

Consultation – FLEX Response

## **Labour Market Enforcement Strategy 2024 to 2025: call for evidence**

8 September 2023

### **About Focus on Labour Exploitation (FLEX)**

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 by 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.

FLEX considers the enforcement of labour market regulations to be of utmost importance to prevent exploitation. Labour conditions exist on a spectrum, or a continuum, from decent work at one end, through forms of abuse such as underpayment of wages, to the most severe types of exploitation at the other end.

The continuum understanding recognises not only that someone's workplace experience may be plotted in a variety of places between decent work and forced labour at either extreme, but also that an individual's work situation may change and evolve over time, for example escalating from labour abuse to severe exploitation and forced labour. As such, effective labour market enforcement at every stage of the continuum is vital for: i) identifying abuses before they escalate to the most extreme forms; ii) acting as a deterrent to employers who may seek to exploit, and; iii) reducing risk of exploitation in high-risk sectors.

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## 1. Improving the radar picture

**1.1. Labour market non-compliance threats (measured by degree of non-compliant behaviour) are greatest in the following sectors: care, agriculture, hand car washes, construction, food processing, which should therefore be the focus of attention for the enforcement bodies.**

*Partially agree.*

Labour market non-compliance is broader than the sectors listed. Enforcement bodies need to be proactive in their attention across these and other sectors. It is also important to remember that the risks of exploitation are broader than non-compliance and that even in compliance, there are often risks to workers in these and other sectors due to structural issues. These include short term visas, ties to immigration sponsors, paying back incredibly high amounts with break fees, and the low pay requirement for the Health and Social Care work visa.

A lack of pro-active labour market enforcement and monitoring means that there is no comprehensive picture of labour market non-compliance threats in the UK at present. While we agree that non-compliance threats are high in the sectors listed it is important to be mindful that non-complaint behaviour will shift according to opportunities (such as changing immigration structures, or employment models) and that the most at-risk workers are unlikely to report non-compliance due to their dependencies on the work they have despite it being exploitative. As mentioned in the International Transport Workers' Federation (ITF) submission, to which FLEX contributed, we believe that fishing should be classified as a high-risk sector, we also believe that domestic worker (including care work) in private households should be recognised as high risk.

The UK has two existing short term visa routes for low paid work. These are the Overseas Domestic Worker (ODW) visa and the Seasonal Workers Scheme (SWS) for work in agriculture. Reports of exploitation on the Overseas Domestic Worker visa increased dramatically in 2012 when the route was further restricted,<sup>1</sup> preventing workers from changing employer or renewing their visas. This meant that exploitative employers knew that workers could not leave and look for a better job and even complaining carried the risk of being sacked and left destitute and unable to work.

The ODW visa has a duration of 6 months, cannot be renewed unless the worker is trafficked and prohibits access to public funds. This creates multiple dependencies on the employer- for accommodation, employment, information about the UK and sometimes interpretation. As migrant workers ODW visa holders may have no support network and little understanding of their rights as workers in the UK, let alone how to access these or other basic entitlements such as healthcare. The situation is compounded by their workplace being the employer's private household in which

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<sup>1</sup> 'Slavery by another name; the tied migrant domestic worker visa' (2013) Kalayaan  
<http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>

many of the workers also which can create issues around boundaries and time off; For example it is common for workers to be expected to be responsible for children during their time off or at weekends as they live in the house anyway, or boundaries are intentionally blurred with workers being told that they 'should' want to spend time with the employer's children as they are 'part of the family'. This blurring can also effect workers' status, with employers still able to rely on the Family Worker Exemption to avoid paying the National Minimum Wage. This is despite the Low Pay Commission finding in October 2021, that the exemption was 'not fit for purpose' and recommended to the government it be removed.<sup>2</sup> This recommendation was accepted by government on 10 March 2022 when it was announced the exemption would be removed 'when parliamentary time allows.'<sup>3</sup>

It is right that agriculture is listed as a high-risk sector. Migrant labour is overrepresented in the sector and proactive labour market enforcement is limited. Much of this migrant labour is provided by the horticultural Seasonal Worker visa scheme. The UK introduced the agricultural Seasonal Worker visa as a pilot in 2019. Since then, the scheme has expanded from under 3,000 visas in 2019 to up to possible 57,000 available in 2023 (10,000 of these are to be released subject to unpublished criteria and 2,000 are shorter visas for the poultry sector). This rapid growth has been despite concerns that the scheme can create risks of exploitation for workers, including reports of workers being left without work after only a few months in the UK, so unable to repay migration debts. While there have been some changes to the scheme guidance such as the introduction of a minimum of 32 paid hours of work a week these do not go far enough and are not independently monitored or enforced. Nor do they protect against the wider structural issues created by the visa. For example the duration of work is not guaranteed meaning that while workers should receive 32 hours work a week while they are employed, this employment could end ahead of their visa expiring and before they have earned enough to repay travel costs.

The visa allows Scheme Operators to recruit workers from anywhere in the world to come to the UK to work in horticulture for up to 6 months and poultry production for 3 months. Workers generally pay their own migration costs with many reporting arriving in the UK with significant debts.

Short term work visas risk workers being unable to access information about their rights, or to exercise these in practice. The structure of the agricultural seasonal worker scheme means that workers are dependent on their visa sponsor (Scheme Operator) for information about the UK, for work, for accommodation and for their visa, as well as for managing any concerns about their employment and any other needs (e.g. health).

There is a lack of proactive labour market enforcement within the scheme. It is unclear what options are available in practice to workers who complain making it likely that

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<sup>2</sup> Low Pay Commission 2021 Report. Summary of findings.

<sup>3</sup> [https://hansard.parliament.uk/commons/2022-03-10/debates/bb8249f8-3123-46aa-9536-c27452ff5cea/DraftNationalMinimumWage\(Amendment\)Regulations2022](https://hansard.parliament.uk/commons/2022-03-10/debates/bb8249f8-3123-46aa-9536-c27452ff5cea/DraftNationalMinimumWage(Amendment)Regulations2022)

some will decide that this is too risky and that it is better to concentrate on earning what they can.

If workers on the scheme are not able to access the protections of UK employment law this risks impacting conditions in the wider sector and creating reputational risks for the industry with conditions being driven down as decent employers are undercut.

It is not always clear which department is responsible for different elements of the scheme which sits under both DEFRA and the Home Office. This results in gaps in accountability and decision making.

For example, the ICIBI's 2022 inspection report<sup>4</sup> found that while the Home Office undertook 25 farm visits between February 2021 and February 2022 only 19 reports were drafted and shared with the Home Office's wider compliance unit. Eight of these identified "significant [welfare] issues" yet according to the inspection report follow up was inadequate:

*At best, reports were fed back to scheme operators months later. At worst, they were not fed back at all. The Home Office stated that no further action could be taken because it did not seek evidence to corroborate the allegations made, and that all allegations had to be investigated thoroughly before action could be taken. No allegations were investigated by the Home Office, by scheme operators, or by other government organisations. Often, by the time the scheme operators received the reports, the workers who had raised the allegations had already left the UK, meaning it was difficult for scheme operators to investigate, or give farms or growers the opportunity to respond.*<sup>5</sup>

There is a lack of clearly set out, accessible information on the scheme, responsibilities or accountability mechanisms. This was highlighted in the recommendations from Independent Chief Inspector for Borders and Immigration's Inspection of the immigration system as it relates to agriculture with the following recommendation:

### *Recommendation 3 - Clarity of roles and responsibilities*

*Within 3 months, for the Seasonal Worker route, produce and publish a reference document clarifying who is responsible for what across the Home Office, other government departments, devolved administrations, and local authorities. This reference document*

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1125411/An\\_inspection\\_of\\_the\\_immigration\\_system\\_as\\_it\\_relates\\_to\\_the\\_agricultural\\_sector\\_May\\_to\\_August\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125411/An_inspection_of_the_immigration_system_as_it_relates_to_the_agricultural_sector_May_to_August_2022.pdf)

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1125411/An\\_inspection\\_of\\_the\\_immigration\\_system\\_as\\_it\\_relates\\_to\\_the\\_agricultural\\_sector\\_May\\_to\\_August\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125411/An_inspection_of_the_immigration_system_as_it_relates_to_the_agricultural_sector_May_to_August_2022.pdf) para 1.22

*should be underpinned by a memorandum of understanding between all the relevant parties.*<sup>6</sup>

The government response committed to preparing a ‘document setting out the roles and responsibilities of various Home Office units involved with the Seasonal Worker route’.<sup>7</sup> This remains unpublished at the time of writing (4 September 2023).

Delivery of the scheme is through Scheme Operators who recruit and place workers and who are required to be licenced by both the Gangmasters and Labour Abuse Authority (GLAA) and the Home Office. [A parliamentary answer states that GLAA checks are ‘intelligence led’ rather than regular or proactive.](#)<sup>8</sup> Another explains that the [GLAA does not routinely inspect farms employing people with Seasonal Workers Scheme visas, as the workers are employed directly by the farms or growers.](#)<sup>9</sup>

It is important to note that underreporting of labour market exploitation is high within the most at-risk sectors. This is due to a combination of factors including the multiple dependencies on employers who are also visa sponsors, as mentioned above, and a lack of decent employment alternatives, as well as a lack of information, employment advice or case work support for employment matters. For many workers, the risks of reporting are higher than any likely redress or benefit. Given the additional precarity of workers with restricted or insecure status and compounded by the isolation and lack of social protections, secure reporting pathways are an important tool to ensure that workers are able to avail of their rights and have meaningful access to protection and support.

## **1.2. Some groups of workers (for example, women, younger people, migrants, those with protected characteristics) are at higher risk of experiencing labour market non-compliance than others.**

*Agree.*

Experiences of and vulnerability to labour exploitation vary greatly depending on personal, situational, and circumstantial factors (see Box 1 below). Individuals who have the fewest options and levels of support to counter these factors are more likely to experience higher levels of harm, compounding the effects.

### **BOX 1. FACTORS AFFECTING VULNERABILITY TO EXPLOITATION**

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<sup>6</sup> <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-immigration-system-in-the-agricultural-sector/a-response-to-an-inspection-of-the-immigration-system-as-it-relates-to-the-agricultural-sector>

<sup>7</sup> <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-immigration-system-in-the-agricultural-sector/a-response-to-an-inspection-of-the-immigration-system-as-it-relates-to-the-agricultural-sector>

<sup>8</sup> <https://questions-statements.parliament.uk/written-questions/detail/2022-10-10/59819/>

<sup>9</sup> <https://questions-statements.parliament.uk/written-questions/detail/2022-09-20/51713/>

**Personal** – Personal vulnerability stems from a person’s individual characteristics, such as their age, gender or physical or mental health.

**Situational** – Situational vulnerability relates to how a person is positioned within their environment, such as being subject to immigration restrictions, undocumented in a foreign country, or socially or linguistically isolated.

**Circumstantial** – Circumstantial vulnerability relates to a fact or event experienced by an individual, such as unemployment, economic destitution, or the loss of identity documents.

For example, when tight immigration restrictions are applied to workers in already high-risk sectors – such as domestic work or agriculture - their effects are compounded. The layering of vulnerabilities produced by labour market and immigration systems can restrict people’s options to the point of creating ‘unfreedom’, compelling them into coercive working relationships and eroding their ability to negotiate decent work.<sup>10</sup>

All individuals within the UK immigration system, whether they have regular status or not, have varying degrees of access to residency, work, and welfare rights and entitlements. This creates what has been called a ‘hierarchy of vulnerability’<sup>11</sup> a stratified system where some people will have greater access to rights and protections, while others will face more restrictive conditions that limit their power to refuse exploitative working conditions. Within the complex UK immigration system, there is a broad range of restrictive categories that put people at higher risk. Restrictions placed on people’s time in the UK, for example, can push individuals into increasingly exploitative forms of work, as employers may take advantage of the fact that it would be extremely difficult for a temporary worker to switch sponsors.

For further detail, please refer to FLEX’s policy briefing [‘Creating a Safe and Fair UK Immigration Policy for Workers’](#) (November 2022).

### **1.3. Jobseekers are increasingly using non-traditional means to find work (for example, online or via apps, social media) placing them at greater risk of fraud and scams.**

*Agree.*

FLEX’s participatory research with couriers in UK app-based delivery sector found that couriers are constantly monitored by the app and measured by their productivity, delivery speed, route taken, customer ratings, and which orders they accept or reject.<sup>12</sup> All this information affects

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<sup>10</sup> [‘No Viable Alternatives: Social \(in\)Security and Risk of Labour Exploitation during Covid-19’](#) (FLEX, IWGB and UVW, 2021).

<sup>11</sup> Peter Dwyer et al., [‘Forced Labour and UK Immigration Policy: Status Matters’](#) (York: Joseph Rowntree Foundation, 2011).

<sup>12</sup> FLEX. 2021. [“The gig is up”: Participatory Research with Couriers in the UK App-Based Delivery Sector.](#) Participatory Working Paper No. 3, p.32

the deliveries that each courier is assigned in the future.<sup>13</sup> Moreover, riders fear being penalised if they are not available during peak-times or for rejecting too many deliveries. Couriers report having their supplier agreement with the platform terminated, often without any explanation or ability to challenge the decision, which they attribute to this monitoring.<sup>14</sup>

Abrupt and unexplained terminations create an environment of fear, pressuring couriers into accepting conditions and jobs they might otherwise refuse, and acting as a barrier to joining a union, reporting incidents, or complaining about or reporting abuse. When asked whether they had been afraid of having their account closed, 43% of survey respondents answered 'yes' if they complained about unfair treatment, 31% if they reported or complained about bad working conditions or pay, 27% if they organised a strike or a boycott, 18% for trade union membership and 16% for reporting or complaining about harassment or abuse at work.<sup>15</sup>

By monitoring couriers through the app, producing a fear of dismissal if couriers report abuse, couriers are left exposed to high levels of violence at work, such as verbal and physical abuse, theft and sexual harassment. Of our survey respondents, 59% had been shouted or sworn at, 24% had been threatened with physical violence while on the job, 20% had been assaulted or attacked, 16% had been shoved and 10% had their vehicle intentionally damaged.<sup>16</sup>

In addition, FLEX found research participants experienced high levels of gender-based abuse, specifically sexual harassment. In total, 18% of survey respondents had experienced some form of sexual harassment at work. This percentage jumps to 57% for women and non-binary participants, who also face other forms of gender discrimination. The gender segregation that we see in traditional sectors of the economy is also replicated in the gig economy. Where women do work in male dominated sectors, such as app-based food and good delivery, they are more likely to face discriminatory treatment.<sup>17</sup> Women and non-binary research participants all recounted how their treatment at work was significantly different from their male colleagues.<sup>18</sup> Through ratings and feedback systems, further power imbalance is created that is skewed toward businesses and customers. While customers' and business' complaints can have real repercussions, such as account termination, it is unclear whether couriers' reports of abuse are followed up appropriately.<sup>19</sup>

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<sup>13</sup> Deliveroo. 2021. [UK Rider Privacy Policy. Section 3, Subsection g.](#)

<sup>14</sup> FLEX. 2021. ["The gig is up": Participatory Research with Couriers in the UK App-Based Delivery Sector.](#) Participatory Working Paper No. 3, p.32

<sup>15</sup> Ibid, p.33

<sup>16</sup> Ibid, p.6

<sup>17</sup> Galperin. 2019. ['This Gig is Not for Women': Gender Stereotyping in Online Hiring.](#)

<sup>18</sup> FLEX. 2021. ["The gig is up": Participatory Research with Couriers in the UK App-Based Delivery Sector.](#) Participatory Working Paper No. 3, p.26

<sup>19</sup> For more information on the lack of action and impediments relating to couriers' reports, please see: ["The gig is up": Participatory Research with Couriers in the UK App-Based Delivery Sector](#), p. 28



#### **1.4. Ongoing labour shortages in some sectors are not translating into improved conditions for workers in those sectors.**

*Agree.*

There needs to be increased scrutiny of the reasons behind labour shortages and why some sectors report struggling to recruit. It needs to be established whether conditions of employment, combined with wage levels, are the reason for labour shortages in some sectors. With the UK's increased reliance on restrictive visas to address labour shortages the nexus between immigration status and work needs to be an area of focus to proactively address exploitation and at minimum to be mitigated by ensuring secure reporting pathways are in place and that workers are able to exercise rights in practice.

## **2. Improving focus and effectiveness**

*Disagree.*

There is a dearth of frontline advice services. Research by the Young Foundation, supported by FLEX<sup>20</sup> found that the sector is under strain as demand for advice soars and not all organisations are able to support complex case work at the intersection of employment and immigration law. The report found that workers were repeatedly signposted without necessarily accessing support, leaving them exhausted and dispirited. The report also found that advice services themselves face challenges to keep services up and running as there is insufficient multi-year, unrestricted and sustainable funding for this kind of work; the burden of documentation (from funders, regulators and to manage cases) is huge; and there is concern about being able to provide the holistic wrap-around support that migrant workers facing employment rights abuses and exploitation need.

This means it is often unclear how workers can become informed of the employment rights. Union membership is low, and migrant workers may be unfamiliar with union membership, or membership models may not work well for them (for example workers on short term visas). Even when workers are aware they have rights. Uncertainty as to how they can exercise these rights in practice or how they interact with other factors such as immigration status mean that often rights are inaccessible even when workers know they exist. Legal aid is generally not available for employment law matters and with responsibility for enforcing labour market rights spread across several government departments and six enforcement agencies and shared with local authorities,<sup>21</sup> it is difficult for workers to know where to start with a complaint.

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<sup>20</sup> 'Rights and Risks: Migrant Labour Exploitation in London' (2023) Boelman, Radicati, Clayton, De Groot and Fisher.

<sup>21</sup> Figure 7. 'Enforce for Good' (2023) Resolution Foundation



Additionally, there may be practical barriers to enforcing or accessing rights including workers fearing the consequences of doing so. This might be due to the risk of loss of work, of destitution or of loss of immigration status if their employer is also their visa sponsor.

## **2.2. Workers have confidence in the three enforcement bodies that their cases are being dealt with proactively.**

*Disagree.*

With the UK's overall ratio of inspectors to workers being approximately 0.4 inspectors per 10,000 workers this means that a UK employer can on average expect an inspection by the HMRC National Minimum Wage team just once every 500 years.<sup>22</sup> This is compounded by the lack of trust created by joint inspections with immigration enforcement and the lack of certainty that rights and welfare will be prioritised over immigration matters, meaning that even when inspections do take place many workers will not speak out.

While there are three enforcement bodies which fall under the remit of the DLME (the Employment Agency Standards Inspectorate (EAS), the Gangmasters and Labour Abuse Authority (GLAA) and the HMRC National Minimum Wage team (HMRC-NMW). Relevant enforcement responsibilities also fall under three more enforcement agencies (the Equalities and Human Rights Commission, the Health and Safety Executive, and the Pensions Regulator), together with Local Authorities

As highlighted above at 1.1 this confusion means that even when issues are unidentified it can be unclear which body is responsible meaning that issues are not followed up.

## **2.3 Compliance and enforcement interventions by the three bodies are helping to ensure a level playing field for business.**

*Disagree.*

Consistent underfunding has had a serious impact across labour market enforcement activities and UK's labour market enforcement gap continues to widen. Indeed, the minimal levels of enforcement in sectors of the labour market where high levels of exploitation are well-known, undermining progress towards a level playing field for business. Any increases in funding have been awarded alongside an expansion of the responsibilities of already over-stretched enforcement agencies. In many cases, such as in relation to health and safety, cuts

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<sup>22</sup> [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)

in resources have intensified considerably. This has slowed down, and in many cases reversed, progress in the UK. Plans to reform the labour market need to be matched with real commitment to resourcing the agencies in charge of governing it. Increases to the minimum wage or improvement to worker protections will amount to little or nothing without a significant investment into ensuring that employers follow these rules. FLEX calls for the need to produce and publish an assessment of the resourcing needs of the SEB and other labour market enforcement agencies. Any efficiencies derived from the proposed merger of different agencies should be reinvested into greater enforcement capacity and a focus on deterrence over compliance. In addition, operations of labour inspection authorities should be prioritised based on the evidence of risk, with greater targeting of sectors where there is chronic low pay, high levels of insecurity, and widespread use of outsourcing and agency work. A good target would be for the UK to aim to at least meet the International Labour Organisation target of one inspector for every 10,000 workers as early as possible.

#### **2.4 Current enforcement penalties (for example, financial, reputational) deter more serious labour market exploitation.**

*Disagree.*

The Resolution Foundation have found that even when non-compliance is uncovered, it often goes unsanctioned.<sup>23</sup> For example they demonstrate that only a minority of firms found to be non-compliant with respect to auto-enrolment face a penalty<sup>24</sup> and that HMRC takes a similar approach and allows for self correction which it identifies minimum wage underpayment.

#### **2.5 The enforcement bodies have a difficult job prioritising their resources but, on balance are addressing the right issues.**

*Disagree.*

Given the reliance by enforcement bodies on workers proactively reporting non-compliance there needs to be greater attention to ensuring that workers are able to understand and access clear and secure reporting pathways, and know that in reporting labour abuse they are not putting themselves at risk as well as know that there are realistic and accessible options for redress.

Recommendations made by the previous DLME, Matthew Taylor, sought to address a number of the drivers that leave migrant workers vulnerable to labour abuse and exploitation, and ultimately recognising that it is '*vitaly important to maintain a clear dividing line between labour market enforcement and immigration enforcement.*'<sup>25</sup> FLEX holds that the

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<sup>23</sup> Enforce for Good (2023) Resolution Foundation.

<sup>24</sup> Figure 14. Enforce for Good (2023) Resolution Foundation.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1040316/E02666987\\_UK\\_LMES\\_2020-21\\_Bookmarked.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040316/E02666987_UK_LMES_2020-21_Bookmarked.pdf), p.104.

recommendation for secure reporting outlined in the DLME's 2021/2022 strategy should be implemented in full.<sup>26</sup>

### **3. Better Joined-Up Thinking**

#### **3.1 Coordinated enforcement actions by the enforcement bodies are helping to achieve a more compliant labour market.**

*Disagree.*

See section 3, other issues for the issues created by joint inspections as well as 3.2 below.

#### **3.2 Cross-government working has been effective in tackling labour exploitation in high-risk sectors (for example, care, hand car washes, agriculture, construction)**

*Disagree.*

The need for improved coordination between enforcement bodies has been recognised by government with the manifesto commitment for a Single Enforcement Body (SEB). At present responses between agencies and between government departments is fragmented. This can be seen for example in responses to issues raised with workers on the UK's agricultural Seasonal Worker scheme. Despite the GLAA licensing Scheme Operators, who sponsor workers' visas and are responsible for bringing them to the UK and placing them in employment with farms they do not routinely monitor or inspect farms or the workers' employment conditions. They will only become involved with workers employment conditions if they reach the threshold of slavery. It is not clear in practice which agency is responsible for proactively enforcing 'lower level' breaches for workers on the scheme that are not considered as reaching the threshold for slavery, particularly given the short length of the visa and therefore time available for investigations or redress before the worker leaves the UK.

As stated above, the lack of clear, accessible information on the scheme, responsibilities or accountability mechanisms has been highlighted in the recommendations from the Independent Chief Inspector for Borders and Immigration's 2022 Inspection of the immigration system as it relates to agriculture:

#### *Recommendation 3 - Clarity of roles and responsibilities*

*Within 3 months, for the Seasonal Worker route, produce and publish a reference document clarifying who is responsible for what across the Home Office, other government departments, devolved administrations, and local authorities. This reference document*

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<sup>26</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1040317/E02666976\\_BEIS\\_UK\\_Labour\\_Market\\_Enforcement\\_Strategy\\_2021-22\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040317/E02666976_BEIS_UK_Labour_Market_Enforcement_Strategy_2021-22_Accessible.pdf), pp. 35-36.

*should be underpinned by a memorandum of understanding between all the relevant parties.*<sup>27</sup>

The government response committed to preparing a ‘document setting out the roles and responsibilities of various Home Office units involved with the Seasonal Worker route’.<sup>28</sup> This remains unpublished at the time of writing (4 September 2023).

Nor is there effective coordination at the higher thresholds of exploitation or abuse. When exploitation reaches the threshold of slavery individuals can be identified by a designated First Responder and referred into the UK’s National Referral Mechanism for identifying victims of slavery. However, as Kalayaan highlighted the National Referral Mechanism, which has been criticised for the inadequate support it provides to survivors for years, is ‘near breaking point’.<sup>29</sup> Potential victims are struggling to access a voluntary sector First Responder to identify and refer them into the NRM and there is no process for voluntary sector organisations to become First Responders, so increasing capacity for this. Meanwhile potential victims report being signposted from organisation to organisation, at risk of destitution and re-entering exploitation. Even once in the NRM the system does not work in workers’ interest; to support them to access redress and move on. There are lengthy delays which may run to years, many potential victims cannot work during this time and there is no pathway to support potential victims into decent work. These issues are compounded by unevidenced government rhetoric around victims ‘gaming the system’ or entering the NRM to gain an immigration advantage. This rhetoric has been criticised by UN experts<sup>30</sup> and disputed by the GLAA<sup>31</sup> and risks further deterring potential victims from coming forward for fear they will not be believed.

This is compounded by recent changes to the guidance following the Nationality and Borders Act. On 30 January 2023 the guidance was amended to require potential victims to have ‘objective evidence’ of their trafficking in order to receive a positive first stage NRM decision (the Reasonable Grounds decision making stage). At this stage the threshold should be low, at ‘suspect but cannot prove’. This is because it is the threshold which needs to be reached before potential victims can access any specialist government funded support prior to which it is not realistic to expect a victim to feel safe enough to begin to disclose or to be in a position to begin to gather ‘objective evidence’ of this often hidden crime. The guidance<sup>32</sup> has now

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<sup>27</sup> <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-immigration-system-in-the-agricultural-sector/a-response-to-an-inspection-of-the-immigration-system-as-it-relates-to-the-agricultural-sector>

<sup>28</sup> <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-immigration-system-in-the-agricultural-sector/a-response-to-an-inspection-of-the-immigration-system-as-it-relates-to-the-agricultural-sector>

<sup>29</sup> The National Referral Mechanism: Near breaking point (2023) Kalayaan  
<http://www.kalayaan.org.uk/campaign-posts/report-launch-the-national-referral-mechanism-near-breaking-point/>

<sup>30</sup> <https://www.ohchr.org/en/press-releases/2022/12/uk-un-experts-condemn-attacks-credibility-slavery-and-trafficking-victims>

<sup>31</sup><sup>31</sup> <https://www.theguardian.com/uk-news/2022/oct/09/watchdog-disputes-bravermans-claim-migrants-gaming-slavery-laws>

<sup>32</sup> <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims/modern-slavery-statutory-guidance-for-england-and-wales-under-s49-of-the-modern-slavery-act-2015-and-non-statutory-guidance-for-scotland-and-northe>

been rewritten following a legal challenge but its effects can be seen in the NRM statistics: In contrast with the 16% of negative first stage decisions in October to December 2022, before the updated Modern Slavery Statutory Guidance was updated after the NABA, this rate has increased to 75% in April to June 2023. While this may change with the re-written guidance this further undermines trust in the NRM for workers and other potential victims.

## **4. Improving Engagement and Support**

### **4.1. Failure to provide detailed, timely, physical, and accessible payslips can leave workers vulnerable to exploitation.**

*Agree.*

This submission already touches on the need for information about rights and entitlements. While information alone doesn't enable access to rights in practice a lack of information makes it incredibly difficult for workers to exercise rights. Clearly set out payslips are fundamental to workers knowing what they are being paid for the work they have done. Without clear payslips which are accessible to workers it can make it very hard for workers to understand if they are being paid correctly for the work they have done and what deductions are for or to raise any issues with these. Ultimately without clear payslips workers are at risk of wage theft.

### **4.2. Lack of contractual clarity around employment status can put people at greater risk of exploitation.**

*Agree.*

Without contractual clarity workers may feel at great risk of dismissal, or having work withdrawn. However, where workers are on very insecure contracts, contractual clarity may only confirm to workers that they risk dismissal if they raise challenges. For example, the horticultural Seasonal Worker visa shows how it is possible for workers to be in a situation which is exploitative even if laws are not being breached. On this scheme workers are issued a visa to travel to the UK and can stay for a maximum period of six months in any 12-month period. Workers generally pay the visa and travel costs, incurring financial risk on the expectation of work. Since April 2023 workers have been 'guaranteed' 32 hours of work a week at the National Living Wage (£10.42 an hour) less accommodation costs (where accommodation is provided by the employer, this is known as the accommodation offset). They may also be charged for transportation within the UK. It would therefore seem reasonable for a worker to make a calculation when deciding whether to migrate to the UK using the scheme based on 6 months' work at 32 hours a week minus reasonable costs. However, in practice neither this work nor income is guaranteed for the full duration of their visa period. If work is not given to workers when they arrive in the UK the scheme guidance has not necessarily been breached. Workers may be dismissed or offered no further work

after only a short period leaving them in a situation where they have not earned enough to cover their migration costs.

### **4.3. Migrant workers coming to the UK on short-term visas are less likely to be aware of their employment rights or to seek remedies in cases of labour violations.**

FLEX has long warned that short-term work visas are inherently high risk for workers,<sup>33</sup> with high migration costs increasing risks of debt bondage and the short time in the UK making it difficult for workers to access information or rights. These risks are well-evidenced for both of the main short-term work visas in the UK, the Overseas Domestic Worker Visa<sup>34</sup> and the Seasonal Worker Visa<sup>35</sup> for the agricultural sector.

Recommendation 279 to the UK in the Universal Periodic Review of the United Kingdom, Great Britain and Northern Ireland, made by the USA and supported by the UK in its response recognises the risk of visas which create vulnerability:

*Take steps to ensure migrant workers are not left vulnerable to abuse and exploitation from employers and the UK visa system*

While the UK has supported this recommendation it is not clear what steps have been taken. Meanwhile research and media reports continue to highlight real risks of exploitation for workers on short term visas.

Data collected by Kalayaan from workers on the Overseas Domestic Worker (ODW) visa in 2012 clearly demonstrates that, when the immigration rules changed, changing that visa from being renewable with a pathway to settlement, enabling workers to access rights, to a short term 6 month visa, exploitation reported by workers increased.<sup>36</sup> The report describes that of the workers seen by Kalayaan;

- All the workers on the new tied and short-term visa reported that they were paid less than £100/ week, as opposed to 60% of those on the original visa;
- 62% of those on the tied short term visa were paid no salary at all, compared with 14% on the original visa;
- 85% did not have their own room so slept with the children or in the kitchen or lounge compared with 31% on the original visa.

It is in any case important to note that workers in the UK, whether they are migrants or not, find it difficult to access redress after exploitation has taken place. This is due to a range of

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<sup>33</sup> Preventing exploitation in the shadow of Brexit: The risks of temporary migration programmes (2018) FLEX [https://labourexploitation.org/app/uploads/2018/09/FLEX-Briefing-temporary-migration\\_FINAL.pdf](https://labourexploitation.org/app/uploads/2018/09/FLEX-Briefing-temporary-migration_FINAL.pdf)

<sup>34</sup> Trapped in Cycles of Exploitation: The UK Overseas Domestic Worker Visa 10 Years On (2022) Mantouvalou and Sedacca

<sup>35</sup> Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot (2021) FLEX

<sup>36</sup> Slavery by another name; the tied migrant domestic worker visa (2013) Kalayaan <http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>

factors including legal aid not generally being available for employment matters and demonstrates the importance of pro- active monitoring, inspections and enforcement of employment standards as a preventative measure.

### **Section 3. Other issues**

**Over and above the issues raised above, are there any other relevant issues you would like to bring to my attention for this strategy?**

#### Implement secure reporting pathways to support workers to report non compliance

The current absence of secure reporting pathways means that many workers, especially workers with restricted or insecure immigration status are reluctant to approach labour market enforcement authorities, out of fear that these bodies will prioritise immigration enforcement over investigating any non-compliance and share their data with the Home Office. Secure reporting pathways and procedures that prohibit this sharing of immigration status when victims of trafficking come forward have not been embedded within labour market enforcement or law enforcement activity. The uncertainty this creates for workers means that many will not speak out for fear that they will not receive any redress but will lose any chance for work which they currently have.

Simultaneous or joint operations, where labour market enforcement and law enforcement conduct investigations with immigration enforcement, have undermined trust in enforcement mechanisms among migrant workers thereby impeding operational effectiveness as well as their wider ability to detect and address exploitation. For instance, in 2022 the Low Pay Commission found that joint inspections stopped workers from reporting the non-payment of wages.

#### Address risks created through visa sponsorship

The UK is increasingly reliant on sponsor visas, where workers are sponsored to enter the UK by an employer. As has been seen recently in the care sector with the Health and Social Care work visa<sup>37</sup> this creates multiple dependencies on employers and can make it very difficult for workers to raise complaints even where conditions are very poor as they know that if they lose the job they have the chances of switching sponsor are low in practice. There needs to be careful scrutiny of the risks created by the sponsorship system and how these can be mitigated in ways which are of practical assistance to workers. Such mitigations need to include options to address exploitation early on, and to leave exploitative work without jeopardising a workers immigration status.

#### Ensure all workers can access redress in practice

To avoid a two-tier workforce, all work visas must meet minimum standards which enable workers to exercise rights. Employment rights breaches which may seem lower harm, such

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<sup>37</sup> 'If you want a reference, pay up: How UK care homes are exploiting overseas nurses' (2022) Unison



as underpayment of wages, are subjective; what is lower harm for one grouping of worker (based on indicators like economic background and safety nets, community ties, debt) are not lower harm for others. As is obvious, underpayment of wages will have a far bigger effect on someone earning the lowest wages or on low hours who has no resource to public funds and no information networks who can support them than someone not in this situation. Likewise, breaches that may seem lower harm can accumulate over time to create a highly vulnerable situation for the worker, at times leading to forced labour.

In addition to secure reporting pathways and an end to joint Labour Market enforcement and immigration inspections, all workers should be able to access to specialist independent advice and a 'fast-track' reporting channel.

There needs to be an increased focus on compensation for workers; Resolution mechanisms which effectively respond to labour abuses should be accessible to temporary workers who are unlikely to be in the UK long enough to be able to access an Employment Tribunal. The GLAA should have the power to make and enforce 'repayment orders' as suggested by the Government.