

Human Rights of Asylum Seekers in the UK - Response to Joint Committee on Human Rights call for evidence

December 2022

The Labour Exploitation Advisory Group (LEAG) is a group of experts from nine organisations¹ supporting people in, or at risk of, severe forms of labour exploitation, such as human trafficking, forced labour and slavery. 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 measures to tackle labour abuse and exploitation.

LEAG members recognise that current Government policies regarding people seeking asylum are actively driving individuals towards, and exacerbating, labour abuse and exploitation. We call on the Government to adopt a preventative and person-centred approach. This submission responds to Questions 7, 8 & 9 of the JCHR call for evidence.

Q7 - How do the rules on right to work impact on the human rights of asylum seekers?

1. Legal barriers preventing access to work for people seeking asylum create real risks of exploitation. As one study found *"the experience of severely exploitative labour, including forced labour, is often unavoidable for refugees and asylum seekers in order to meet the basic needs of themselves and their families."*² Inadequate support, for instance the receipt of only £5.84 per day, leaves people seeking asylum in poverty, and creates a drive towards informal work in order to supplement their income.³ The absence of employment rights, poor wages and working conditions, as well as gaps in oversight, leave workers vulnerable to labour exploitation. Without the right to safe work with decent pay and conditions, the Government produces an environment that facilitates abuse and exploitation, with exploitative

¹ Member Organisations: Latin American Women's Rights Service (LEAG Chair); Focus on Labour Exploitation (Founder & Secretariat); British Red Cross; East European Resource Centre; Kalayaan, Glass Door Homeless Charity; Work Rights Centre; Unite the Union; Kanlungan.

² Hannah Lewis *et al.* (2013), *Precarious lives: Experiences of forced labour among refugees and asylum seekers in England*, Research Report, University of Leeds.

³ Lift the Ban (2020), *Why giving people seeking asylum the right to work is common sense*, p.24. Available at: <https://www.refugee-action.org.uk/wp-content/uploads/2020/07/Lift-The-Ban-Common-Sense.pdf>.

employers able to use individual's precarious situations to recruit, or continue abusive and exploitative work. Workers in this situation are unable to report the exploitation for fear of detention and/or deportation, a fear that is utilised by unscrupulous employers.

2. While fully supporting access to work for asylum seekers, LEAG members are clear that to avoid creating risks of exploitation, access to work for asylum seekers should be unrestricted rather than limited to specific sectors where there are labour shortages. Research has shown that restrictive migration schemes such as the Seasonal Workers Scheme contain significant risks of exploitation.⁴ While recognising the potential benefits of work for rebuilding lives,⁵ the ability to claim asylum is a fundamental right, and should be completely distinct from the UK's labour needs. The right to work should be grounded in the principle of free and informed consent, with workers supported to enter work that is suited to their skills, wants and wellbeing.
3. We endorse the recommendations of the Lift the Ban coalition,⁶ namely the right for people seeking asylum to work unconstrained by the Shortage Occupation List, as well as their submission to the call for evidence.

Q8 - Is the UK's legal framework for tackling modern slavery and human trafficking effective, and is it compatible with our human rights obligations? Are there changes that should be made?

4. Robust migrants' rights and employment rights must be enshrined to ensure that human trafficking and modern slavery do not occur in the first instance. Strengthening labour market enforcement can help to embed a model based on proactive protection rather than simply respond once a situation has degraded to a sufficient level of severity. The benefits of this approach have been recognised by the Home Office itself.⁷

⁴ Focus on Labour Exploitation and Fife Migrants Forum (2021), *Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot*. Available at: <https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

⁵ Focus on Labour Exploitation (2021), *Access to work for survivors of slavery to enable independence and sustainable freedom*. Available at: <https://www.labourexploitation.org/publications/access-work-survivors-slavery-enable-independence-and-sustainable-freedom>

⁶ See Lift the Ban Campaign: <https://www.refugee-action.org.uk/lift-the-ban/>

⁷ UK Government. Home Office (2018). *The economic and social costs of modern slavery - research report 100*, p.27. Available at:

5. Secure reporting pathways⁸ are necessary to ensure that victims of labour exploitation with insecure immigration status can come forward to labour market or law enforcement without fear of their information being shared with immigration enforcement. The absence of such secure reporting pathways provides perpetrators with another tool to keep victims in exploitative conditions and deprives victims of a meaningful ability to exit their exploitation. We hold that the government must adopt a victim-centred approach to address and identify human trafficking and modern slavery, and ensure that immigration enforcement is separated from trafficking and exploitation responses through the creation of secure reporting procedures and processes in law enforcement and labour market enforcement.⁹
6. It is essential that the UK adopts a victim-centred approach, allowing victims and survivors of trafficking and modern slavery and those that are witnesses to crimes to feel able to come forward and engage. The present overemphasis on criminal law and immigration enforcement fails to address the causes and the conditions that allow trafficking and modern slavery to proliferate. We were alarmed to see 'Modern Slavery' moved out of the remit of the Minister for Safeguarding and placed under the 'illegal migration and asylum' section of the responsibilities of the Minister of State (Minister for Immigration) in October 2022. This demonstrates the continued trend of the Government of linking human trafficking and exploitation with a false idea of abuse of the system by irregular migrants.
7. We endorse the submission made by Hope for Justice in relation to Question 8.

Q9 - Is there any evidence that modern slavery laws are being abused by people "gaming" the system?

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729836/economic-and-social-costs-of-modern-slavery-horr100.pdf.

⁸ Organisations working in the immigration, women and labour rights sectors use both safe reporting and secure reporting to describe a mechanism to ensure that victims and workers with insecure immigration status can report crime without facing negative consequences in regards to their legal status. This is relevant for all parties involved in the protection of vulnerable victims and workers, such as police and labour inspectorates.

⁹ For more information, see: Latin American Women's Rights Service and Focus on Labour Exploitation (2022).

Preventing and addressing abuse and exploitation: a guide for police and labour inspectors working with migrants.
Available at:

https://lawrs.org.uk/wp-content/uploads/2022/02/Preventing_and_addressing_abuse_and_exploitation_FINAL.pdf

8. LEAG members have seen no evidence of abuse of the system. Rather, they have seen that the failings of the National Referral Mechanism (NRM) in the UK, including the absence of secure reporting pathways, which have led to individuals feeling unable to come forward to authorities to seek support and protection, and instead seek support from civil society organisations who they feel better able to trust. We endorse the responses to this question made by the Taskforce on Victims of Trafficking in Immigration Detention.
9. In 2021, positive decisions were made in 90% of Reasonable Grounds decisions¹⁰ (and 92%, 89% and 88% in the first three quarters of 2022 respectively).¹¹ Similarly, in 2021, positive decisions were made in 91% of Conclusive Grounds decisions (and 92%, 91% and 91% in the first three quarters of 2022 respectively).¹² These figures show a remarkably high success rate for decisions made by the Home Office's own staff.
10. The Government's un evidenced claim that reporting instances of trafficking and modern slavery is a tactic to avoid removal and access immigration status fails to recognise the incredibly low rates for leave to remain in the UK for victims, with only 7% of confirmed victims being granted leave to remain between April 2016 and June 2021.¹³

¹⁰ UK Government. Home Office (2022), *Official Statistics. Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021#:~:text=In%202021%2C%20the%20NRM%20received,referrals%20since%20the%20NRM%20began>

¹¹ UK Government. Home Office (2022), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2022 - January to March*. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-1-2022-january-to-march/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-1-2022-january-to-march#:~:text=In%20quarter%201%202022%2C%20the,referrals%20since%20the%20NRM%20began>; UK Government. Home Office (2022), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2022 - April to June*. Available at: [https://www.gov.uk/government/statistics/national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2022-april-to-june#:~:text=In%20quarter%202%202022%2C%20the,2%20in%202021%20\(3%2C124\)](https://www.gov.uk/government/statistics/national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2022-april-to-june#:~:text=In%20quarter%202%202022%2C%20the,2%20in%202021%20(3%2C124)); UK Government. Home Office (2022), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 3 2022 – July to September*. Available at: <https://www.gov.uk/government/statistics/national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2022-july-to-september>.

¹² See note 7.

¹³ Scottish Refugee Council (2022), *New FOIs reveals chronic slowness of the UK's asylum system*. Available at: <https://www.scottishrefugeecouncil.org.uk/new-fois-reveals-chronic-slowness-of-the-uks-asylum-system/>

11. The head of the UK's Gangmasters & Labour Abuse Authority (GLAA) contested the Home Secretary's claims about abuse of the system, stating that "[the GLAA] don't see people gaming the system [...] What we see is vulnerable people who are being exploited by opportunists and criminals."¹⁴ Similarly, the former Independent Anti-Slavery Commissioner stated that "if we are going to change the policy on the basis that the Modern Slavery Act is being abused I think the Government needs to give us much better information and data, so we can have a proper public discussion."¹⁵ The Modern Slavery Policy & Evidence Centre has stated, "[t]he data published by the Home Office to date does not contain sufficient information to make an informed judgement about the scale of misuse."¹⁶ In December 2022, the Director General for Regulation at the Office for Statistics Regulation held that "the NRM statistics do not support the [Government] claims that people are "gaming" the modern slavery system, and the source of the claim is unclear to us."¹⁷
12. It is very disappointing to see Government officials equating so-called 'late' disclosure with false disclosure. It is well-recognised, including in the UK's own Statutory Guidance, that disclosure often takes years or even decades, and will often only happen once survivors feel safe enough to unpack what has happened to them.¹⁸ Survivors can be highly traumatised, afraid of disclosing their situation of exploitation due to shame and fear, the control methods and threats used by exploiters, and fear of authorities. Indicators of trafficking and modern slavery are often not recognised by individuals and agencies who come into contact with victims, including police and public authorities. Numerous government-commissioned or parliamentary reports

¹⁴ Emily Dugan (2022), *Watchdog disputes Braverman's claim modern slavery laws being 'gamed'*, The Guardian. Available at: <https://www.theguardian.com/uk-news/2022/oct/09/watchdog-disputes-bravermans-claim-migrants-gaming-slavery-laws>

¹⁵ Flora Thompson (2022), *Government 'totally misguided in attacks on rights of slavery victims'*, Evening Standard. Available at: <https://www.standard.co.uk/news/politics/government-sara-thornton-suella-braverman-home-secretary-home-office-b1030251.html>

¹⁶ Modern Slavery and Human Rights Policy and Evidence Centre (2021), *Submission on the Nationality and Borders Bill*. Available at: <https://modernslaverypec.org/resources/submission-nationality-borders-bill>

¹⁷ Office for Statistics Regulation (2022), *Ed Humpherson to Maya Esslemont and Anna Powell-Smith: Modern slavery data*. Available at: <https://osr.statisticsauthority.gov.uk/correspondence/ed-humpherson-to-maya-esslemont-and-anna-powell-smith-modern-slavery-data/>

¹⁸ The Modern Slavery Act 2015, Section 49 Statutory Guidance on "Identification and Care" recognises the impact of trauma as a reason why a person may not self-identify and/or be reluctant to disclose their situation of exploitation.

and inquiries have already highlighted that the Home Office is failing in its duty to identify and release vulnerable people.¹⁹

13. We are deeply disturbed by the current legislative, policy and political environment in the UK. There appears to be a concerted campaign by the Government to use unevidenced claims and inflammatory language to delegitimise and demonise victims and survivors of human trafficking, their legal representatives, and to undermine public sympathy for their support and protection in order to justify the removal of their rights. Unfounded comments including the terms ‘*anti-British*’²⁰ and ‘*small boat-chasing*’ lawyers,²¹ also amplify the hostile rhetoric towards human rights lawyers and organisations working with victims and survivors of trafficking and modern slavery or on their cases. Concerns have been raised in the past that Home Office language has put legal professionals at risk of harm,²² with such statements continuing this worrying trend.

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¹⁹ These include the following: Stephen Shaw (2016), Review into the Welfare in Detention of Vulnerable Persons. A report to the Home Office. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/5253_2_Shaw_Review_Accessible.pdf; Stephen Shaw (2018), Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons A follow-up report to the Home Office. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf; Joint Committee on Human Rights (2019), Immigration Detention. Sixteenth Report of Session 2017-19. Available at:

<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/1484.pdf>; Parliament. Home Affairs Select Committee (2019), *Immigration Detention. Summary*. Available at:

https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/91303.htm#_idTextAnchor000

²⁰ Law Society Gazette (2022) *Minister slams ‘anti-British’ lawyers for thwarting Rwanda plan*. Available at:

<https://www.lawgazette.co.uk/news/minister-slams-anti-british-lawyers-for-thwarting-rwanda-plan/5114201.article>

²¹ Daily Express (2022), *Suella Braverman's full speech at Tory Party Conference*. Available at:

<https://www.youtube.com/watch?v=yWlzZTdaOZc>

²² Jemma Slingo (2020), *Lawyers at risk of physical attack after Patel speech, says Law Society*, the Law Society Gazette. Available at:

<https://www.lawgazette.co.uk/news/lawyers-at-risk-of-physical-attack-after-patel-speech-says-law-society/5105879.article>