's failure to protect migrant workers from abuse and exploitation as well as its failure to identify employers non-compliant with labour law.
- ii. LEAG believes that in an enforcement system that is fit for purpose all workers should be able to seek support and benefit from the work of labour inspectorates. This is not happening in the UK.
- iii. Migrant workers' fear of retaliation in the form of immigration consequences act as a major barrier for them alerting labour inspectorates about bad workplace practices.
- iv. This fear is strengthened by the perceived, and actual, strong relationship between labour enforcement bodies and the Home Office's immigration control function.
- v. A large body of evidence has cautioned labour inspectorates of the dangers of supporting immigration control activities on their ability to exercise their main functions: supporting all workers; informing employers and workers about their rights and responsibilities; and identifying gaps in legal provision.
- vi. Based on this, LEAG recommends that UK labour enforcement bodies, single or plural,
  - a. work to establish trust with *all* workers to empower them to report workplace issues.
  - b. abide by article 3(2) of the International Labour Organisation Convention 81 and recommendation by the former Special Rapporteur on the Human Rights of Migrants, and protect the rights and interests of *all* workers, irrespective of immigration status.
  - c. cease carrying out immigration enforcement activities, such as reporting migrant workers in breach of the 'illegal working offence' and end harmful joint operations that help immigration enforcement identify and detain undocumented workers.

## LEAG's response to consultation questions

### 1. Is the current system effective in enforcing the rights of vulnerable workers?

- I.1. No, the current system is failing to enforce the rights of the most vulnerable workers.
- I.2. This submission focuses on the current system's failure to protect documented and undocumented migrant workers from labour abuses and exploitation as well as failing to identify employers who do not comply with labour law and to prevent these issues from happening to other workers.
- I.3. LEAG members have identified a strong causal link between labour abuses and labour exploitation within certain UK labour sectors. Breaches of labour law, such as non-payment of minimum wage, holiday pay and workplace discrimination, when left unchecked, can develop into forms of exploitation, including forced labour as covered by the Modern Slavery Act 2015. In his 2018/19 Annual Strategy, the former Director of Labour Market Enforcement, supported this view stating:

"I see modern slavery as the extreme end of a continuum of non-compliant behaviour. I am keen to ensure that the links between modern slavery and other forms of labour market exploitation (both in terms of the individuals involved and the conditions that enable it to happen) are recognised so that the whole spectrum of behaviour can be tackled in a coherent and effective manner."<sup>2</sup>

Therefore, in an enforcement system that is fit for purpose, it is essential that labour inspectorates help workers address cases of labour abuse to reduce the chances of it developing into severe forms of exploitation.

- I.4. LEAG members support migrants working in low-paid jobs in unregulated labour sectors – such as care, domestic work, hospitality and cleaning. They have often been employed through recruitment agencies or other subcontracting models which can create the perfect conditions for labour abuses to thrive, and in some cases to develop into offences contained under the Modern Slavery Act 2015.
- I.5. Fear of immigration consequences is one of the main barriers to reporting for both undocumented and documented workers – the latter often being unaware of, or insecure in, their immigration status. It is widely accepted by non-governmental organisations, academics and supranational bodies that the threat of reporting to police or immigration authorities is routinely used by unscrupulous employers to hold workers in abusive situations.<sup>3</sup>
- I.6. LEAG members have identified many cases in which employers have used this threat, coupled with workers' associated inability to enforce their rights, to under-pay, refuse holidays and sick pay and perpetrate other workplace abuses, some of which developed into exploitation.

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<sup>2</sup> Director of Labour Market Enforcement, United Kingdom Labour Market Enforcement Strategy 2018/19, May 2018, p.4. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf)

<sup>3</sup> European Union Agency for Fundamental Rights, Protecting migrant workers from exploitation in the EU: boosting workplace inspections, 2018. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-protecting-migrant-workers-boosting-inspections\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-protecting-migrant-workers-boosting-inspections_en.pdf); Centre for Social Justice, It happens here: Equipping the United Kingdom to fight modern slavery, March 2013, p.83. Available at: <https://www.centreforsocialjustice.org.uk/library/happens-equipping-united-kingdom-fight-modern-slavery>; François Crépeau and Bethany Hastie, The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights, European Journal of Migration and Law (2-3), 2015.

- 1.7. Shortly after the EU Referendum in 2016, a LEAG member supported Natalia, a European woman who had her workload increased in a way that required her to work extra hours without additional pay. Natalia felt unable to complain as her employer stated that she “should behave now” because she is European and since the UK had decided to leave the EU her ability to enforce her rights were at risk. This demonstrates how the threat of immigration authorities can be used even against migrants who have the right to work in the UK.
- 1.8. Even if the threat does not come directly from the employer, undocumented workers often feel unable to report cases of abuse for fear that labour inspectors will alert immigration enforcement of their status in the country.
- 1.9. LEAG member Focus on Labour Exploitation (FLEX) interviewed Renata, an undocumented woman who described multiple instances of abuse while undertaking work in cleaning, hospitality and domestic work, some of which amounted to exploitation. When asked about why she did not report her employers she stated, “if you are illegal [sic] here, we have no rights to complain or report.”
- 1.10. Renata’s view illustrates that of many other undocumented workers supported by LEAG members who describe feeling unable to complain when experiencing issues at work because of the perceived strong relationship between labour inspectorate bodies and the Home Office’s immigration enforcement function. When Renata was asked what it would take for her to raise a complaint about the issues she was experiencing at work she said, “if I was protected in some way [...] against deportation”.
- 1.11. Recognising the impact of the lack of trust undocumented migrants have towards labour inspectorates when they are seen to collaborate with immigration authorities, some countries have adopted strategies to ensure immigration control activities do not interfere with the protection of workers’ rights:
  - i) in the United States, labour inspectors must not ask for immigration documents when investigating cases of unpaid wages.<sup>4</sup>
  - ii) Brazil goes even further. After identifying that Federal Police officers were treating exploitation of undocumented workers solely as a violation of immigration policies, Brazil implemented a complete separation between labour inspection and immigration enforcement, which they believe is essential to counter precarity at the workplace and promote better working conditions for all workers. In practice, labour inspectors do not enquire about workers’ immigration status and if they are found to be undocumented, immigration authorities are not alerted.<sup>5</sup>
- 1.12. Former United Nations Special Rapporteur on the Human Rights of Migrants, François Crépeau, has advocated for this separation between labour enforcement authorities and immigration control responsibilities stating that “unless there is a ‘firewall’ in place which prevents labour inspectors from communicating information about potential irregular migrants to immigration enforcement” undocumented workers will continue to be “very reluctant to report workplace violations to labour inspectors”.<sup>6</sup>

<sup>4</sup> National Employment Law Project and National Immigration Law Centre, Immigration and Labor Enforcement in the Workplace: the Revised Labor Agency-DHS Memorandum of Understanding, Factsheet May 2016. Available at: <https://s27147.pcdn.co/wp-content/uploads/Fact-Sheet-Immigration-and-Labor-Enforcement-Workplace.pdf>

<sup>5</sup> Focus on Labour Exploitation interview with Brazilian Labour Inspection Official, September 2017.

<sup>6</sup> United Nations General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants, 2014, p.16. Available at: <https://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

1.13. In its 2018 report *‘Protecting migrant workers from exploitation in the EU: boosting workplace inspections’*<sup>7</sup>, the European Union Agency for Fundamental Rights detailed the different strategies used by employers to undermine labour inspections in the UK, which included:

- instructing workers, especially those with undocumented immigration status, on what to do in case of an inspection;
- ensuring undocumented workers are not present during inspections, including by instructing workers to run away or leave the premises;
- instructing workers to “smile and say they were happy”<sup>8</sup> as well as to lie about their working conditions and accommodations;

The report also stated that “several exploited workers said that their employers reinforced their requests with threats in case of non-compliance”<sup>9</sup> with dismissal and deportation. Evidence gathered by LEAG members supplement these findings.

1.14. LEAG member Latin American Women’s Rights Service (LAWRS) supported Lucia. She was undocumented and was working as a cleaner with another person’s documents. Lucia was experiencing issues at work but when she was informed that there would be a labour inspection at her workplace, she decided not to go to work because she was afraid of coming to the attention of immigration authorities. In this case, the Gangmasters and Labour Abuse Authority (GLAA) missed an important opportunity to support a worker and to identify an employer who was in breach of employment law.

1.15. In addition to eroding trust with workers, collaboration with immigration enforcement is seen to create conflicting responsibilities for labour inspectorates by expecting that they enforce employment regulations while conducting immigration control activities by reporting undocumented workers.

1.16. According to article 3 of the International Labour Organisation’s (ILO) Convention 81, the *‘Labour Inspection Convention’*, which the UK has ratified, labour inspectors are responsible for securing enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspections; and that:

“any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.”<sup>10</sup>

1.17. The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEARC)’s 2017 report on *‘Addressing governance challenges in labour migration landscape’* clarified that:

“the main objective of the labour inspection system is to protect the rights and interests of *all* workers, and to improve their working conditions, rather than to enforce immigration law,

<sup>7</sup> European Union Agency for Fundamental Rights, *Protecting migrant workers from exploitation in the EU: boosting workplace inspections*, 2018. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-protecting-migrant-workers-boosting-inspections\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-protecting-migrant-workers-boosting-inspections_en.pdf)

<sup>8</sup> Ibid, p.20.

<sup>9</sup> Ibid.

<sup>10</sup> International Labour Organisation Convention 81, *Labour Inspector Convention*, 1947, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C081](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081)

and therefore any cooperation between the labour inspectorate and immigration authorities should be carried out cautiously.”<sup>11</sup>

- 1.18. It is LEAG’s opinion that by alerting immigration enforcement about workers’ undocumented status and conducting joint operations that help immigration enforcement identify undocumented workers, UK labour inspectorates are failing to fulfil their responsibility towards workers, especially those most at risk of labour abuse and exploitation.

#### **4. What do you think would be the risks, if any, of a single enforcement body?**

- 4.1 Based on the issues described through section 1, LEAG is concerned that current plans for the establishment of a Single Enforcement Body (SEB) include “closer working with other enforcement partners, including [...] immigration enforcement”<sup>12</sup> and that therefore there is a significant risk that the SEB’s efficacy in supporting migrant workers and identifying employers who are not complying with employment law would be diminished.
- 4.2 It is LEAG’s view that effective labour enforcement bodies, plural or singular, must not conduct, or help enforce, immigration control activities against workers. A large body of evidence which includes non-governmental organisations, academics and supranational bodies have cautioned labour inspectorates of the dangers of undertaking this role on their ability to exercise their main functions, which are to protect *all* workers; advise employers and workers on their rights and responsibilities; and alert relevant authorities about gaps in legal provision.<sup>13</sup>
- 4.3 The former Director of Labour Market Enforcement has recognised the importance of workers feeling empowered to complain in order to identify and reduce employer non-compliance with employment law.<sup>14</sup> LEAG recommends that the UK’s labour enforcement bodies, single or plural, work to establish trust with *all* workers, especially those most at risk of labour abuse and exploitation such as migrants with undocumented or insecure immigration status, to empower them to come forward about issues at work.
- 4.4 LEAG also recommends that labour inspection authorities, in the current system and in the proposed SEB, cease carrying out immigration enforcement activities, such as reporting migrant workers in breach of the ‘illegal working offence’, and end harmful joint operations that help immigration enforcement identify and detain undocumented workers, in order to reduce the risks of being unable to support migrant workers experiencing abuse and exploitation in the UK.

<sup>11</sup> Emphasis added. International Labour Organisation, Report IV: Addressing Governance challenges in a changing labour migration landscape, International Labour Conference, 106<sup>th</sup> Session, 2017, p.25. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_550269.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_550269.pdf)

<sup>12</sup> Department for Business, Energy & Industrial Strategy, Good Work Plan: establishing a new Single Enforcement Body for employment rights: Consultation, July 2019, p.13. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/817359/single-enforcement-body-employment-rights-consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817359/single-enforcement-body-employment-rights-consultation.pdf)

<sup>13</sup> International Labour Organisation Convention 81, Labour Inspector Convention, 1947, article 3(2), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C081](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081)

<sup>14</sup> Director of Labour Market Enforcement, United Kingdom Labour Market Enforcement Strategy 2018/19, May 2018, p.18. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705503/labour-market-enforcement-strategy-2018-2019-full-report.pdf)