

FOCUS ON LABOUR EXPLOITATION

UK Modern Slavery Strategy Review

FLEX written evidence

November 2021

Focus on Labour Exploitation (FLEX) is a research and policy organisation working towards an end to labour exploitation. FLEX seeks to achieve this vision through the prevention of labour abuses, protection of the rights of those affected or at risk of exploitation and by promoting best practice responses to labour exploitation through research and evidence-based advocacy.

FLEX's work builds on the understanding that labour exploitation is situated at the extreme end of a spectrum ranging from labour compliance through to labour law violations, culminating at extreme exploitation in the form of offences such as forced labour and human trafficking for labour exploitation. These are at once serious crimes, human rights breaches, and violations of labour law.

In the UK, FLEX has conducted research on a range of issues relevant to the new Modern Slavery Strategy. These include improving identification and support of victims of trafficking in the European Union (EU)¹ and the impact of migration status, labour market structures, and immigration control measures on vulnerability to exploitation.²

In 2015, FLEX established the Labour Exploitation Advisory Group (LEAG) - a coalition of organisations working directly with people who have experienced or are at risk of labour exploitation in the UK. LEAG promotes discussion, information-sharing and collaboration as well as learning from best practice and linking practice to policy.³ FLEX's CEO, Lucila Granada, Co-Chairs the Home Office Modern Slavery Strategy and Implementation Group (MSSIG)'s Task and Finish Group on Preventing modern Slavery.

FLEX believes partnership with, and participation of, those affected by labour abuse and exploitation is crucial to effective research and to inform policy making. Their knowledge can help identify and shape better policy solutions. Despite their expertise by experience and despite being the ones most affected by such policy decisions, workers at risk are rarely involved by policy-makers in developing solutions to labour exploitation. For this reason, FLEX has developed and pioneered participatory approaches to research on human trafficking for labour exploitation. In 2018, we developed a 'community researcher methodology', working with London construction workers to enable them to research the experiences of their own communities and raise their voices for change. FLEX has also been piloting a

¹ FLEX, Fairwork and ADPARE. 2016. *Improving the identification and support of victims of trafficking for labour exploitation in the EU*. Available at <http://www.labourexploitation.org/sites/default/files/publications/PROACT%20Policy%20Paper.pdf>

² FLEX. 2017. *Risky business: Tackling exploitation in the UK labour market*. Available at <https://www.labourexploitation.org/publications/risky-business-tackling-exploitation-uk-labour-market>

³ LEAG members include: FLEX (founder and secretariat), Latin American Women's Rights Service (chair), Unite the Union, East European Resource Centre, Ashiana Sheffield, British Red Cross, Kalayaan, Bail for Immigration Detainees, Kanlungan, Work Rights Centre, Glass Door

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participatory research approach called Feminist Participatory Action Research (FPAR). FLEX believes that working together with workers to generate knowledge and advocate for change will lead to better evidence-based policies and on-the-ground change, and that participatory research approaches are a means to achieve this by working ‘with’, rather than ‘for’ or ‘on’, at-risk workers.⁴ FLEX strongly recommends that active efforts are made to facilitate input to and learning from people with lived experience to inform the future Modern Slavery Strategy.

This evidence uses both terms ‘victim’ and ‘survivor’. While FLEX recognises that the term ‘survivor’ is often preferred by people with lived experience this evidence also uses the term ‘victim’ as this is used in relevant legislation. In line with our areas of expertise and as well as in response to limitations around time and capacity we have focused on the following four questions posed by the Home Office:

- What **prevention** means in the context of modern slavery and what further measures can be taken to strengthen prevention interventions
- How the nature and threat of modern slavery has changed since 2014, and the strength of research and evidence on ‘what works’ to address modern slavery
- How the **law enforcement** and criminal justice system response has been strengthened over the last few years and future ways to ensure that this can keep ahead of the crime
- How the strategy can build on the substantial reforms to the National Referral Mechanism which have taken place over recent years and ensure continued sustainable and effective identification and needs-based support for **victims**, both adults and children

Executive summary

Prevention, or actively ensuring that structures and systems protect people from people from exploitation or becoming victims of slavery, must be the foundation of any effective strategy on Modern Slavery. This must be in addition to a Modern Slavery Strategy which actively addresses wider, intersecting systems which create vulnerabilities to exploitation. These include poverty and a lack of options, often exacerbated by immigration status including visas which limit workers’ options through conditions which restrict work to specific employers or sectors, which are time limited and / or non-renewable and which do not permit recourse to public funds and / or healthcare.⁵

Other structural causes of vulnerability include work contracts or terms which leave workers without options to challenge underpayment or poor conditions and with multiple

⁴ <https://www.labourexploitation.org/what-we-do/research-0>

⁵ The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper <https://www.labourexploitation.org/publications/risks-exploitation-temporary-migration-programmes-flex-response-2018-immigration-white>

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dependencies on an employer which can create a power imbalance. This might include an employer providing accommodation as well as work, meaning that in challenging work conditions or asserting rights a worker risks destitution as well as unemployment.

It is of course important that a Modern Slavery Strategy focuses on preventing exploitation of people rather than on averting stated concerns about abuse of the 'system'. An effective Slavery Strategy must look at the barriers to reporting crimes and to create options for facilitating safe reporting as well as NRM referrals. By introducing secure reporting the government would help create a safer labour market for all by enabling migrant workers to report exploitative employers and dismantle the current cycles of impunity.⁶

The new Slavery Strategy should take a holistic approach and plan accordingly, including committing resources to prevent exploitation and facilitate recovery. It needs to take account of the interactions between slavery and wider legislation and sectors, covering welfare, employment, race and gender equality.⁷ It also needs to be clear about how current legislative change in the form of the Nationality and Borders Bill fits with the strategy, and with other relevant legislation such as the Modern Slavery Act 2015, in addition to the statutory guidance on victim support.⁸ Early intervention, through specialistic, accessible legal advice and options which can be exercised in practice should be the foundation of the UK's strategy. There should be a move away from disparate awareness raising campaigns towards proactive work and implementing options which are informed by lived experience so that we know that they work in practice. This need to take account of push factors such as the need to earn money (debts, medical bills, families being threatened), the need for shelter, the need for legal aid and information, access to healthcare and a safety net so people can challenge, or if necessary leave, exploitative work, even before it deteriorates to the threshold of slavery.

'If you know that if you lose your job, you're not going to have a safety net to fall back on, you're really loath to let go of that job. That makes it really hard to assert your rights or complain about poor treatment.'

FLEX's Research Manager, Meri Ahlberg, describing findings from FLEX's recently published report No viable alternatives: Social (in)security and risk of labour exploitation during Covid-19. October, 2021

This written evidence is succinct due to competing time pressures. It aims to respond to questions set out by the Home Office in the call for written evidence. FLEX would welcome the opportunity to input into the Strategy in further detail and urges the Home Office to actively consult with people with lived experience of slavery and slavery support systems.

Many of these issues have already been presented to the Home Office Modern Slavery Unit including via the Modern Slavery Strategy and Implementation Group (MSSIG) Prevent Task

⁶ Opportunity Knocks: Improving responses to labour exploitation with secure reporting. April 2020 LEAG and FLEX

⁷ The 2017 Work and Pensions Select Committee inquiry into Modern Slavery showed the lack of intersection between modern slavery and wider systems resulting in victims being failed

<https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/803/80303.htm>

⁸ Section 49, Modern Slavery Act 2015

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and Finish Group. In January 2020 the group held its quarterly meeting, this time with the theme of understanding how immigration policy intersects with modern slavery prevention. At the meeting members agreed that the group should produce a short paper outlining issues raised for the information of the Home Office and other relevant agencies with the aim of ensuring immigration policies and practices do not undermine modern slavery prevention.

- **What prevention means in the context of modern slavery and what further measures can be taken to strengthen prevention interventions**

FLEX has previously recommended⁹ that to prevent human trafficking for labour exploitation the UK should:

- Monitor labour standards and strengthen labour rights of vulnerable workers
- Enforce employment law where flouted
- Regulate high- risk labour sectors
- Ensure immigration structures do not contribute to trafficking for labour exploitation.

FLEX's 2017 research paper, Risky Business,¹⁰ sets out an action plan for a UK response to exploitation in the labour market. It provides an analysis of risk and vulnerability to exploitation in selected sectors of the UK labour market and sets out strategies for preventing labour exploitation through inspection and enforcement. It highlights the limited resourcing of inspections in the UK and sets out steps which should be taken by labour inspectorates to understand risks of exploitation in highly feminised sectors and notes strategies which can be used by labour inspectorates to effectively prevent labour exploitation. It also looks at gateways to information, noting this as key to identification and support as well as making recommendations on supply chain oversight.

Prevention in the context of modern slavery means identifying and addressing the structural factors which create vulnerability to exploitation. This is why early intervention- including prior to exploitation escalating- is so vital and why there needs to be increased concern about and measures to address 'lower levels' of exploitation and to prevent these escalating. The new Modern Slavery Strategy needs to look at proactive work with labour inspectorates and ensuring workable solutions for people to challenge and to leave exploitative situations before they reach the slavery threshold. Kalayaan has evidenced the bind which workers are left in when their options are so few that they cannot challenge abuse early.¹¹ This is why it is important that it is recognised that while a negative reasonable grounds NRM decision can mean that there was not sufficient evidence for a positive decision, or that the exploitation did not meet the threshold of trafficking or modern slavery¹² it does not mean that the person was not exploited, or that the referral involved any deception on their part. The fact that

⁹ Preventing Trafficking for Labour Exploitation Caroline Robinson, FLEX, 2015

¹⁰ Risky Business: Tackling Exploitation in the UK Labour Market. FLEX 2017

¹¹ Dignity not Destitution. The impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism. 2019. Kalayaan.

¹² There are many other reasons why someone may get a negative Reasonable Grounds NRM decision. These include that the person was not given sufficient opportunity to disclose abuse, was fearful of disclosing abuse, did not understand what they were being asked or the NRM referral form was completed badly.

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anyone referred into the NRM has been identified as potentially trafficked by a designated First Responder should mean that a negative decision results in a referral to appropriate support to prevent the exploitation identified by the referring First Responder from escalating further. The implementation of and expansion of the role of multi-agency decision making panels would greatly facilitate appropriate referrals as well as improve decision making.¹³

An effective modern slavery strategy must consider the wider factors which impact on people's options and vulnerability to exploitation including modern Slavery. These include the following:

Immigration structures which leave people unable to challenge or report exploitation or access rights in practice. These include the effect of the hostile environment on immigration, the 2016 Immigration Act's criminalisation of 'illegal working' and the practice of labour enforcement bodies and police sharing data with Immigration Enforcement.¹⁴ As set out above they also include visa structures which increase dependency on employers and limit workers' options. These include short term work visas such as on the Seasonal Worker pilot, its expansion into other sectors and the Overseas Domestic Worker (ODW) visa.¹⁵

Employment structures. These need to include ensuring and facilitating access in practice to labour law and to early specialist legal advice and compensation. This cannot happen if workers do not have other viable options for employment, or if reporting exploitation will result in them becoming homeless or jeopardising their immigration status. Workers employed on a temporary basis, who are falsely self employed, or on a contract with zero hours or one-sided flexibility are also less likely to be able to challenge exploitative practices.

Ensuring accessible options and alternatives- including early identification systems which give access to specialist advice and support to access options which meet the needs and priorities of the workers.

FLEX's latest publication, [*No viable alternatives: Social \(in\)security and the risk of labour exploitation during Covid-19*](#). Explores the implications of a lack of options through the experiences of migrant workers in low-paid and insecure work during the Covid-19 pandemic, focusing on barriers to accessing employment rights and social protections, and the associated risks of labour abuse and exploitation. The research, which surveyed 337 IWGB and UVW members, found that the key employment issues experienced were not being paid wages owed (44% of participants), being exposed to Covid-19 through work (17%), being asked to work in ways that felt dangerous, including with poor social distancing or without Personal Protective Equipment (12%), and being forced to work despite being ill (8%). There were also significant levels of redundancy (33%), excessive workload (11% saw an unpaid increase in their workload) and an increase in cases of sexual harassment, as employers exploited power

¹³ See A review of the National Referral Mechanism Multi-Agency Assurance Panels, ATMG

¹⁴ Opportunity Knocks: improving responses to labour exploitation with secure reporting. 2020. LEAG and FLEX

¹⁵ See The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper, 2019, FLEX

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imbalances heightened by the pandemic. The new Modern Slavery Strategy should acknowledge and recognise the fact that low-pay, insecurity, and lack of access to social security are not issues exclusive to the Covid-19 context, but that they already existed and will continue to exist unless we see important changes to labour market, immigration, and social security policies. Addressing these issues will also help build resilience to labour exploitation and support the UK's commitment to tackling modern slavery.

- **How the nature and threat of modern slavery has changed since 2014, and the strength of research and evidence on 'what works' to address modern slavery**

Changes to the nature and threat of modern slavery since 2014 have been significant and are too great to comprehensively cover in this written submission. As set out above the changing wider contexts exacerbate risks of exploitation and make it harder to prevent these deteriorating towards the threshold of slavery. The new strategy must plan to address and to mitigate these wider structural contributors.

There has been a significant increase in awareness of modern slavery since 2014 but this has not matched with an effective response. Disappointingly political interest in addressing the issue has waned since the Modern Slavery Act 2015. Significant gaps remain including developing responses by learning from people directly affected by slavery or exploitation as to 'what works' or would have worked for them. Workers who entered the UK on the Overseas Domestic Worker (ODW) visa have repeatedly highlighted that the rights contained in the 'original' or pre 2012 visa did much to keep them safe and prevent exploitation yet continue to be ignored. This is despite evidence of significant increases in exploitation when the 2012 changes to the visa made it more restrictive¹⁶ and their evidence being backed by the international and national experts.¹⁷ Nor has preventing or addressing modern slavery always been a priority, with other policy aims (particularly around immigration) often taking precedence and even simple and proven solutions being ignored. Again, the example of the ODW visa is highly illustrative with recommendations made in the government commissioned 2015 review of the ODW visa by James Ewins QC unimplemented.¹⁸ This was set out by the MSSIG Prevent Group in a 2019 statement to the

¹⁶ Slavery by another name: the tied migrant domestic worker visa, 2013, Kalayaan

¹⁷ The Draft International Labour Organisation Multilateral Framework on Labour Migration of 2005 and the UN Special Rapporteur on the Human Rights of Migrants cited the overseas domestic worker visa as best practice. The Home Affairs Selected committee (trafficking inquiry 2008-2009) found it to be an important safeguard against trafficking in human beings. **What Is to Be Done for Migrant Domestic Workers?** Virginia Mantouvalou *Labour Migration in Hard Times*, B Ryan (ed), Institute of Employment Rights, 2013, <http://www.ier.org.uk/publications/labour-migration-hard-times-reforming-labour-market-regulation>

¹⁸ Independent review of the Overseas Domestic Worker Visa. 2015. James Ewins https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf

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Home Office from Civil Society members regarding conflict between overseas domestic worker visa and government anti-slavery aims.¹⁹

The 2017 National Audit Office report ‘Reducing Modern Slavery’ gives a through overview of many of the issues with the UK’s modern slavery response, many of which remain outstanding including delays in decision making, issues with access to Article 12 entitlements and a lack of clarity around outcomes of the NRM for slavery survivors.

More recently the Group of Experts on Action against Trafficking in Human Beings (GRETA)’s third report on the UK, published 2021²⁰ urges the United Kingdom to improve the identification of trafficking victims, to make sure victims receive legal aid and legal and psychological assistance and to ensure that more traffickers are convicted. The report says that the UK authorities should also do more to prevent trafficking for labour exploitation, including by strengthening the remit and capacity of labour market inspectorates. GRETA express concern in their report at the low number of convictions compared to identified victims, highlighting insufficient resources, cuts to the criminal justice system and a lack of sustainable support for victims. GRETA also asks the authorities to ensure that court proceedings are reasonable in length and the group expresses concern at the low number of victims who have actually received compensation from either their traffickers or the state. GRETA urges the authorities to enable all victims of trafficking, including undocumented migrants, to make use of their right to compensation. GRETA calls on the authorities to make sure that the ‘non-punishment provision’ contained in the convention can be applied to all offences that victims were forced to commit.

As explained previously, changes in the labour market have increased vulnerability to exploitation. While ‘flexibility’ can be and is welcomed by some workers, it does not work for everyone or in all contexts. Where workers’ options are reduced by low pay, limited alternative employment options, and ineffective social security measures, flexibility can facilitate labour exploitation. This is further compounded in contexts where usual methods of correcting workplace power imbalances, such as state labour market enforcement and worker organising, are limited or not working.

FLEX’s recently published report No viable alternatives: Social (in)security and risk of labour exploitation during Covid-19, October 2021 FLEX, the Independent Workers’ Union of Great Britain (IWGB) and United Voices of the World (UVW),²¹ sets out how precarity, which in the UK is often referred to as insecurity or vulnerability (see e.g. TUC Commission on Vulnerable Employment, 2008), is a concept used to describe work situations where people lack income security, face lower rates of pay and experience poor working conditions. Insecure work puts people at risk of labour abuse and exploitation because of the power imbalance it creates in the employment relationship. Workers may find it harder to leave bad jobs due to financial concerns and, knowing they can be easily replaced or have their hours

¹⁹ <https://www.labourexploitation.org/news/government-stakeholder-group-members-make-statement-overseas-domestic-worker-visa>

²⁰ <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>

²¹ <https://labourexploitation.org/publications/no-viable-alternatives-social-insecurity-and-risk-labour-exploitation-during-covid-19>

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cut, face greater pressure to maintain their existing employment relationship, often despite exploitative conditions. The Taylor Review (Taylor, 2017: 43) found that insecure workers often experience one-sided flexibility, leading to unreasonable requirements around their availability; difficulties managing finances due to unpredictability; and an overarching fear of losing future work if they express legitimate concerns about conditions or make reasonable requests. The Low Pay Commission (2018) goes further to say that the “misuse by some employers of flexible working arrangements creates unpredictability, insecurity of income and a reluctance among some workers to assert basic employment rights” (Low Pay Commission, 2018). There is also broad agreement about the negative impacts of low-paid and insecure work on health, finances, personal life, and rights, creating a compounding effect where workers who are already marginalised are further disempowered (Green, 2015; Adams and Prassl, 2018; Low Pay Commission, 2018; Martin, 2019; Maternity Action, 2020).

The report sets out how insecurity often stems from the fact that certain types of workers have fewer rights than people in conventional employment, including missing out on safeguards against sudden losses of income, like protection against unfair dismissal, minimum notice periods, and redundancy pay. However, even ‘employees’ only have full employment rights, namely protection against unfair dismissal, after two years of continuous service and many face barriers to enforcing this right through the Employment Tribunal system (McCloskey and Senegri, 2020). Insecurity is made worse by low pay and lack of personal or public financial safety nets: as one of our research participants put it, if workers cannot afford to lose even a week’s income, their dependence on their employer increases dangerously:

We are getting exploited basically because they [employers] feel that we rely more on them. We rely financially on them. So then the abuse starts. [...] They can cut off our finances so easily and so we’re back in square one, back in the same cycle of interviews and panicking for two or three weeks, trying to find a job with payment that does not exploit you. [...] Even a week off work is quite disastrous for a normal person. We cannot afford to be a week off work, especially in London. We cannot afford it, so we have to keep working, and keep finding solutions on the way.

Irina, Romanian waitress, Focus group, 5 June 2020.²²

Since the UK left the EU nationals from EU countries are increasingly likely to either be or to believe they are outside of the immigration rules, increasing their vulnerability to exploitation and meaning they are less likely to seek support.²³ FLEX and others have repeatedly highlighted the risks of exploitation which result from the use of short term visas including

²² Quoted in No viable alternatives: Social (in)security and risk of labour exploitation during Covid-19, October 2021 FLEX, the Independent Workers’ Union of Great Britain (IWGB) and United Voices of the World (UVW).

²³ Lost in Transition: Brexit & Labour Exploitation. August 2017. FLEX & the Labour Exploitation Advisory Group <https://labourexploitation.org/publications/lost-transition-brexit-labour-exploitation>

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the ODW visa and the Seasonal Workers Pilot.²⁴ It is concerning that the second is being expanded in spite of these concerns, without the publication of the 2019 evaluation and without clear mitigations to protect rights and prevent exploitation in place.

Access to early information and specialist legal advice is key to challenging early exploitation and also securing justice. In 2017 the then Minister recognised this and made welcome commitments to ‘places of safety’ in the form of pre NRM support.²⁵ Disappointingly these are still not in place and to date no government funded specialist support or advice entitlement exists to inform an NRM referral. Instead, there have been continued cuts to legal aid and even people who are in the NRM may not be eligible.²⁶ Cuts have affected availability resulting in the current situation where even people who are able to access legal aid may be unable to secure advice and representation in practice or face long delays.

There is significant risk, that without significant amendment, measures included in the Nationality and Borders Bill will further muddle and undermine the UK’s action on slavery. The sudden change made to the statutory guidance in November 2021, to create an Immigration Enforcement Competent Authority²⁷ risks further muddling identification with immigration enforcement and undermining trust in the NRM preventing victims from coming forward or from consenting to an NRM referral.

- **How the law enforcement and criminal justice system response has been strengthened over the last few years and future ways to ensure that this can keep ahead of the crime**

²⁴ Treating workers like commodities: Short term work visas and the risks of exploitation. 2021
<https://labourexploitation.org/news/treating-workers-commodities-short-term-work-visas-and-risks-exploitation>

²⁵ Sarah Newton MP, Modern Slavery Act debate October 2017
<https://hansard.parliament.uk/Commons/2017-10-26/debates/D9B8BD1A-F0D6-42D5-9490-741950800859/ModernSlaveryAct2015?highlight=places%20safety#contribution-610D0DCA-1C21-4E54-974B-99C3204314F6>

²⁶ The National Referral Mechanism for identifying victims of trafficking (NRM) and recovery entitlements. Subsistence payments and legal aid for victims of trafficking. Accessing one entitlement to lose another Subsistence payments and legal aid eligibility. Joint briefing by ATLEU, Anti-Slavery International, Simpson Millar, Human Trafficking Foundation https://www.antislavery.org/wp-content/uploads/2021/03/Legal-aid-and-the-income-test_.pdf

²⁷ Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland Version 2.5
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031731/modern-slavery-statutory-guidance-ew-non-statutory-guidance-sni-v2.5-final.pdf

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The law enforcement and criminal justice system response has remained disappointing over the last few years, despite this being a focus of the Modern Slavery Act 2015. While there is increased awareness of modern slavery levels of prosecutions remain low. In 2019, the number of prosecutions and conviction rate increased with the number of completed “flagged modern slavery prosecutions” increasing from 294 to 349.²⁸ While the conviction rate increased to 71.9% in 2019, an increase from 65% in the previous year the overall figures are low in comparison to the 10,627 people referred into the NRM in 2019. These low levels may have been compounded by delays in NRM decision making and the resulting limbo and uncertainty; When the end of year NRM statistics were published 8,429 people (or around 8 out of 10 people) were waiting for their conclusive grounds decision.²⁹

For there to be an effective law enforcement and criminal justice system response it is vital that people in exploitation are able to report exploitation or other crimes and know they will be taken seriously. The 2016 Immigration Act criminalised illegal working. This was a significant backwards step which further drives people with insecure or uncertain immigration status underground and actively deters them working with authorities.

Data sharing with Immigration Enforcement undermines safe reporting and plays into the hands of exploiters as anyone with insecure immigration risks being treated as an immigration offender, rather than a victim, if they report. This has far broader implications than for the crime of modern slavery and was the subject of a recent super-complaint raised by the Southall Black Sisters and Liberty.³⁰

This is why encouraging early identification and support is so vital. In addition to the need for the implementation of places of safety in the form of pre NRM support and advice to support potential victims to disclose it is vital that, despite proposed clauses in the Nationality and Borders Bill the identification threshold for a Reasonable Grounds decision is low in practice and that people who may be victims have the time they need to disclose.

The changes to the statutory guidance, apparently introduced without consultation or prior discussion even with relevant stakeholder groups in November 2021 risk further undermining

²⁸ 2020 UK Annual Report on Modern Slavery. 2020

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927111/FINAL-2020_Modern_Slavery_Report_14-10-20.pdf

²⁹ National Referral Mechanism Statistics UK, End of Year Summary, 2019

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876646/national-referral-mechanism-statistics-uk-end-of-year-summary-2019.pdf

³⁰ Safe to share? Report on Liberty and Southall Black Sisters’ super-complaint on policing and immigration status College of Policing, HMICFRS, IOPC

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf

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trust in the NRM and deterring people from coming forward.³¹ The updated guidance creates an Immigration Enforcement Competent Authority. It is unclear why the roles of decision making as to whether someone is a victim of trafficking or modern slavery should be muddled with immigration enforcement and how this will not lead to differences in decision making. This unexplained move is particularly odd given that the UK only a few years ago created the single competent authority, moving away from having separate decision-making bodies in order to have consistency in decision making.

It is unrealistic and unreasonable to expect someone who may have only recently left exploitation and has not yet accessed specialist support to provide evidence to any standard higher than 'suspect but cannot prove'. It is important to note that a negative RG decision does not systematically lead to a referral to appropriate services or care pathways, despite the identification as a possible victim and referral into the NRM by a designated First Responder. Nor will most people who receive a negative RG decision have access to support to challenge this. Despite this, a significant number of negative decisions are overturned. FOI data secured by After Exploitation found that 81% of reconsidered claims at initial 'Reasonable Grounds' stage are later positive, suggesting that the RG threshold being applied in practice in these cases may already be too high.³² This means that potential survivors who should have been granted safe housing and support may have faced delays in getting help and suggests that others whose negative decisions may have been overturned will not have been supported to request a reconsideration.

Being safe is key to being able to disclose information about exploitation. Therefore, potential victims need to know that following identification they will not be again dependent on their exploiter. Giving access to decent work while people are in the NRM would support them to begin to rebuild their lives and gain independence as would the issuing of a residence permit with the duration of at least 12 months following a positive Conclusive Grounds decision.³³ A research report by Nusrat Uddin³⁴ compared support systems available to survivors of slavery and found that fear of deportation or removal and reprisals from traffickers prevented victims from making reports to authorities whereas the provision of support, including specialist legal

³¹ Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland. Version 2.5
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031731/modern-slavery-statutory-guidance-ew-non-statutory-guidance-sni-v2.5-final.pdf

³² <https://afterexploitation.com/2021/07/02/new-data-majority-of-trafficking-claims-later-found-to-be-positive-after-reconsideration/>

³³ Access to work for survivors of slavery to enable independence and sustainable freedom. March 2021. 2021. ATLEU, ATMG, Anti-Slavery International, Coop, FLEX, Kalayaan, Sophie Hayes Foundation, Survivor Alliance.
<https://www.labourexploitation.org/publications/access-work-survivors-slavery-enable-independence-and-sustainable-freedom>

³⁴ The fight against modern slavery and human trafficking: The role of victim support in prosecuting this crime. Nusrat Uddin https://media.churchillfellowship.org/documents/Uddin_N_Report_2017_Final.pdf

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representation and long term security (which includes a secure immigration status) had a positive impact in terms of recovery and on successful prosecutions.

The importance of access to compensation in achieving positive long-term outcomes for survivors of human trafficking has been recognised by the Government in its previous Modern Slavery Strategy, in which the Government set out to ensure “that there are avenues for victims to receive reparation and compensation”³⁵ as one of its key objectives. The UK is obligated by article 15 of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) to ensure trafficking victims’ right to obtain compensation, both from the perpetrators and from the State.

To prevent exploitation escalating and encourage early reporting and intervention, compensation should include unpaid wages in addition to compensation for abuse. Not only would compensation do much to support recovery and survivors to rebuild their lives, a more proactive approach to enforcement of compensation and the provision of legally aided specialist compensation advice would act as a prevention mechanism and turn exploitation including modern slavery from a low risk, high profit crime, to high risk, low profit crime. The 2016 FLEX working paper on access to compensation for victims of trafficking sets out available avenues for compensation and the limitations of these.³⁶ Unfortunately little has changed since the report’s publication in 2016 with victims seeking justice still facing significant legal and practical barriers to obtaining compensation for the abuses committed against them.

- **How the strategy can build on the substantial reforms to the National Referral Mechanism which have taken place over recent years and ensure continued sustainable and effective identification and needs-based support for victims, both adults and children**

The National Referral Mechanism for identifying victims of trafficking (NRM) is the system through which government funded support as well as identification is provided to potential victims of trafficking. Despite the many reforms to the system, it still does not offer the reassurances victims need in terms of identification, support or outcomes. The NRM needs significant reform but to be effective this reform must be centred on the needs of the people for whom the system exists- victims of trafficking and modern slavery. There is significant lived experience of the system, and many survivors are very keen to share their experiences to ensure that others have better experiences and outcomes than them. The Home Office must not miss this key opportunity to build a new strategy based on what works. Instead, fundamental changes to the system are being debated at the time of writing in the form of clauses proposed by the government in the Nationality and Borders Bill. The Bill in its current form muddles immigration and slavery and the proposed clauses have not been informed by lived experience, the experience of front-line workers supporting victims or learning to date.

³⁵ Modern Slavery Strategy, 2014.

³⁶ <https://www.labourexploitation.org/publications/flex-working-paper-access-compensation-victims-human-trafficking>

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The real challenge for a new Modern Slavery Strategy is to persuade people in exploitation which includes ongoing control to trust enough to disclose their slavery and consent to enter the NRM. FLEX works with front line partners who support trafficked people and struggle to persuade them that the identification system, or National Referral Mechanism (NRM) can work for them. While the true figures of people in modern slavery in the UK is unknown, the indication is that we are only identifying a tiny proportion of the estimated number of victims of trafficking, with just 3,084 people conclusively identified and in receipt of a positive second stage decision through the NRM in 2020.³⁷ This contrasts with the Centre for Social Justice calculating that the true number of people in modern slavery in the UK might be in excess of 100,000³⁸ and Walk Free's Global Slavery Index estimating this figure to be over 136,000 in 2018.³⁹ The focus for the new slavery strategy needs to be preventing exploitation and enabling people who are in exploitation to seek help as early as possible through safe reporting mechanisms. Resourcing for prevention, identification and support mechanisms needs to keep pace with the increasing numbers. The recent, unexpected change to the statutory guidance mentioned above, creating an Immigration Enforcement Competent Authority does nothing to address these changes and will further undermine trust in the decision making system.

Survivors have described the NRM process as compounding their trauma, forcing them to relive their trafficking experience and keeping them waiting in limbo for a trafficking decision. It is not unusual for victims to be kept waiting for years while unable to work.⁴⁰ Rather than seeking to introduce barriers to identification and support systems we need to be working with people with lived experience of those systems to understand what would have helped them to escape earlier and better support their recovery.

Access to work while in the NRM would support re-integration and recovery and allow victims to begin to rebuild their lives and move on from their experience of exploitation. The Coop Bright Future Project has shown how effective decent work can be in providing a pathway towards independence.⁴¹ This would make better use of the NRM recovery period and casework support. Conversely, keeping victims in limbo, unable to move on while they wait for a trafficking decision can compound trauma and the impact of trafficking.⁴²

Even a positive Conclusive Grounds trafficking decision does not necessarily lead to any grant of leave, compensation, or a pathway to rebuild their lives. The Independent Anti Slavery

³⁷ Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary, 2020. Home Office

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970995/modern-slavery-national-referral-mechanism-statistics-end-year-summary-2020-hosb0821.pdf

³⁸ It still happens here. Fighting UK slavery in the 2020s. July 2020. Centre for Social Justice.

<https://www.centreforsocialjustice.org.uk/wp-content/uploads/2020/07/It-Still-Happens-Here.pdf>

³⁹ <https://www.globallslaveryindex.org/news/more-than-136000-people-are-living-in-modern-slavery-in-the-united-kingdom/>

⁴⁰ <https://www.theguardian.com/uk-news/2021/oct/12/trafficking-victims-should-be-granted-leave-to-remain-in-uk-high-court-rules>

⁴¹ <https://www.co-operative.coop/ethics/bright-future>

⁴² Access to work for survivors of slavery to enable independence and sustainable freedom. March 2021. https://www.antislavery.org/wp-content/uploads/2021/03/Coalition_AccessToWork_report_v3.pdf

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Commissioner has expressed her concern at the low figures while underlining how important leave can be for survivors to gain independence:

"The latest guidance says that discretionary leave is automatically considered for all non-EEA survivors. But the overall number of survivors granted discretionary leave remains very low. In 2015, 123 survivors with positive conclusive grounds were granted discretionary leave, in 2019 it was 70 and in the first three months of this year it was only 8. From 1 January some EEA nationals will be similarly unsure about their future."⁴³

There is at present no pre NRM specialist support available in the UK. This is despite government recognising the need for pre NRM support to facilitate disclosure through having time in a safe space to receive information and advice in its 2017 announcement of 'places of safety'.⁴⁴ Initial identification is key to victims leaving exploitation and accessing support towards recovery and avoiding re-exploitation. It is vital that the identification system is accessible, and the initial threshold (reasonable grounds decision) is low to ensure that victims who have built up the courage to seek help are identified as a potential victim and admitted into the NRM.

A negative decision does not mean someone has not been trafficked but rather that, despite someone having been identified as potentially trafficked or a victim of modern slavery by a First Responder, the low threshold of evidence was not met. All negative decisions should be treated with concern and should in no way damage credibility. There should be multi-agency panel scrutiny of all negative Reasonable Grounds decisions, in addition to Conclusive Grounds decisions, and support including legal aid for reconsiderations at both thresholds.⁴⁵

A 2020 FLEX report shows that workers are enduring long periods of abuse and exploitation for fear that if they seek help their personal information will be passed onto immigration authorities.⁴⁶ With the UK's current expansion of short term visa work schemes there is a risk that workers on these schemes will lack information about their rights or how to report exploitation or secure retribution. There is a risk that exploiters could use this to threaten workers that if they report abuse they risk jeopardising their immigration status and need to leave the UK without any chance to pay off pre existing debts or the costs of migrating. It is vital that neither the UK's labour nor anti trafficking policies exacerbate exploitation by

⁴³ <http://www.antislaverycommissioner.co.uk/news-insights/iasc-commentary-supporting-survivors-to-regain-independence/>

⁴⁴ Sarah Newton MP, 2017, Debate on the Modern Slavery Act <https://hansard.parliament.uk/Commons/2017-10-26/debates/D9B8BD1A-F0D6-42D5-9490-741950800859/ModernSlaveryAct2015?highlight=places%20safety#contribution-610D0DCA-1C21-4E54-974B-99C3204314F6>

⁴⁵ See 'A review of the National Referral Mechanism multi-agency assurance panels. ATMG. 2021 https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs_report_final.pdf

⁴⁶ **Opportunity Knocks: improving responses to labour exploitation with secure reporting. LEAG & FLEX, 2020** <https://www.labourexploitation.org/publications/opportunity-knocks-improving-responses-labour-exploitation-secure-reporting>

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dissuading people with insecure status from reporting exploitation. In addition to secure reporting systems which mean that victims of crime know their details will not be shared with immigration enforcement, we need to make sure that any changes to the RG threshold do not deter people from reporting and identification due to trafficked people not reporting because of fear that their exploitation is not severe enough.

Relevant FLEX publications and recommendations:

NRM reforms, identification and support:

- [Vulnerability to human trafficking for labour exploitation](#), May 2016.
- [Identification and Support of Victims of Trafficking for Labour Exploitation in the Netherlands, the UK and Romania](#), Feb 2016.
- [LEAG submission to the Special Rapporteur on Contemporary Forms of Slavery on the gendered dimensions of contemporary forms of slavery, its causes and consequences](#), May 2018.
- [Towards Better Modern Slavery Reporting](#), March 2019.
- [Joint submission to the Group of Experts on Action against Trafficking in Human Beings Third Evaluation Round](#), February 2020.
- [Opportunity Knocks: improving responses to labour exploitation with secure reporting](#), April 2020.
- [Access to work for survivors of slavery to enable independence and sustainable freedom](#), March 2021.

Prevention of MS:

- [No viable alternatives: Social \(in\)security and the risk of labour exploitation during Covid-19](#), October 2021
- [Risky Business: Tackling exploitation in the UK labour market](#), October 2017.
- [FLEX submission: UN Special Rapporteur on Trafficking in Persons on early identification of victims and potential victims of trafficking in persons, and identification of indicators of vulnerabilities to trafficking in the context of mixed migration flow](#), January 2018.
- [FLEX written evidence to the Public Accounts Committee: Reducing Modern Slavery](#), February 2018.

Immigration and modern slavery:

- [Lost in transition: Brexit & Labour exploitation](#), August 2017.
- [Migration Advisory Committee Call for Evidence: EEA - workers in the UK labour market](#), October 2017.
- [Preventing exploitation in the shadow of brexit: The risks of temporary migration programmes](#), September 2018. I
- [Letter to the Secretary of State for the Home Department on the Immigration Detention of Victims of Human trafficking in the UK](#), May 2020.

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- [Submission to the Public Accounts Committee call for evidence on 'Immigration Enforcement'](#), July 2020.
- [Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot](#), March 2021.

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