

Joint Position Paper on Preventing Exploitation in the Adult Social Care Sector

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Who we are:

This joint position paper was produced by a coalition of organisations and academics working on the care sector or for the interests of migrant care workers. This position paper was coordinated by Focus on Labour Exploitation (FLEX).

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1. Introduction

Increasingly, there have been reports of severe forms of labour exploitation in the UK care sector, with issues including illegal fees, exorbitant repayment clauses, non-payment of wages, debt bondage and excessive overtime highlighted in media coverage. Using data collected through the Modern Slavery & Exploitation Helpline, the charity Unseen has reported a 606% increase in the number of modern slavery cases in the care sector from 2021 and 2022.¹ The Director of Labour Market Enforcement has identified adult social care as a high-risk sector for labour exploitation, with live-in and agency care workers believed to be at particular risk.² The Migration Advisory Committee (MAC) has stated that the Government has tacitly accepted exploitation in the care sector.³

The UK's care sector is suffering ongoing and rising labour shortages.⁴ This is not translating into improved conditions. Low-pay, poor conditions and abusive treatment remain endemic in the sector.⁵ In this sense, the Health & Care Worker visa has 'landed' on top of an already high-risk sector, with workers being caught between the prevalent systemic poor conditions of the adult care sector and the harsh effects of UK immigration policy. Rather than increasing wages and improving conditions, the Government and employers in the adult social care sector are placing the true costs of providing care on workers. The racialisation of the workforce as well as the gendered nature of care work in the UK are also factors that must also be taken into account when examining the risks of exploitation in the sector.

In December 2021, the Government added care work to the Shortage Occupation List in an attempt to address the shortage of care workers, and allowed migrant care workers to use the Health & Care Worker visa. The number of Health & Care Worker visas granted grew from 47,194 in the year ending 2022, to 121,290 in the year ending June 2023 (a 157% increase). In the period of June 2022 to June 2023, the Health & Care Worker visa represented 57% of all 'Worker' visas.⁶ The MAC has stated that *"it's now by far the biggest occupation that's using the immigration system."*⁷ Focus on Labour Exploitation and the Labour Exploitation Advisory Group have long warned of the need to address the risks of exploitation in the care sector and of their concerns regarding the use of sponsorship requirements on visa routes to

1 Unseen (2023), Who Cares?: a review of reports of exploitation in the care sector, p.4. Available at: <https://www.unseen.org/reports/care-sector-report/> (Accessed 29 November 2023).

2 Director of Labour Market Enforcement (2022), United Kingdom Labour Market Enforcement Strategy 2022/23. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1143364/uk-labour-market-enforcement-strategy-2022-2023.pdf (Accessed 11 December 2023).

3 The Guardian (2023), Exploitation of care workers in England is 'appalling', says government adviser. Available at: <https://www.theguardian.com/society/2023/jul/30/exploitation-of-care-workers-in-england-is-appalling-says-government-adviser> (Accessed 11 December 2023).

4 Skills for Care (2022), Vacancies in social care increase by 52% to their highest rates and the workforce shrinks for the first time. Available at: <https://www.skillsforcare.org.uk/news-and-events/news/vacancies-in-social-care-increase-by-52-to-their-highest-rates-and-the-workforce-shrinks-for-the-first-time> (Accessed 11 December 2023); Unseen (2023), note 1, p.3.

5 UNISON (2023), Migrant care staff in UK 'exploited and harassed' by employers, says UNISON. Available at: <https://www.unison.org.uk/news/press-release/2023/07/migrant-care-staff-in-uk-exploited-and-harassed-by-employers-says-unison/> (Accessed 11 December 2023).

6 Home Office (2023), National statistics - Why do people come to the UK? To work. Available at: <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-june-2023/why-do-people-come-to-the-uk-to-work> (Accessed 11 December 2023).

7 The Guardian (2023), at note 3. See also Home Office (2023) at note 6.

address labour shortages following the end of free movement.⁸ It is evident that the Government has failed to properly heed these concerns, and has not addressed these risks. The scheme also appears to be failing at achieving its stated aims, as severe labour shortages continue to exist while workers on the route are often left without sufficient hours as outlined below.

The ILO forced labour indicators have been previously used by FLEX to analyse risks of forced labour in the Seasonal Worker Pilot. In this approach, the presence of two or more of these indicators offers a strong indication of forced labour.⁹

The indicators are as follows:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

As outlined below, the presence of at least some of these indicators is common in the experiences of many workers in the care sector. The combination of poor labour market enforcement and immigration policy in the UK creates the conditions for exploiters to subject workers to these acts with impunity.

To effectively address labour exploitation it is helpful to apply the ‘continuum of exploitation’ approach.¹⁰ Labour exploitation has been recognised as part of a spectrum of experiences that ranges from decent work through minor and major labour law violations to extreme exploitation.¹¹ The factors that produce vulnerabilities at one end of this gradient create risks across the continuum as a whole. At one end there is decent and well-paid work, with bad practices such as breaches of employment rights (such as unpaid

8 FLEX (2019), Disposable Workers: the future of the UK’s migrant workforce, p.6. Available at: https://labourexploitation.org/app/uploads/2019/03/FLEX_Briefing_DisposableWorkers_Final.pdf (Accessed 11 December 2023); FLEX (2019), The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper, p.16. Available at: https://labourexploitation.org/app/uploads/2019/05/Report_Risks-of-Exploitation-in-TMPs_May-2019_Final.pdf (Accessed 11 December 2023); FLEX (2018), Preventing exploitation in the shadow of Brexit: The risks of temporary migration programmes, p.6, Available at: https://labourexploitation.org/app/uploads/2018/09/FLEX-Briefing-temporary-migration_FINAL.pdf (Accessed 11 December 2021); FLEX & LEAG (2017), Lost in Translation: Brexit & labour exploitation, p.12. Available at: <https://labourexploitation.org/app/uploads/2017/08/LEAG-POSITION-Impacts-of-Brexit-Final.pdf> (Accessed 11 December 2023).

9 International Labour Organisation (2012), ILO Indicators of Forced Labour. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_227848.pdf (Accessed 11 December 2023).

10 See: Klara Skrivankova (2011), Between decent work and forced labour: examining the continuum of exploitation. Available at: <https://www.irf.org.uk/report/between-decent-work-and-forced-labour-examining-continuum-exploitation> (Accessed 1 December 2023).

11 Labour Exploitation Advisory Group (2020), Opportunity Knocks: improving responses to labour exploitation with secure reporting, p.13. Available at: <https://labourexploitation.org/publications/opportunity-knocks-improving-responses-to-labour-exploitation-with-secure-reporting/> (Accessed 11 December 2023).

wages, discrimination etc.) situated along the continuum, culminating at the opposite end of the continuum in severe exploitation, such as human trafficking and forced labour.¹²



Fig: Graphic produced by Focus on Labour Exploitation (2022)

This position paper focuses primarily on the experiences of migrant care workers on the Health & Care Worker visa, though section 8 explores the issues faced by care workers who do not hold Health & Care Worker visas.

¹² This approach has been recognised by the Office of the Independent Anti Slavery Commissioner and the GLAA. See: University of Nottingham Rights Lab (2018), Labour Exploitation in Hand Car Wages, p.8 Available at: <https://www.antislaverycommissioner.co.uk/media/1238/labour-exploitation-in-hand-car-washes.pdf> (Accessed 11 December 2023); Gangmasters & Labour Abuse Authority (2023) What is Modern Slavery? Available at: <https://www.youtube.com/watch?v=Xj-c5Xo6mnU> (Accessed 11 December 2023).

Priority Recommendations

In order to prevent and mitigate the risk of exploitation in the care sector, the Government must implement a number of policy and legislative changes. Nevertheless, the following four recommendations should be prioritised in any attempts to address labour exploitation in the adult care sector.

1. National Care Service

Establish an NHS-style system for social care.

2. Labour Market Enforcement

Establish a **Single Enforcement Body** that is accessible to workers in practice, adequately funded, provided with robust enforcement powers and has **secure reporting pathways** in place. The Government must **separate all labour market and immigration enforcement activity**.

3. Dependency/Options for Workers

Introduce **bridging visas** or the ability to apply to renew a visa in-country once expired. Ensure that all work visas have **pathways to permanent settlement**, the ability to change jobs easily and access to public funds. Recognising the vital role of care workers in the UK, and the need for migrant workers to support the sector, related visa fees for both the worker and the sponsoring employer must be removed.

4. Recruitment

Recruitment should only take place via agencies on the '**ethical recruiters list**', which must have appropriate monitoring conditions in place to ensure compliance. Ensure that the **UK Code of Practice on ethical international recruitment is made enforceable** so that unscrupulous employers and recruitment agencies cannot operate freely outside of it. As recommended by UNISON, Integrated Care Systems in England, with involvement from local authorities, should operate a central point in the region tracking vacancies with sponsoring employers. This would enable care workers to find new employers more easily.

2. Sponsorship

a. Dependencies

The Health and Care Worker visa creates a dependency on individual sponsors, as workers on this visa must have a job offer from an approved UK employer who is also their visa sponsor. As such, workers' right to stay in the UK depends on maintaining their relationship with their employer or finding a new employer who can sponsor their visa within 60 days. The resulting reliance on the sponsor for employment and the right to remain in the UK creates a barrier to reporting concerns about labour exploitation or other bad practice. In this context, we have seen care companies threaten to cancel work and sponsorship where workers have sought to raise complaints. Workers have referred to employers seeing care workers as their 'property' as they had sponsored their visa.¹³

When workers leave an employer who is also their visa sponsor, they have only 60 days to find a new employer who is approved by the Home Office to sponsor them if they are to have permission to remain working in the UK.¹⁴ This condition can create considerable difficulties for workers who exit exploitative employment, as finding an employer who is willing and able to sponsor them within this short window is incredibly difficult. This is compounded by the high costs associated with finding a new employer, as many in-country applicants are asked by prospective employers to shoulder the costs of immigration fees, certificates of sponsorship and the cost of the application to the Home Office. Workers on this visa have no recourse to public funds during this time. Potential new employers may also be deterred from hiring workers leaving their exploitative conditions due to the cost of the sponsorship fees and the need to register as a sponsor. At present such fees cannot be waived, even in situations of severe exploitation. Several migrant care workers from the Pan-African Workers Association expressed concern at the lack of support in finding new employment. As recommended by UNISON, Integrated Care Systems with involvement from local authorities, should operate a central point in the region tracking vacancies with sponsoring employers with a requirement to recruit workers on the Health & Care Worker visa looking to change job before recruiting overseas.

Additionally, workers may also be fearful of raising (or of others raising) concerns of exploitation or other bad practice that may result in the Home Office revoking sponsorship abilities, as this

¹³ BBC News (2023), Unison calls for health staff 'repayment clause' reform. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-66462332> (Accessed 11 December 2023).

¹⁴ Home Office (2023), Cancellation and Curtailment of permission, Version 2.0. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1176509/Cancellation and Curtailment of permission.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1176509/Cancellation_and_Curtailment_of_permission.pdf) (Accessed 11 December 2023).

may mean that workers are left without a sponsor. Even where workers make anonymised complaints in order to avoid being individually victimised by their employer, they may ultimately be seriously impacted by the loss of employment if their sponsor has their licence revoked and may be required to leave the UK if they cannot find an alternative employer willing and able to sponsor their visa within 60 days. This will result in not only the loss of their own individual sponsorship, but the sponsorship of their colleagues as well.

The absence of a bridging visa¹⁵ in the UK means that workers may be pushed out of status and made undocumented. This undocumented status increases the risk of exploitation, particularly as ‘hostile environment’ policies such as the Illegal Working Offence and associated right to work checks, mean that workers are often pushed into exploitative work.¹⁶ While there is no evidence that the Illegal Working Offence and other ‘hostile immigration’ policies are effective at deterring irregular migration into the UK, there is significant evidence showing how these policies prevent people from reporting crimes and unsafe working conditions to the authorities,¹⁷ which further drives risks of exploitation. Migrants at Work has reported that several migrant workers attempted suicide after their employers’ sponsorship licence was revoked, with three care workers having died by suicide after becoming destitute following the loss of sponsorship.¹⁸ Instead, the UK’s previous good practice should be replicated in relation to the migrant workers in the adult social care sector. The pre-2012 Overseas Domestic Worker visa’s portability provision was noted as playing a crucial role in facilitating migrant domestic workers’ ability to exit exploitative employment and pursue legal remedies against their employer.¹⁹

The dependency created by sponsorship also creates a barrier to workers’ ability to join a trade union or engage in collective action in order to advocate for better conditions, out of the fear that

15 In the Republic of Ireland, the Reactivation Employment Permit permits non-EU citizens who held a work permit but became undocumented through “no fault of their own” and have remained in the country. “No fault of their own” can refer to labour exploitation and abuse, closure of the workplace without previous notice, being made redundant, or failure of the previous employer to submit the redundancy notification on time. Similarly, in Finland, in Finland, non-EEA workers who have experienced labour exploitation or significant negligence in the workplace can apply for special residence permits due to such exploitation. See: PICUM (2022), Labour Migration Policy Case Study Series: Ireland. Available at: https://picum.org/wp-content/uploads/2023/02/Labour-migration-policies_Case-study-series_Ireland_EN.pdf (Accessed 20 September 2023); PICUM (2023), Labour migration policies in Finland. Available at: <https://picum.org/blog/labour-migration-policies-finland/> (Accessed 28 November 2023).

16 Labour Exploitation Advisory Group (2020), note 11, p.16.

17 Labour Exploitation Advisory Group (2020), note 11. The Home Office’s own research concedes that the deterrent effect of the hostile, or ‘compliant’ environment is unclear, see: Home Office (2023) A review of external evidence of the compliant environment: Literature synthesis of external evidence and best use of international examples. Available at: <https://www.gov.uk/government/publications/a-review-of-external-evidence-of-the-compliant-environment-literature-synthesis-of-external-evidence-and-best-use-of-international-examples/a-review-of-external-evidence-of-the-compliant-environment-literature-synthesis-of-external-evidence-and-best-use-of-international-examples> (Accessed 11 December 2023).

18 Migrants at Work & Migrants’ Rights Network (2023), Written evidence submitted by Migrants at Work and Migrants’ Rights Network. Available at: <https://committees.parliament.uk/writtenevidence/124203/pdf/> (Accessed 11 December 2023).

19 Kalayaan (2011), Ending the Abuse: policies that work to protect migrant domestic workers, p.3. Available at: <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Ending-the-abuse-Kalayaan-briefing-2011.pdf> (accessed 29 November 2023); The original ODW visa was cited internationally as good practice. See: International Labour Organization (2006), Multilateral Framework on Labour Migration: Non-binding

they will be victimised for trade union activity resulting in them losing not only their job but also their immigration status. Polish Migrants Organise for Change (POMOC) have identified that employers involved in exploitative practices often use deception by suggesting that as they do not recognise a trade union their workers are not allowed to join one. Trade unions have faced difficulties in effectively organising care workers as many employers in the sector refuse to engage with any efforts of trade union’s organisers to encourage union membership through in workplace information sessions. In addition, most trade union officials find it hard to deal with cases involving workers on the Health and Care Worker visa because they lack experience and information on how the scheme works.

A research project, led by Dr Inga Thiemann, previously University of Exeter (now University of Leicester), in partnership with the University of Bristol, the University of York, and the University of Durham, as well as NGOs Focus on Labour Exploitation (FLEX), the Joint Council for the Welfare of Immigrants (JCWI), Southeast and East Asian Centre (SEEAC) and Kanlungan Filipino Consortium, with support from UNISON, is looking at the impact of the UK’s visa and immigration rules on workers, including in those in the social care sector.²⁰ As part of this, researchers conducted 15 interviews with migrant care workers, a number of whom are on the Health & Care Worker visa. Health & Care Worker visa holders who faced mistreatment or inadequate working conditions told researchers they were afraid to try to change employer in case this impacted their immigration status, and left them vulnerable to ‘hostile environment’ policies, now referred to as ‘compliant environment.’ This visa is a relatively secure visa compared to other short-term work visas, granting 3 years of leave to remain and a route to permanent settlement. However, it is still a sector-specific visa which requires an employer to be a visa sponsor. This means particularly without an accessible process, or if necessary, targeted support to find an alternative employer/ sponsor, it brings a greater risk of exploitation as workers’ ability to remain in the country depends on their employment, making it harder to leave exploitative or abusive situations. This is compounded by the lack of recourse to public funds on the visa.

b. Repayment Clauses

Repayment clauses require workers to pay back the upfront costs that the employer has invested in recruiting health or social care personnel if they leave employment. While such repayment clauses can be legal in the UK, it is apparent that in some cases they are being ‘badly misused’.²¹

principles and guidelines for a rights-based approach to labour migration, p. 67. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/documents/publication/wcms_146243.pdf (Accessed 30 November 2023).

20 Inga Thiemann et al, (forthcoming 2024), Findings from research project on migrant care and agricultural workers. See project description at: <https://modernslaverypec.org/research-projects/agriculture-care-visas> (Accessed 11 December 2023).

21 Financial Times (2023), Union calls out ‘shocking abuse’ of migrant careworkers in UK. Available at: <https://www.ft.com/content/f356fa28-f506-4a23-a4a9-a154228706af> (Accessed 11 December 2023).

Workers are being charged large amounts of money where they want to leave their employer, amounts that they are often unable to afford. UNISON have seen amounts of £15,000 being charged to workers seeking to resign from a position.²² The result of this is that workers may be unable to leave exploitative employment and ironically, may be trapped in a work where they are underpaid because they cannot earn enough to pay the charge to leave. Those who still manage to leave employment while facing large repayment charges, may be left with significant debt. One worker who faced a charge of £6,000 told the BBC that she worked for a period of two months without payment in order to recoup the costs.²³

Some employers are also including prohibited charges within these amounts, such as the immigration skills charge.²⁴ Additionally, clauses around repayment are often not included in contracts, and (as highlighted below) many workers on the Health & Care Worker visa are not provided with a written contract, or experience conditions very different from those that they were promised.²⁵

The code of practice for the international recruitment of health and social care personnel in England ('Code of Practice') sets out a number of principles regarding repayment clauses that employment contracts must abide by. This includes the principles of transparency; proportionate costs; timing; and flexibility.²⁶ It also sets out a number of examples where repayment clauses can be waived including where a worker's health and wellbeing is being adversely impacted; where there is bullying, discrimination or poor working conditions; if a health or social care recruit's circumstances have changed beyond their control, either in the UK or in their home country; or where the health and social care recruit wishes to move roles for career progression.

The Code of Practice also sets out that the repayment amount should only include expenses met by the employer on behalf of the worker such as relocation expenses; visa fees; regulatory exam fees. The employer is responsible for paying the agency fee; the immigration skills charge; the sponsor license fee; the cost of sponsorship; and the costs of the interview process. Employers are also forbidden from charging interest and should allow for monthly repayment. The Code of Practice also sets out that the amount that's charged should be tapered, with the example of a worker being charged 100% of total itemised expenses where they leave within the year, down to having no repayable expenses after 36 months of service.²⁷

22 BBC News (2023), at note 13.

23 Id.

24 UNISON (2023), *Expendable Lives: the exploitation of migrant care workers*, p.4. Available at: <https://www.unison.org.uk/content/uploads/2023/11/Expendable-labour-report.pdf> (Accessed 29 November 2023).

25 See: Unseen (2023), note 1, pp.15-16.

26 Department of Health & Social Care (2023), *Guidance: Code of practice for the international recruitment of health and social care personnel in England*. Available at:

<https://www.gov.uk/government/publications/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel-in-england> (Accessed 11 December 2023).

27 Id.

The Code of Practice establishes *'principles and best practice benchmarks to be adhered to by all employers - public and independent, contracting bodies, recruiting organisations, agencies and collaborations - when recruiting international health and social care personnel'*. Further, it aims to *'ensure recruitment is undertaken in an ethical, managed and mutually beneficial way'*. Despite this, it is apparent that its principles are routinely and significantly violated by employers, with no enforcement action taken to address such violations. Additionally, there seems to be a general lack of awareness of the Code of Practice, including what can be charged for.

JCWI runs a free immigration advice helpline for members of the trade union UNISON, which was established in 2011. Callers to the helpline include people who are currently in the UK on skilled visa schemes, especially the Health and Care Visa and the General Skilled visa (Tier 2). Many of the callers to the helpline work in the care sector. On average JCWI supports 12 callers a week. For the last 2 years, and especially in the last year, JCWI have seen a sharp increase in the numbers of workers finding themselves in vulnerable situations. The JCWI helpline receives many queries from people suffering a loss of recognition of their lawful immigration status and their relationship with their employers. Roughly 70% of calls over the past 18 months have related to issues with the new Health & Care Worker/skilled worker Tier 2 visa, including mistreatment, poor working conditions, and threats of illegal fees and fines. One major issue for JCWI callers has been around repayment clauses with many migrant healthcare workers who are expected to sign contracts which require them to repay recruitment and training costs to their employers if they leave their post within a few years. JCWI are aware of many instances where migrant health workers are effectively being blackmailed by employers into accepting poor working conditions with the threat of taking on a large debt if they leave.

Case study – Dolores

Dolores, a migrant care worker in the UK, was being bullied in the workplace, so instigated internal complaints, but was told that her employers did not ‘trust’ her. When she resigned to seek alternative employment, she was hit with repayment clauses, leaving her with no choice but to take her employers to the Employment Tribunal to seek relief.¹

Case study – Florence

Florence has paid £12,000 for sponsorship to come to the UK to work in a care home in Derbyshire. She is a qualified nurse in her country, and she re-mortgaged her home to pay the £12,000 fee to the sponsor. The sponsor is also her landlord in the UK and provided sub-standard accommodation with no heating, for which he deducts over £600 per month from her wages. She lives in a village in a rural area, with multiple other workers from the care home, some staying in caravans, and also paying £600 for accommodation. The member approached UNISON due to mistreatment by the employer. She experienced racism and was accused of failing to report an incident with a patient in the care home, despite the fact that the incident did not happen while she was on shift. After the worker instigated complaints, the employer dismissed her, and has said that he will inform the Home Office that she is no longer employed by them. He has also stated that if she wishes to stay in the accommodation, she must pay an extortionate fee and deposit.

c. National Referral Mechanism

People who have faced exploitation that is considered to have amounted to modern slavery may be referred to the National Referral Mechanism (NRM).²⁸ However, those who have become undocumented due to the issues outlined above are not given permission to work. Once referred into the NRM, the final ‘conclusive’ identification decision is intended to take around 6 weeks. In fact it is not unusual to meet people who have been waiting in the system, in limbo, for years.²⁹ The system expects people who may be in debt bondage or who have been pushed into

28 The National Referral Mechanism is the UK’s framework for identifying and referring potential victims of modern slavery and providing access to government funded support.

29 The median time for NRM process is 543 days. See: Home Office (2023), Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary 2022. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022> (Accessed 11 December 2023).

exploitation due to poverty to put their lives on hold indefinitely, compounding the impact of their trafficking and their trauma. Where workers do not have permission to work, they may be less inclined, or feel unable to enter the NRM and are therefore unable to access the support and protection provided through the NRM.³⁰

d. Home Office compliance requirements on sponsors

There is a fundamental tension between Home Office immigration enforcement functions and the welfare of care workers with threats around immigration compliance being misused to prevent workers reporting poor treatment. In this sense, the Home Office compliance team cannot be an adequate safeguard against poor conditions for migrant care workers.

Home Office compliance visits in other sectors, for example regarding the Seasonal Worker Scheme, have been recognised as having significant shortcomings.³¹ As previously recognised by the ICIBI in relation to the Seasonal Worker visa, when *'serious concerns have been raised by workers themselves, [the Home Office] did not act promptly or seriously'*.³² Workers on the Health & Care Worker visa have also highlighted that these issues are replicated across the Health & Care Worker visa. While we strongly endorse compliance visits from Labour Market Enforcement bodies, with a clear separation of remit to immigration enforcement it appears that even when issues have been reported to the Home Office they were not acted on.³³

3. Recruitment Fees and Debt

Many migrant care workers are being required to pay large sums to recruitment agencies in their countries of origin. Such recruitment fees would be illegal in the UK and are in breach of international labour standards. It has been reported that these illegal recruitment fees may then be split with the care operator in the UK.³⁴ These illegal fees can be significant, such as amounts

30 For more information on the limitations and challenges of the NRM, please see: Kalayaan (2023), The National Referral Mechanism: Near Breaking Point. Available at: <http://www.kalayaan.org.uk/campaign-posts/report-launch-the-national-referral-mechanism-near-breaking-point/> (Accessed 11 December 2023); Kalayaan (2019), Dignity not Destitution: the impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism. Available at: http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf (Accessed 11 December 2023).

31 ICIBI (2022), An inspection of the immigration system as it relates to the agricultural sector: May – August 2022, pp.6-7, 49. Available at: 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 (Accessed 11 December 2023).

32 Id., p.7.

33 TBIJ (2023) All that is missing is a whip: Home Office ignored migrant worker abuses on farms. Available at: <https://www.thebureauinvestigates.com/stories/2023-10-22/all-that-is-missing-is-a-whip-home-office-ignored-migrant-worker-abuses-on-farms> (Accessed 29 November 2023).

34 The Guardian (2023), UK care operators accused of 'shocking abuse' of migrant workers. Available at: <https://www.theguardian.com/society/2023/jul/10/uk-care-operators-accused-of-shocking-abuse-of-migrant-workers> (Accessed 11 December 2023).

up to £18,000 being reported in the media.³⁵ The Anti Trafficking & Labour Exploitation Unit (ATLEU) have had one client charged as much as £28,000. In 2023, based on information gathered through Unseen’s modern slavery helpline on the debt relating to 109 care workers, the average amount of debt was £11,800.³⁶

There have also been instances of UK-registered agencies charging illegal fees such as the Certificate of Sponsorship, as well as for ‘visa application support’ which only lawyers and registered immigration advisers can legally charge for.³⁷ Workers have also reported to ATLEU that when seeking an extension of their visas once in the UK, the sponsoring agencies would again charge them large fees for 'visa paperwork' costs including, for example, renewing a Certificate of Sponsorship to issue another job contract.

As a result of these illegal fees (as well as the legitimate costs), care workers may arrive in the UK already considerably indebted. One worker stated that their employer withheld her biometric residence permit (proof of her immigration status) until she had paid the debt.³⁸

Debt is one of the most widely recognised factors that increases the risk of labour exploitation, with workers unable to leave exploitative conditions because of the need to pay off these debts.³⁹ It is compounded by the low pay that is endemic in the care sector and additional costs such as repayment clauses which mean that care workers may end up in increased levels of debt (as outlined above).

Recruiters seek out workers in lower-income countries such as India, Nigeria and Zimbabwe *via* social media or word of mouth, and advertise good conditions or a ‘dream life’ in the UK.⁴⁰ Workers who expect to receive a higher salary than they do, may also have taken on more debt than they are able to pay back, and are therefore left with significant amounts that they are unable to pay off their debts.

The jurisdictional limits of labour market enforcement bodies such as the Gangmasters & Labour Abuse Authority (GLAA) and the Employment Agency Standards Inspectorate (EASI) also limits their ability to address exploitative overseas recruitment practices. Gaps in overseas labour market enforcement and insufficient Government planning has led to a situation where migrant care workers are at significant risk of illegal recruitment practices. In 2017, the GLAA stated that *“in addressing worker recruitment by overseas companies, and licence applications from the same,*

35 The Observer (2022), Migrant care workers came to help the UK. Now they’re trapped in debt bondage. Available at: <https://www.theguardian.com/world/2022/jun/18/migrant-care-workers-uk-debt> (Accessed 11 December 2023).

36 Unseen (2023), note 1, p.13.

37 Id.

38 Id.

39 FLEX & Fife Migrants Forum (2021), Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot. Available at:

<https://labourexploitation.org/publications/assessment-of-the-risks-of-human-trafficking-for-forced-labour-on-the-uk-seasonal-workers-pilot/> (Accessed 11 December 2023).

40 The Observer (2022) at note 36.

it is a recognised risk that there is unlikely to be any intelligence held by UK Government Departments on the level of compliance that overseas companies may provide.”⁴¹

There is also a lack of information available for workers on if and how they can be compensated for any recruitment costs or associated fees that fall outside of the compulsory fees for the scheme.

Many of the public officials lack an understanding of the issues faced by migrant workers on the Health & Care Worker visa, for instance, the difficulties in finding a new employer capable of sponsoring a worker in the 60 day window after they leave a previous employer.

Migrants at Work and Migrants’ Rights Network previously worked with a Zimbabwean national who had confidentially disclosed details of exploitation to Home Office compliance officers to assist in an investigation into illegal recruitment practices. Despite assurances that her identity would not be disclosed, the details of the investigation were subsequently disclosed to the employer. Ultimately, this worker was exposed to the risk of losing her sponsorship as well harassment and abuse by her employer.⁴²

Rogue businesses and insufficient due diligence

One emerging issue that has been identified is that rogue businesses appear to have been set up to make profits from recruitment fees as opposed to care service delivery, where the profit margins are often low.⁴³ In some instances, these employers are known to suddenly recruit large numbers (in some cases over 100) workers, without having previously operated as a care provider. Many workers are then left without work and have been left destitute and without support after having paid fees to arrive in the UK. Insufficient checks are being conducted prior to the grant of certificate of sponsorship. Without additional protections such as access to public funds or the ability to easily secure new employment, the revocation of sponsorship licenses from such employers following exploitative practices can produce significant risks for large numbers of migrant care workers. UNISON have highlighted that in one instance, more than 100 migrant care staff in Cambridgeshire were made redundant after their employer handed back its contract to the council.⁴⁴ The gaps in due diligence and lack of regulation regarding the means that the UK is facilitating exploitative practices.

41 GLAA (2017) GLA55/14 GLAA - International activity, at 3.8 . Available at: <https://www.gla.gov.uk/media/3268/glaa-55-14-international-activity.pdf> (accessed 11 December 2023).

42 Migrants at Work and Migrants’ Rights Network (2023) at note 18.

43 See: Samanth Subramanian (2023), Merchants of Care: how Indian brokers take the shine off the dreams of migrant nurses. Available at: <https://qz.com/how-indian-brokers-take-the-shine-off-the-dreams-of-mig-1850861013> (accessed 29 November 2023).

44 UNISON (2023), Expendable Lives: the exploitation of migrant care workers, p.2. Available at: <https://www.unison.org.uk/content/uploads/2023/11/Expendable-labour-report.pdf> (Accessed 29 November 2023).

4. Minimum salary

In order to receive a Health & Care Worker visa, workers will usually need to be paid at least £20,960.⁴⁵ The low minimum salary requirement on the Health & Care Worker visa creates precarity for migrant care workers who may struggle to meet essential living costs together with the (legal or illegal) costs related to accessing this employment in the first instance.

The National Living Wage for a full-time worker was estimated at an annual salary of £21,255⁴⁶ (the equivalent estimation for the London Living Wage is £23,302.50).⁴⁷ This demonstrates how workers on the Health & Care Worker visa, who are unable to supplement their income, are less able to meet their basic needs or meet unexpected high costs, for instance, those resulting from illness. Often care workers are also burdened with additional costs like uniform cost, cost of regularly washing a uniform, travel costs and even paying for their own PPE.

In April 2022, the Migration Advisory Committee published a report stating that *'one cannot seriously address the workforce issues in social care unless pay is improved'*. The report called for the immediate implementation of a *'fully funded minimum rate of pay for care workers in England that is above the national living wage, where care is being provided through public funds.'*⁴⁸ To date the Government has not responded to this recommendation or report from the MAC.⁴⁹ MAC chair, Brian Bell, has stated that the Government has typically responded to committee reports that they have commissioned in two or three months.⁵⁰

In 2021, the Scottish Government implemented a minimum hourly wage of £9.50 for care workers, which has since increased. Likewise, the Welsh Government has established a fresh minimum wage of £9.90 for social care employees, aligned with the Real Living Wage.

45 If the 'going rate' for the job is higher than £20,960, workers will usually need to be paid at least the going rate. Each occupation code has its own annual going rate.

46 Living Wage Foundation (2023), FAQs - What is the Living Wage as an annual salary?. Available at: <https://www.livingwage.org.uk/faqs#:~:text=These%20are%20the%20current%20National,18%20to%2020%3A%20%20C%2%A37.49> (Accessed 11 December 2023).

47 Living Wage Foundation (2022), Real Living Wage increases to £10.90 in UK and £11.95 in London as the cost-of-living rises. Available at: <https://www.livingwage.org.uk/news/real-living-wage-increases-%C2%A31090-uk-and-%C2%A31195-london-cost-living-rises#:~:text=For%20a%20Living%20Wage%20worker,who%20earns%20the%20minimum%20wage> (Accessed 11 December 2023).

48 MAC (2022), Research and analysis: Adult social care and immigration. Available at: <https://www.gov.uk/government/publications/review-of-adult-social-care-2022/adult-social-care-and-immigration-accessible> (Accessed 11 December 2023).

49 Mithran Samuel (2023), Very bad' employers exploiting overseas social care staff, warns government migration adviser. Available at: <https://www.communitycare.co.uk/2023/08/01/very-bad-employers-exploiting-overseas-social-care-staff-warns-government-migration-adviser/> (Accessed 11 December 2023).

50 Id.

5. Treatment & Conditions

a. The Care Sector

Regardless of migration status, there has been a widespread deterioration of conditions in the adult care sector generally with an increase in sickness, vacancy and turnover rates for care workers.⁵¹ Academics have noted that *‘the dynamics of marketisation, financialisation, austerity and personalisation have created significant challenges and fragility in the sector.’*⁵² Irrespective of the Health & Care Worker visa, the care sector itself is rife with significant challenges and structural flaws that create downward pressures on workers’ rights.⁵³ In 2023, the Homecare Association found that ‘only 5% of UK public organisations paid the Minimum Price for homecare’ which they based on a careworker receiving the National Living Wage in England, and real Living Wage in the devolved administrations. None of the Local Health Boards in Wales, councils in Scotland, or Health and Social Care Trusts in Northern Ireland met the Homecare Association’s Minimum Price.⁵⁴

The Health & Care Worker visa has then been added ‘on-top’ of this high-risk sector, with the dynamics of the Government’s current immigration policies meaning that migrant workers have been less able to push back against this trend.

In the ongoing joint research, led by Dr Inga Thiemann, outlined above,⁵⁵ all participants have reported current or past experiences of abuse and exploitation while working in the care sector, including illegally long working hours, minimum wage violations, racism, bullying and lack of physical protection. In some cases, these accounts of workplace exploitation from workers on the Health & Care Worker visa have amounted to trafficking and modern day slavery. These cases are a major cause for concern, especially given the scale at which this visa route is growing.

b. Discrimination

Migrant care workers have reported experiencing discrimination on the basis of their ethnicity, nationality and migration status. Though less prominent than in the domestic work sector, the

51 Care Quality Commission (2022), State of Care 2021/22 - Summary. Available at: <https://www.cqc.org.uk/publication/state-care-202122/summary> (Accessed 11 December 2023).

52 Meri Åhlberg, Caroline Emberson, Lucila Granada, Shereen Hussein and Agnes Turnpenny (2022), The vulnerability of paid, migrant, live-in care workers in London to modern slavery’, Rights Lab University of Nottingham. Available at: <https://www.nottingham.ac.uk/Research/Beacons-of-Excellence/Rights-Lab/resources/reports-and-briefings/2022/July/The-vulnerability-of-paid-migrant-live-in-care-workers-in-London-to-modern-slavery.pdf> (Accessed 11 December 2023).

53 Ibid, p.12.

54 Home Care Association (2023), The Homecare Deficit 2023, p.7. Available at: <https://www.homecareassociation.org.uk/resource/the-homecare-deficit-2023-pdf.html> (Accessed 28 November 2023).

55 Inga Thiemann et al, (forthcoming 2024), at note 20.

often gendered nature of the work has been noted as a known risk factor for exploitation⁵⁶ with much of the work also undervalued as a result.

One Health & Care Worker visa holder from Kenya stated that *'I don't feel psychologically safe because they treat us like we are dispensable, like we are expendable'*. This worker believed that the low pay and lack of social benefits he and other minority workers received was based on discrimination.⁵⁷

c. Accommodation

Workers on the Health & Care Worker visa have been forced to stay in substandard accommodation, describing for instance, a lack of heating as well as sharing bedrooms and even beds.⁵⁸ UNISON have reported that workers have also had their rent deducted from their wages, and had their wages withheld for months in order to recoup costs for accommodation and training.⁵⁹ Unseen have found that tied accommodation was prevalent in 60.1% of the modern slavery cases in the adult care sector reported through their helpline, with accommodation provided by the employer or with the potential victims of trafficking living at the work premises.⁶⁰

The reliance on the accommodation provided by their employer also heightens the dependency outlined above, making the worker less able to leave exploitative employment out of their need for housing.

d. Withheld Wages

Beyond the issues caused by the low wages in the sector, workers have reported employers underpaying employees as well as issuing false payslips, allowing unscrupulous employers to insulate themselves from challenges or to hide underpayment. Financial control was indicated in 72.5% of the modern slavery cases that Unseen recorded through their modern slavery helpline, with methods such as withholding wages, non-compliance with National Minimum Wage, withholding of payslips, large salary deductions, debt bondage and excessive repayment clause fees being used to exploit workers.⁶¹

56 Meri Åhlberg et al. (2022), at note 53.

57 Inga Thiemann et al, (forthcoming 2024), at note 20.

58 UNISON (2023), at note 5.

59 Id.

60 Unseen (2023), note 1, p.16.

61 Unseen (2023), note 1, p.16.

Some workers working months without pay are told it is being taken out for the cost of accommodation and migrant workers' training.⁶² The refusal to pay for workers' travel time between care recipients has also been highlighted as a concern. For instance, one Health & Care Worker visa holder who was working as a domiciliary carer commented that they were often sent to approximately 15 houses in a day, wherein their travel time was not paid at all.⁶³

The Low Pay Commission has stated that '*surest way to escape underpayment remains by changing jobs*'. However, in the case of the Health & Care Worker visa, the restrictions to work within the care sector combined with the sponsorship requirement and other structural barriers outlined above, mean that migrant care workers are less able to change job to escape underpayment.⁶⁴

e. Insufficient Hours

One issue is that workers are being provided with fewer hours than they were promised. Workers have reported being given very few hours (for instance, two hours per day) and resultantly earn very little at the end of the month. The lack of enforcement and failure of employers to comply with their requirements has meant that workers do not receive sufficient payment to meet their living costs or repay debts.

The ability for recruiters to continuously recruit without there being enough hours for workers on the Health & Care Worker visa already in employment has exacerbated this issue.

As highlighted above, where unscrupulous employers and agencies are seeking to obtain profits from fees as opposed to care provision, workers are left without work with significant risks of destitution, homelessness and removal from the UK.

f. Working Hours & Requirement to be Permanently on Call

Workers on the Health & Care Worker visa have also been made to work extraordinarily long hours, often in breach of working hours restrictions. This has included working 19 hours without breaks.⁶⁵ The ongoing joint research led by Dr Inga Thiemann, also found workers working more than 50 hours per week.⁶⁶ This was in addition to concerns regarding the lack of holiday pay, sick pay and weekend breaks.

62 UNISON (2023), at note 5.

63 Inga Thiemann et al, (forthcoming 2024), note 20.

64 Low Pay Commission (2023), Compliance and enforcement of the National Minimum Wage. Available at: <https://www.gov.uk/government/publications/compliance-and-enforcement-of-the-national-minimum-wage> (Accessed 11 December 2023).

65 The Guardian (2023), at note 35.

66 Inga Thiemann et al, (forthcoming 2024), note 20.

There have also been instances where workers have been required to be permanently on call. Beyond the issue of overwork, this has the effect of further restricting workers movements, as they must be available to work at short notice.

Despite that fact zero-hour contracts are prohibited on the Health & Care Worker visa, JCWI reports from its UNISON helpline that some workers on this visa route are treated this way in practice, routinely being told there are not enough working hours per week or month and working far below their contracted hours. As well as being non-compliant with the terms for the visa, this has a knock-on effect on earnings, which can put workers at risk of being unable to pay for visa renewals and becoming undocumented therefore earning less than they are contracted to.

g. Isolation

Kanlungan Filipino Consortium have previously emphasised the lack of public visibility of care work.⁶⁷ In such isolated settings, it can be difficult for carers to build solidarity and networks, or access support. This is particularly the case where they are based in private homes as they are disconnected from the wider workforce.⁶⁸ Where workers do not have these networks, it is more difficult for them to reach out for advice or for support where exploitation does take place. Isolation was identified in 7.1% of the modern slavery cases in the adult social care sector recorded through Unseen's modern slavery helpline, with potential victims of trafficking being prevented from communicating with colleagues, patients, friends and family members.⁶⁹

h. Health & Safety at Work

Workers on the visa route have also been known to experience unsafe working conditions.⁷⁰ Care workers have highlighted the lack of workplace inspection, primarily those in private homes, reflecting the exclusion of these sites from inspection under Health and Safety at Work Act 1974. Where inspections do take place, it is often unclear whether they were undertaken to protect the worker or to scrutinise their work. For example, when one care worker was interviewed as part of the ongoing joint research led by Dr Inga Thiemann, was asked about inspections, they answered in terms of having to make sure had the right equipment so she would not get in trouble.

67 Human Trafficking Foundation (2022) UK Labour Visa Schemes: Creating the Conditions for Exploitation? Post-Event Report Summary, p.5. Available at: <https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/63a09670b6676413e7607197/1671468656660/HTF+Post+Event+Briefing+Final.pdf> (Accessed 11 December 2023).

68 Id.

69 Unseen (2023), note 1, p.16.

70 Inga Thiemann et al, (forthcoming 2024), note 20.

i. Information Asymmetry

Although having knowledge of employment rights does not in itself allow workers to seek redress in practice, there is often a significant information asymmetry between employers, recruiters and workers regarding the visa conditions and employment rights. This acts to further entrench the power disparity in the employment relationship and creates the conditions for exploitation.

The ongoing joint research led by Dr Inga Thiemann has found that employers and/or agencies are failing to provide adequate information on employment rights and how they can be enforced, including as regards several workers on the Health & Care Worker visa. As a result, workers have relied on social media to find out about their rights. Workers were also not provided with an employee handbook.

Clear information about the visa conditions, including a transparent and itemised list of any fees charged, alongside terms and conditions of employment should be provided to the worker prior to their arrival in the UK, translated into the worker's language. Once in the UK, workers must also be able to access information and independent advice about their employment rights, including access to legally-aided advice and representation when needed. Trade unions can play a vital role in this respect by engaging directly with care workers and should, similarly to the NHS, have a right to enter a workplace to provide information and support.

j. Contracts

Many migrant care workers experience a lack of contractual clarity around employment status, putting them at greater risk of exploitation. JCWI reports that many callers to its UNISON helpline simply receive a 'verbal contract', no contract at all, or find that the realities of their working conditions and pay differ entirely from what is outlined in their contract. In their recent research interviews with migrant care workers conducted as part of the ongoing joint research led by Dr Inga Thiemann, only 4 out of 8 people reported receiving a contract, with just one of these reporting that their contract properly reflected their rights and working conditions. One person reported that their employer took their contract away as soon as they had signed it, so they did not know what was included in it, and they had not been paid since. Another person said nothing in their contract reflected the realities of their work. All four of the undocumented workers reported they had not received a contract.⁷¹

⁷¹ Inga Thiemann et al, (forthcoming 2024), at note 20.

Furthermore, UNISON members calling JCWI's helpline have described having no clarity in relation to their contractual hours, repeatedly being given over 40 hours of work per week, and at other times being given few to no hours of work. The lack of clarity in terms of employers' minimum obligations or enforcement of contractual obligations creates financial precarity for workers, and additional anxiety about the impact of their decreased income on any future applications to extend work visas.

The ongoing joint research led by Dr Inga Thiemann,⁷² found that a number of workers on the Health & Care Worker visa were not provided with written contracts and others experienced contract substitution. Additionally, workers also experienced conditions that did not reflect what was promised, most commonly in relation to pay rates. One worker reported being paid around £10 per hour with extra for overtime, despite being promised pay in the region of £20 per hour after the first year. Other divergences from expectations included job responsibilities and the way in which working hours and pay were calculated.

6. Oversight

a. Barriers to exercising employment rights

As outlined above, the power imbalance between employer and employee is drastically heightened for workers on the Health & Care Worker visa. In this context, we have seen care companies threaten to cancel work and sponsorship where workers have sought to raise complaints. Even where this threat is not explicitly made, workers' will likely be fearful of raising concerns or exercising their employment rights.

Where workers have a limited knowledge of their rights and ability to seek recourse, unscrupulous employers are better able to take advantage of workers and it is harder for workers to advocate for themselves. Moreover, this lack of information acts as a barrier to advocating for their rights.

While many workers have some understanding of their rights, this is often quite vague and focused on general concepts such as the National Minimum Wage, annual leave and sick leave, but not the specific provisions and processes or how they may apply to their situations. Many workers also struggle to navigate the incredibly fragmented system of labour market enforcement in the UK.⁷³

b. Labour Market Enforcement

⁷² Inga Thiemann et al, (forthcoming 2024), at note 20.

⁷³ FLEX (2019), Risky Business: Tackling Exploitation in the UK Labour Market, p.18. Available at: <https://labourexploitation.org/publications/risky-business-tackling-exploitation-in-the-uk-labour-market/> (Accessed 11 December 2023).

Merely being aware of rights does not remove the barriers in accessing them. As a result of these structural challenges, a reactive system that relies on workers to report concerns and exploitation (despite the issues outlined above) will be unable to capture the scale of exploitation that is taking place in the adult care sector.

The incredibly underfunded labour market enforcement system in the UK has meant that an extremely limited number of proactive inspections are conducted.⁷⁴ In this context labour market enforcement authorities often rely on ‘spot-the-signs’ and ‘know your rights’ trainings, and limited after-the-fact enforcement. In this reactive system, the onus is placed on the worker to report violations, though the workers that are the most vulnerable to exploitation are often the least likely to come forward.⁷⁵ As recognised by GRETA, there is a need for ‘*workplace inspections, including on health and safety, compliance with labour standards and revenue laws, in deterring instances of human trafficking for forced labour and identifying possible victims of trafficking.*’⁷⁶

No meaningful checks on employment conditions take place following the grant of a Certificate of Sponsorship demonstrating a lack of regulation once the Certificate of Sponsorship has been granted to the agency. Ultimately, the visa route places a significant amount of trust and power in private profit-making agencies, with numerous examples of abuse of this trust and power.

Additionally, the key principles set out by the Care Quality Commission (CQC) to inform their approach to inspections do not actively address the working conditions and wellbeing of care workers.⁷⁷ In this sense, the independent regulation of health and adult social care also contains significant oversight gaps.

c. Prioritisation of Immigration Enforcement over Worker Wellbeing

The prioritisation of immigration enforcement over worker safety and rights puts migrant workers at risk of harm and undermines trust in authorities who migrant workers may otherwise come forward to in the case of exploitation.⁷⁸ Data obtained by JCWI in 2022 demonstrated the scale of immigration enforcement action against workers in the care sector.⁷⁹ The police conducted

74 Unchecked & FLEX (2022), Briefing: Labour market enforcement gap. Available at: <https://unchecked.uk/wp-content/uploads/2021/11/Labour-Market-Enforcement-Gap.pdf> (Accessed 11 December 2023).

75 FLEX (2019), at note 74.

76 GRETA (2016), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom - Second Evaluation Round, p.26. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806abcdc> p.26 (Accessed 11 December 2023); See also: GRETA (2011), Evaluation Report: United Kingdom - Third Evaluation Round - Access to justice and effective remedies for victims of trafficking in human beings, p.61. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36> (Accessed 11 December 2023).

77 Care Quality Commission (2022), The five key questions we ask. Available at: <https://www.cqc.org.uk/about-us/how-we-do-our-job/five-key-questions-we-ask> (Accessed 11 December 2023).

78 Labour Exploitation Advisory Group (2020), at note 11.

79 The New Statesman (2022), Revealed: UK police and Home Office ran immigration raids on care homes during Covid-19. Available at: <https://www.newstatesman.com/politics/society/2022/12/uk-police-home-office-immigration-raids-care-homes-covid-19> (Accessed 11 December 2023).

13,000 raids across the UK from May 2020 to June 2022, including several hundred taking place amid Covid-19 lockdowns. Labour market enforcement authorities such as the GLAA and EASI have also conducted joint inspections with immigration enforcement in the care sector.

‘Hostile environment’ policies in the workplace, including the Illegal Working Offence and associated right to work checks, make it harder for migrants to challenge or report exploitation, abuse or mistreatment, due to the fear that this could result in immigration enforcement action. While this risk is greatest for undocumented workers, the climate of fear created by the ‘hostile environment’ extends far beyond undocumented workers. People JCWI spoke to on the Health & Care Worker visa, as part of the ongoing joint research led by Dr Inga Thiemann, who were facing mistreatment or inadequate working conditions told us they were afraid to try and change employer in case this impacted their immigration status, and left them fearful of being reported to the Home Office and losing their right to work and stay in the UK. The Health & Care Worker visa is a relatively secure visa compared to other short-term work visas, granting 3 years of leave to remain and a route to permanent settlement. However, it is still a sector-specific visa, which brings a greater risk of exploitation as workers’ ability to remain in the country depends on their employment, making it harder to leave exploitative or abusive situations.

Previous research conducted by the Labour Exploitation Advisory Group found that migrant workers are enduring long periods of abuse and exploitation because they fear that reporting to police or labour inspectors will put them at risk of arrest, detention and removal. The lack of separation between law enforcement (as well as labour market enforcement authorities such as the GLAA and EASI) and immigration enforcement dissuades the public from reporting potential cases of modern slavery out of concern that it will result in negative immigration consequences for victims.⁸⁰

Recommendations made by the previous Director of Labour Market Enforcement, Matthew Taylor, sought to address a number of the drivers that leave migrant workers vulnerable to labour abuse and exploitation, and ultimately recognised that it is ‘*vitaly important to maintain a clear dividing line between labour market enforcement and immigration enforcement.*’⁸¹ In this context, the sharing of information on a potential victim of trafficking’s migration status with immigration enforcement and the use of joint inspections with both immigration enforcement with law enforcement or labour market enforcement risks undermining trust in the community and putting people at risk.

80 Jen Berks & Alison Gardner (2019), Introducing the Slave Next Door, Anti-Trafficking Review, issue 13, 2019, pp. 66-81, p.66. Available at: <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/407> (Accessed 11 December 2023).

81 Interim DLME (2021), United Kingdom Labour Market Enforcement Strategy 2020/21, p.104. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040316/E02666987_UK_LMES_2020-21_Bookmarked.pdf (Accessed 11 December 2023).

A small number of organisations provide specific support to migrant workers and may have built up trust with certain communities, receiving referrals predominantly through word of mouth.⁸² However, these organisations are largely concentrated in London, their resources and capacity are limited and knowledge of the existence of these organisations and their remit is rarely commonplace.

7. Social Support

a. 'No Recourse to Public Funds' Condition

Workers on the Health & Care Worker visa are subject to the No Recourse to Public Funds (NRPF) condition, meaning that they are not eligible to apply for most benefits, or the State Pension. NRPF is well known for its negative impact on migrants, forcing many into destitution and debt. This, in turn, can prevent workers (especially in low-paid and insecure work)⁸³ from leaving exploitative and abusive situations due to their dependency on their employer for income and subsistence.⁸⁴

Social security systems are designed to create a safety net that guarantees that people can meet their basic needs even in situations where they lose their jobs or suffer from illness. If such safeguards are non-existent, people may find themselves obliged to continue or accept abusive or exploitative employment just to survive, similar to the dependencies stemming from low pay highlighted above. Ultimately, an effective social security system is one way in which the layered vulnerabilities stemming from low-pay, insecurity and immigration restrictions could be mitigated.

b. Immigration Fees Increase

On Thursday 13 July, the Government announced significant increases to immigration fees and the immigration health surcharge.⁸⁵ Though migrant workers on the Health & Care Worker Visa are exempt from the immigration health surcharge, they will be required to pay the 15% increase of work visa fees, and may be impacted by the 20% increase for extensions, settlement and

82 Victoria Boelman, Dr Alessandra Radicati, Amelia Clayton, Sophie De Groot and Oliver Fisher (2023), Rights and Risks: Migrant labour exploitation in London, Research Report, p.48. Available at: <https://youngfoundation.b-cdn.net/wp-content/uploads/2023/06/Rights-and-Risks-Migrant-labour-exploitation-in-London-Final.pdf?x55643> (Accessed 11 December 2023).

83 FLEX (2021), No Viable Alternatives: Social (in)Security and Risk of Labour Exploitation during Covid-19, p.51. Available at: <https://labourexploitation.org/publications/no-viable-alternatives-social-insecurity-and-risk-of-labour-exploitation-during-covid-19/> (Accessed 11 December 2023)

84 FLEX (2022), Creating a safe and fair UK immigration policy for workers, pp.4-5. Available at: <https://labourexploitation.org/publications/briefing-creating-a-safe-and-fair-uk-immigration-policy-for-workers-2/> (Accessed 11 December 2023).

85 JCWI et al (2023), Joint briefing: fee increases for Home Office immigration and nationality applications. Available at: <https://www.jcwi.org.uk/fee-increases-for-home-office-immigration-and-nationality-applications-briefing> (Accessed 30 November 2023).

citizenship fees.⁸⁶ These fee increases will cause real economic hardship and paying such high fees will push people into debt, creating a vulnerable and readily exploitable population. As they stand, immigration fees in the UK are considerably higher than comparable European countries and the United States,⁸⁷ with many already struggling to meet the cost of their visa fees. Where people are unable to meet these growing costs, they will simply be unable to renew their visas and be forced to become undocumented.

c. Legal aid

The large real-term budget cuts to legal aid provision since 2010 have also impeded workers' abilities to enforce their rights at work. There is also currently a shortage of qualified caseworkers across all categories of legal aid provision in the UK, Organisations struggle to recruit caseworkers with the required level of accreditation. With the limited exception of discrimination claims under the Equality Act 2010, advice or representation in employment law matters is generally out of scope for legal aid as a result of the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Although technically legal aid is available for employment law advice and representation on damages claims for victims of trafficking and modern slavery,⁸⁸ there are significant legal aid deserts across the country. A 2022 report by ATLEU revealed a legal advice crisis for survivors of trafficking and modern slavery, with demand for advice far outstripping available supply.⁸⁹ As there is not a specific legal aid contract for trafficking and modern slavery damages claims (it is delivered through 'miscellaneous matter starts') and there is no contract category for employment, there are now very few practitioners to deliver legally aided employment law advice and representation for victims of trafficking and modern slavery.⁹⁰

The strict deadline to lodge most complaints at the Employment Tribunal, of 3 months less a day since the employment abuse occurred, can be entirely unrealistic for those who have suffered exploitation. Many workers will be too preoccupied with their recovery and the urgent need to address the precarity of their immigration status to consider pursuing a claim, even if they were able to access advice on how to pursue a claim in this short time frame.

If unable to access legal aid, the endemic low wages within the care sector means that it may be difficult for a worker to take an employment law claim to enforce their rights.

86 One care worker who received support from the ATLEU was charged for the immigration health surcharge as part of the costs they paid to a recruitment agent. The worker was unaware that they were exempt from this charge.

87 JCWI, (2021), We Are Here: Routes to regularisation for the UK's undocumented population, p.41. Available at: <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=5467543a-6e30-4e28-a39f-db48ffad6d3a> (Accessed 30 September 2021).

88 Schedule 1 LASPO, (2) Civil legal services provided in relation to a claim under employment law arising in connection with the exploitation of an individual who is a victim of trafficking in human beings... and (3) Civil legal services provided in relation to a claim for damages arising in connection with the trafficking or exploitation of an individual who is a victim of trafficking in human beings.

89 ATLEU (2022), 'It has destroyed me': A legal advice system on the brink, Available at <https://drive.google.com/file/d/15xlzaXCpN2eyXSlw7Ubx2Au1lr6mRXRF/view> (Accessed 20 September 2023).

90 For more information, please see ATLEU, (2022) at note 90, pp.28-29.

8. Care workers who do not hold Health & Care Worker visa

Workers on other visa routes such as the Overseas Domestic Worker visa, as well as undocumented workers, are also employed in the adult care sector. However, research has demonstrated a number of systemic issues regardless of visa type. For instance, the ongoing joint research led by Dr Inga Thiemann, has highlighted a prevalent issue of low pay among migrant care workers regardless of their visa status.⁹¹ While many of the issues reflect those related to the Health & Care Worker visa, there are a number of issues that are particular to migrant workers who are undocumented or are on other visa routes.

For those who do not have visas, the situation in the workplace is even more dire. Undocumented care workers are at the sharpest end of workplace precarity, due to Hostile Environment policies in the workplace. These policies create a culture of fear that deters migrant workers from reporting abuse or exploitation, due to the very real fear that this could result in immigration enforcement action. This is reflected in the ongoing joint research led by Dr Inga Thiemann, in which the undocumented care workers expressed feeling terrified and trapped in poor working conditions or exploitation, unable to leave due to fear of the Home Office. Employers in some cases used workers' precarious immigration status as a tool to threaten them into accepting illegally low wages or long hours.

Research conducted on and with migrant care workers who are not on the Health & Care Worker visa,⁹² has pointed to risks of exploitation arising from:

- Employment status, business models, and the role of intermediaries; (including notional self-employment with a reliance on so called 'matching' agencies)
- Information asymmetry between care workers and intermediaries;
- The emotionally and physically intensive nature of live-in care work, blurring of boundaries between work and private life;
- Barriers to exercising rights at work: sick leave, time off, redundancy/notice, health and safety at work;
- Individual risk and resilience factors.

The above is not an exhaustive list of risks and abusive labour practices.

9. Renewability

Despite, and without prejudice to, the issues outlined above, we would like to commend the renewability of the Health & Care Worker visa route, as well as the fact that it contains a pathway

⁹¹ Inga Thiemann et al, (forthcoming 2024), at note 20.

⁹² See: Meri Åhlberg et al. (2022), at note 57.

to settlement. Efforts must be made to ensure that renewability and settlement are fully accessible in practice.

There is anecdotal evidence of employers 'gatekeeping' renewability by using this as a method of extracting more money from workers. For instance, where a worker is on a 24 month visa, the employer may threaten to not renew their employment or sponsorship unless they are paid a fee. This is a worrying issue, however, we believe that the conditions that allow this abuse to take place can be addressed by providing workers with more options, particularly around being able to change jobs in practice, and addressing unscrupulous employers' and recruiters' ability to act with impunity.

As well as this, we commend that the visa allows dependent partners and children to join or stay with the visa holder in the UK if eligible.

Health & Care Work Visa Recommendations

1. Employment model

- i. Establish a comprehensive NHS-style system for social care.
- ii. Establish a fully funded minimum rate of pay for care workers in England that is above the national living wage, where care is being provided through public funds, as recommended by the Migration Advisory Committee. The minimum rate of pay should be £15 per hour as recommended by the TUC.¹
- iii. Ensure that workers in the social care sector receive at least the national minimum wage for sleep-in shifts, aligning the UK in its practice around sleep-in pay with practice in Scotland.

2. Recruitment

- i. For overseas social care workers, recruitment should only take place via agencies on the 'ethical recruiters list', which must have appropriate monitoring conditions in place to ensure compliance'.¹
- ii. As recommended by UNISON, Integrated Care Systems with involvement from local authorities, should operate a central point in the region tracking vacancies with sponsoring employers with a requirement to recruit workers on the Health & Care Worker visa looking to change job before recruiting overseas.

3. Visa structure

- i. All visas should be renewable subject to ongoing employment, allow workers to switch easily between employers and sectors and come with a pathway to settlement, without undue restriction or costs. The Government should remove the obligation for care workers to update their visas when they change jobs within the sector to provide greater freedom to change employer without risk to immigration status.
- ii. Bridging visas or the ability to apply to renew a visa once expired, (alongside safeguards from any immigration enforcement action and protection from impact on any future visa/citizenship application), should be provided to workers who held a work permit but became undocumented as a result of no longer being in employment for whatever reason.
- iii. Permit workers to have recourse to public funds.
- iv. Recognise the vital role of care workers in the UK by removing related visa fees for both the worker and the sponsoring employer.

4. Labour market enforcement

- i. Establish a Single Enforcement Body that is accessible to workers in practice, and provided with robust enforcement powers. These reforms must be grounded in the principles of protected reporting, evidence-based resourcing, compliance with international standards at a minimum, fair and efficient remediation, gender sensitivity, and meaningful worker participation. A Single Enforcement Body with expertise on cross-cutting vulnerabilities would be best-placed to address the racialisation of workers and gendered dynamics within the workplace.
- ii. The Government must introduce secure reporting pathways and procedures, separating the police and labour inspectorates from Immigration Enforcement. Preventing the sharing of data with the Home Office and ending the practice of simultaneous or coordinated operations with immigration authorities is essential to building community trust and ensuring that all workers can access their workplace rights and safely report exploitation, regardless of immigration status. It is also crucial to ensuring labour inspectorates are able to do their job properly, and therefore protecting conditions and pay for all workers. Worker welfare and compliance with labour rights should be the priority of all inspections conducted by labour inspectorates;
- iii. The CQC should include workers' rights and welfare as part of their inspection principles and report relevant issues to a Single Enforcement Body once established (and to existing labour market enforcement authorities in the interim).

- iv. Standardised risk assessments of both the condition of the property and the care plan should be conducted by both staffing and introductory agencies
- v. Should the sponsorship system be maintained, business sponsors must show UKVI that employees' contracts are legal under UK law.
- vi. The Government must greatly increase funding for and adequately resource UK labour market inspection authorities, at minimum exceeding the ILO target of one inspector for every 10,000 workers in the short term.

5. Enforcing rights

- i. Ensure that migrant care workers have a written contract in their first language before arrival, detailing fees and deductions for accommodation charges, and are provided with clear information on their rights under UK employment law. This should include clear details on the time limits for bringing claims relating to those rights and an explanation of the framework for justice, details of ACAS and the conciliation certificate, and information and contact details for and rights regarding trade unions. This should also clearly set out the hourly pay salary and guaranteed minimum and maximum hours. Employers should make clear any uniform requirements will be provided at no additional cost to the worker.
- ii. Ban the use of repayment clauses that require workers to pay back any upfront costs the employer has invested in recruiting staff if they leave employment.
- iii. Remove Hostile Environment policies which leave migrant workers at greater risk of workplace exploitation and vulnerable to unscrupulous employers. Repeal section 24B of the Immigration Act 1971 which criminalises the act of working without required documentation in the UK (the Illegal Working Offence) and associated right to work checks.
- iv. Ensure the UK Code of Practice on ethical international recruitment is made enforceable so that unscrupulous employers and recruitment agencies cannot operate freely outside of it.
- v. Ensure migrant social care workers receive protection from vindictive retaliation by employers if they alert the labour market enforcement authorities and/or CQC to issues of concern regarding exploitation or standards of care.

- vi. Extend the scope of legal aid to cover employment advice and representation in Employment Tribunals. Improve access to legal aid by making the financial eligibility criteria less stringent and ensuring it is sustainable for legal aid practitioners to continue providing this service. Extend the scope of immigration legal aid to cover independent legal advice and representation for those on restricted visas who meet the legal aid financial thresholds.
- vii. Extend the timeline for bringing all Employment Tribunal claims including unlawful deduction of wages claims and claims under the Equality Act 2010 cases, from three months minus one day to six months, at a minimum. This should be done in recognition of the many barriers workers face, which often delay reporting, including the psychological impact of trauma caused by severe forms of abuse.
- viii. Ratify ILO Convention 189 on Domestic Workers in order to better protect workers in private households.
- ix. All workers should have protection from unfair dismissal, and access to sick pay and parental leave from the beginning of their employment.
- x. Repeal anti-trade union legislation and policies such as the Trade Union Act 2016 and Strikes (Minimum Service Levels) Act 2023 and strengthen trade union rights.
- xi. Establish regulations that set minimum accommodation standards, regularly monitor compliance, and prohibit employers from charging workers for accommodation, utilities, or related expenses.

6. Additional Recommendations for non-Health & Care Work visa holder migrant care workers

Migrant care workers who do not hold Health & Care Work visas may face distinct risks that relate directly to their visa. For instance, this might include workers on the restrictive Overseas Domestic Worker visa or people seeking asylum who are working in social care via the Shortage Occupation List. The below recommendations are necessary to ensure that the causal drivers of exploitation for all migrant care workers are addressed.

- i. Proceed with the commitment to remove the Shortage Occupation List going rate discount, and ensure that people seeking asylum have the right but not requirement to work across sectors after six months.
- ii. All UK work visas should include options for renewal, the ability to change jobs easily without losing the right to stay in the UK, pathways to permanent settlement and access to public funds.

- iii. Proceed with the commitment to remove the Shortage Occupation List going rate discount, and ensure that people seeking asylum have the right but not requirement to work across sectors after six months.
- iv. All UK work visas should include options for renewal, the ability to change jobs easily without losing the right to stay in the UK, pathways to permanent settlement and access to public funds.
- v. Ensure that the risks incurred by the costs of visas and travel are borne by industry, not workers.
- vi. Where immigration fees are charged they should be no higher than their administrative cost in line in line with the principles of fairness and affordability/reasonability
- vii. Scrap the Immigration Health Surcharge.

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