

FOCUS ON LABOUR EXPLOITATION

FLEX TIP report submission 2024

Country focus: United Kingdom

Background

Thank you for the opportunity to contribute to the 2024 Trafficking in Persons Report.

Focus on Labour Exploitation (FLEX) welcomes scrutiny of the efforts made by the United Kingdom (UK) government to combat human trafficking.

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

In much of its work, FLEX has set out the link between labour abuses and labour exploitation. Abuses occur across the continuum, from relatively minor infractions to extreme exploitation and modern slavery. FLEX research¹ has identified a strong causal link between labour abuses and severe labour exploitation within certain UK labour sectors and particularly amongst migrant communities. When left unchecked, labour abuses can develop into severe exploitation.

Scope of submission

FLEX's work focuses on preventing exploitation from taking place. Accordingly, this submission looks at increased risk of labour exploitation and prevention or mitigation measures needed. FLEX's submission gives significant focus to the UK's immigration policy in the context of its exit from the European Union, subsequent labour shortages and increased use of short term or restrictive work visas, which, combined with poor labour market enforcement, have resulted in increased risk to individuals vulnerable to labour exploitation. The submission notes the UK's recent policy and legislative changes around identification and support for victims of trafficking and endorses the Joint Submission from anti-slavery NGOs coordinated by Hope for Justice which covers these in detail. These include changes implemented following the Nationality and Borders Act, the Illegal Migration Act and announced in policy. These changes took place in a context where victims and potential victims have been repeatedly discredited through claims made publicly by government around the UK's identification and protection systems being 'gamed'. Such rhetoric has been criticised for its effect on victims themselves and how they are viewed by decision makers as well as for being without basis. We call for the UK government to rethink its approach and redirect its efforts to an approach which learns from victims and responds to their recommendations.

¹ FLEX and the Labour Exploitation Advisory Group (LEAG), *Labour Compliance to Exploitation and the Abuses In-Between*, 2016. Available at: <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20position%20paper%2001.pdf>

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UK developments in the prevention space

The UK labour market continues to be in transition with complaints of labour shortages in so called ‘low skilled’ sectors such as care work and agriculture, combined with an increasing reliance on migrant workers who enter the UK on restrictive visas to fill these gaps. The Government’s manifesto commitment to an Employment Bill which would include the creation of a single labour inspectorate authority or single enforcement body (SEB) will not be taken forward ahead of a general election.² FLEX had welcomed the prospect of an Employment Bill and the proposal of a single enforcement body (SEB). We believe that an effective SEB can do much to prevent as well as address labour exploitation.³ Rather than working to overcome current issues with intelligence sharing and coordination between the different labour inspectorate agencies to make it easier for workers to report complaints and access remedy the UK is choosing to focus on immigration enforcement, hiring 200 new immigration enforcement staff and increasing immigration raids including on workers in the gig economy.⁴ This approach, which will be heightened by the Illegal Migration Act, risks increasing the power of exploiters by discouraging people from speaking out about exploitation or from seeking help for fear of immigration detention and removal.

Post-Brexit immigration policy and labour exploitation

We are concerned that, following the loss of freedom of movement within the EU, and the resulting labour shortages, we continue to see a use of short-term and restrictive work visas including in sectors where there is a high risk of exploitation.

Additionally, the increasing prioritising of immigration enforcement over anti-trafficking measures risks undermining years of progress to address trafficking in the UK.

The UK’s immigration system has fundamentally changed as a result of Brexit and the end of free movement with the European Union.

FLEX’s underlying position is that, to prevent labour exploitation, all workers, regardless of employment and immigration status, should be able and supported to report abuse and access vital protections. Such an approach is necessary, not only to protect individuals and promote redress, but in order to maintain wider labour standards and to support decent employers.

As a general comment, we are concerned that the immigration enforcement-centred approach to human trafficking (in conjunction with broader ‘Hostile Environment’ policies)

² The Telegraph (2022), Tories ditch manifesto pledge to create workers’ rights super watchdog. Accessed at: <https://www.telegraph.co.uk/politics/2022/12/13/tories-ditch-manifesto-pledge-create-workers-rights-super-watchdog/>

³ A Single Enforcement Body: What an effective enforcement body looks like. FLEX Policy Briefing. December 2023. <https://labourexploitation.org/app/uploads/2023/12/FLEX-Single-Enforcement-Body-Briefing-2023.pdf>

⁴ Home Office (2023). Immigration enforcement surge since pledge to tackle illegal working. Accessible at: https://www.gov.uk/government/news/immigration-enforcement-surge-since-pledge-to-tackle-illegal-working?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=c1afee0a-15fa-4444-a89a-e4a8f2ff1c38&utm_content=daily

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has created and exacerbated vulnerabilities than impede victims' ability to avail of support and exit their exploitation. National and international evidence has demonstrated that where immigration enforcement objectives are prioritised within law enforcement, their primary function of victim protection is compromised and suffers as a result.⁵ This has been compounded by the Illegal Migration Act which if implemented will deny protection to victims who entered the UK irregularly, even if this was as part of their trafficking.

The Nationality and Borders Act

Identification and support

The UK's Nationality & Borders Act passed into law during 2022. The Act contains a section on slavery with a focus on identification and support. The clauses narrow options for people who have been trafficked. Key areas of concern within the Act are set out below. The earlier parts of the Act, which restrict options for and criminalise people seeking safety, will additionally drive people underground and increase risks of exploitation including trafficking and modern slavery.

Identification

The provision of support to victims of trafficking is dependent on the ability to recognise victim status through formal referral and identification through the National Referral Mechanism for identifying victims of trafficking (NRM). The NRM is the system for identifying and providing support to victims of modern slavery and trafficking in the UK. A victim is not able to enter the NRM independently and therefore, is reliant on identification and referral to the NRM by a designated 'First Responder' such as the police, Home Office or a specified charity to identify them as a victim.⁶ Nevertheless, groups such as After Exploitation⁷ and the Anti-Trafficking Monitoring Group⁸ have identified that potential victims of human trafficking face a 'referral lottery', with many of those identified by First Responders not being referred to the NRM. The ongoing issues with the First Responder role are mentioned in more detail elsewhere in this submission. These include that the role is unfunded, that there is no qualification or continual professional development (CPD) requirement and that without pre-NRM support victims may be expected to disclose under unsuitable circumstances. Referrals made in rushed circumstances, without translation or by First Responders who are not engaged or who do not understand the role may receive a negative first stage, or 'Reasonable Grounds' decision leaving the potential victim without any statutory support or referral pathway and at risk of further exploitation.

⁵ Labour Exploitation Advisory Group, Opportunity Knocks: Improving responses to labour exploitation with secure reporting, April 2020. London: Focus on Labour Exploitation (FLEX), p.6.

⁶ Home Office (2021), Guidance - National referral mechanism guidance: adult (England and Wales). Accessible at: [https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales#:~:text=The%20National%20Referral%20Mechanism%20\(%20NRM,human%20trafficking](https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales#:~:text=The%20National%20Referral%20Mechanism%20(%20NRM,human%20trafficking)

⁷ After Exploitation (2020). The Referral 'Lottery'. Available at <https://afterexploitation.com/national-referral-mechanism/>

⁸ The Anti-Trafficking Monitoring Group (2021). A Review of the National Referral Mechanism Multi-Agency Assurance Panels. Available at: https://www.antislavery.org/wp-content/uploads/2021/02/MAAPs_report_final.pdf

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The Act sets unrealistic standards for disclosure of trafficking or exploitation. This poses a significant threat to the UK's ability to identify victims of human trafficking. By demanding that victims to present all evidence that they have suffered human trafficking crime at the earliest stage and holding that late disclosure evidence will damage credibility, the government is acting against best evidence, and its own understanding of the difficulties that many face in disclosing evidence.⁹

The unrealistic expectations around disclosure and victims ability to process and speak about serious trauma risks the UK failing to meet its obligations to combat slavery and human trafficking. The clauses reveal clear gaps in understanding and ignores existing evidence around identification of people as victims of trafficking and on the reality of the process of disclosure, particularly, in relation to trauma.¹⁰ It is vital that no potential victim risks having their credibility undermined as a result of not disclosing trauma in line with an arbitrary time frame.

Already the introduction of a higher threshold for identifying victims of trafficking resulting from the Nationality and Borders Act has been overturned following legal challenge of the requirement for potential victims to provide objective 'evidence' of trafficking prior to receiving any government funded specialist support, or having any security or space to process their exploitation.

Public Order & 'Bad Faith' Exclusion

The Act risks encouraging the targeting of people with criminal records for exploitation. The 'public order' threshold is low, applying to broad non-violent offences which carry a 12-month (or higher) sentence, including possession with intent to supply. It also acts to exclude those perceived by the authorities to have made a claim 'in bad faith', and resultantly that there will be no prohibition on forcibly removing that person from the UK and no requirement to grant them leave to remain in the UK, even if they are recognised as a victim of trafficking. FLEX are keen to highlight the fact that victims of trafficking should never be refused the support necessary to exit their exploitation, and that victims of criminal exploitation will be severely impacted by this clause as their supposed criminal activity is often not recognised as coerced. Moreover, the systems necessary to implement this provision and verify criminal histories (including in third countries) may result in considerable delays to a system which is already severely backlogged.¹¹ Additionally, the provisions within the Act that, through their misunderstanding of the nature of asylum claims and trafficking, criminalise arrival in the UK risk denying individuals the support and protection that they are entitled to under international law.

Unrealistic Standards for Victims

⁹ "Victims' early accounts may be affected by the impact of trauma. This can result in delayed disclosure, difficulty recalling facts, or symptoms of post-traumatic stress disorder." - 8 Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non Statutory Guidance for Scotland and Northern Ireland

¹⁰ Witkin, R. & Robjant, K, (2022) 'The Trauma-Informed Code of Conduct: for all professionals working with survivors of human trafficking and slavery,' Helen Bamber Foundation, p. 44. Accessed at: <https://www.helenbamber.org/resources/best-practiseguidelines/trauma-informed-code-conduct-ticc>.

¹¹ ITV (2020), Suspected modern slavery victims wait around 450 days on average for decision – report. Accessed at: <https://www.itv.com/news/2020-09-17/suspected-modern-slavery-victims-wait-around-450-days-on-average-for-decision-report>.

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Initial identification as a victim is key to accessing even the most basic government funded support, such as safe accommodation. The UK currently provides no statutory funding for pre-NRM accommodation or legal advice to inform consent to a referral and support disclosure. In December 2023 the UK government confirmed that they would not be taking forward their 2017 commitment to provide ‘places of safety’ or government funded support to support informed consent to a referral together with disclosure. It is vital that the initial threshold (Reasonable Grounds) for identification as trafficked is not set too high. It is essential that victim protection and support is not the preserve of a select few but is designed to identify as many victims as possible to help them exit their exploitative conditions and provide them with support. The ‘It Still Happens Here’ report by the Centre for Social Justice estimates that there are ‘at least 100,000’ victims of modern slavery offences in the UK, compared to the 2017 Government estimate of 10-13,000. This strongly suggests that we are massively under-identifying victims and therefore need to increase rather than narrow access to identification and support.¹²

International law places an obligation on states to identify victims of trafficking.¹³ This obligation does not permit exceptions, and therefore, the creation of unrealistic thresholds risks prejudicing the UK’s compliance with its legal obligations. The Independent Chief Inspectors of Borders and Immigration (ICIBI) has previously highlighted that the Home Office often fails to identify potential victims of trafficking as a result of “focusing on the fact that someone was working illegally rather than that they may be a victim of abuse, exploitation and slavery”.¹⁴ The Nationality & Borders Act, with its heightened risk of detention, prioritisation of immigration enforcement and its failure to recognise the hierarchy of needs presents a considerable threat to victims’ ability to come forward and receive support and protection. Recently, the ICIBI reported major issues regarding the identification of victims of trafficking in immigration detention. Despite a requirement to ask questions about modern slavery and human trafficking when they first enter detention, the ICIBI noted that some detainees were not asked about this at all, and that for a number, although they were asked, no explanation of these technical concepts was provided, meaning that they did not understand the questions and could not reasonably be expected to disclose.¹⁵

FLEX holds that it is important to ensure that no victims of trafficking are penalised for so called ‘late’ disclosures or for their immigration status or method of entry to the UK.

The Illegal Migration Act

The ‘Illegal Migration Act’ 2023 compounds the UK’s reframing of trafficking as an immigration matter and in doing so increases its hostility to people who may have been trafficked. The UK’s Joint Committee on Human Rights found the Illegal Migration bill to

¹² The Centre for Social Justice & Justice and Care, (2020), ‘It Still Happens Here: fighting UK slavery in the 2020s,’ p. 6.

¹³ Article 10, Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197.

¹⁴ Independent Chief Inspector of Borders and Immigration, An inspection of the Home Office’s approach to Illegal Working (August – December 2018), May 2019, p.47.

¹⁵ Independent Chief Inspector of Borders and Immigration, Third annual inspection of ‘Adults at risk in immigration detention’ (June – September 2022), January 2023, p.17.

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have “widespread human rights failings” including to be in breach of the UK’s obligations under the Council of Europe Convention Against Trafficking and the European Convention on Human Rights.

The Illegal Migration Act builds on the Nationality and Borders Act’s recategorization of trafficking and modern slavery as an immigration, rather than criminal and human rights matter. Yet rather than address immigration structures which create risks of exploitation for migrant victims, the Act criminalises people who fall foul of these structures, and in doing so facilitates further exploitation.

Once implemented the Act will block anybody entering and arriving in the UK via a route the Home Office deems irregular, from claiming asylum or benefitting from modern slavery protections. This leaves them subject to detention and removal from the UK, in violation of international law. The Act removes almost all protections for victims of modern slavery and trafficking who are targeted for removal. Inevitably this provides a tool for traffickers who can simply explain to their victims that if they were ever to approach the authorities for assistance this would not be forthcoming.

There is a narrow exception for some individuals who are cooperating with investigations or criminal proceedings relating to their exploitation, if the Home Secretary considers it ‘necessary for the person to be present in the United Kingdom to provide that cooperation’. This is likely to apply to only a very small number of individuals, especially as the Home Office’s own statutory guidance recognises that many victims do not feel safe enough to support an investigation until they have had the time to recover from their exploitation. The Government added a presumption that it is not necessary for a person to be in the UK in order to cooperate with an investigation and/or prosecution unless there are ‘compelling circumstances’, to be determined with regard to new statutory guidance. Further, this clause does not account for those who indicate that they want to cooperate but have not yet engaged, or where a decision has been taken not to investigate. It is likely also to lead to accusations of inducement, with exploiters asserting that victims are claiming exploitation in order to avoid removal.

In any event this clause does not save the Bill from undermining the work of the authorities to investigate and prosecute traffickers or exploiters. This is because the Bill will increase fear of any contact with authorities and the potential for exploiters to use this to prevent victims from coming forward.

However, on a practical basis victims cannot be removed from the UK unless they are a national of a specific list of ‘safe countries’, or can be removed to Rwanda. Therefore, at present, the majority of people will remain in the UK, unable to move on with their lives, either in immigration detention or in a pre removal facility while being prevented from working, integrating or beginning the process of moving on following trafficking. This state of limbo will compound both the trauma of their trafficking and causes of vulnerability such as family members being threatened over debt. Further, for trafficking survivors, immigration detention increases the risk of re-traumatisation and negative long-term physical and mental health outcomes.

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The failure to create a framework where people feel able to come forward and be identified will mean that individuals cannot be protected, in violation of Article 4 ECHR and the obligation to protect.

In contrast to government's claims of the UK's slavery systems being 'abused', the UK's slavery identification and support system has never centred on victim's recovery needs. For the majority of confirmed victims being officially identified as trafficked does not necessarily lead to even a short grant of leave to remain. Between 2020 and 2022 5,578 adults were confirmed as victims of trafficking but only 364 adults subject to immigration control were granted leave via the NRM. During the same time 5,266 children were confirmed as victims of trafficking, but fewer than 21 were granted leave via the NRM. In fact, many adult victims of trafficking do not consent to enter the NRM as they cannot see how it works in their interest. January to March 2023 saw the highest number of 'Duty to Notify', or identified adults who do not grant consent, since DtN began to be recorded in 2015.

If someone does receive a positive first stage identification decision the average (median) time taken from referral to conclusive grounds decisions made in quarter 4 2022 across the competent authorities was 642 days. This limbo, during which time many survivors are not granted the right to work to support them to begin to rebuild lives and address factors such as poverty and debt which drive trafficking, compounds the trauma of trafficking and risks creating additional risks of exploitation.

This narrowing of the UK's already too limited anti slavery identification and support systems represents a regression which accommodates only a 'perfect victim'; someone with no immigration issues, who trusts the authorities immediately and who has documentation setting out their trauma which they are able to disclose despite their precarious situation. The reality is that, where such a victim exists their story may be considered to be so perfect that this in itself can lead to suspicion and undermine their credibility. The truth is that the system is stacked against victims and will be even more so under this new Act.

Further to the passing of the Illegal Migration Act towards the end of 2023 UK government confirmed that it would not be progressing previously committed to support for victims:

In December 2021 in the context of the Nationality and Borders Bill, assurances had been given that all those who receive a positive Conclusive Grounds (CG) decision, and are in need of tailored support, will receive appropriate individualised support for a minimum of 12 months ('12 months of support').

In December 2023, the Home Office announced that they have concluded that the existing 'needs-based' approach already ensures that necessary assistance to victims with a positive CG decision is available and that they will not be moving forward with the previous commitment. This means that rather than focusing on recovery victims know they will have to continue to evidence their ongoing need for support from which they could be exited at any time.

While there is provision for confirmed victims to qualify for leave to remain for periods of up to 12 months to pursue a compensation claim, or up to 30 months to pursue a criminal

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case against their trafficker(s) or where they have recovery needs that can only be met in the UK (see Temporary Permission to Stay for Victims of Human Trafficking or Slavery guidance published in January) it is clear this is only granted in a minority of cases. As explained by the Helen Bamber Foundation in their 2023 report 'Leave in Limbo', between 2020 and 2022 5,578 adults were confirmed as victims of trafficking but only 364 adults subject to immigration control were granted leave via the NRM. During the same time 5,266 children were confirmed as victims of trafficking, but fewer than 21 were granted leave via the NRM.

The Home Office also announced that a commitment made in 2017 by a former Minister to provide Places of Safety so that adult victims leaving immediate situations of exploitation can be given assistance and advice for up to 3 days before deciding on whether to enter the NRM would not be taken forward.

First Responder crisis; An additional barrier to entering the NRM

Referrals into the UK's NRM can only be made by a designated First Responder. There are both statutory and voluntary First Responders. There is no qualification or required training to become a First Responder (although many First Responder organisations will have their own internal processes). Anyone who is employed by a First Responder organisation can make a referral into the NRM and we understand that in practice some First Responder organisations use volunteers to prepare referrals or partner with other organisations to do this. Nor is there any statutory funding for pre-NRM support to facilitate informed consent and disclosure for a referral. This can mean in practice that a victim who is identified may have to disclose trauma in order to inform a referral before they have any stability or security in their lives and while they are uncomfortable, confused and unsure where they will sleep that night. They may not have had access to an interpreter or legal advice prior to a referral. If the referral is negative there is no formal pathway for support despite the fact that for the referral to have been made trafficking indicators should have been in place.

In March 2023, the UK government published NRM statistics for 2022. These set out that the Home Office received 4,580 reports of adult potential victims via the DtN process during 2022, the highest annual number since the DtN began.¹⁶

These are instances of adults not consenting to an NRM referral (children do not need to consent). This is likely to be an underrepresentation given that only statutory First Responders have a duty to notify. This indicates that, contrary to government claims of people 'gaming the system' many potential victims did not see a referral as being in their interest.

There is currently no process in place in the UK by which any organisation can apply to become a First Responder and there is no specific statutory funding for this role. This means that there is a potential bottleneck of entry to the NRM whereby potential victims cannot

¹⁶ Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022
<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>

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find a First Responder to make an NRM referral. This could leave people without access to identification or specialist support and could mean people returning to or remaining in exploitation, as many victims will be fearful of approaching a statutory First Responder, or may struggle to find a statutory First Responder with the expertise or capacity to make a referral. It is FLEX's understanding that there is no specific statutory funding for the First Responder role including within the Victim Care Contract and at present several voluntary sector First Responders are concerned about their capacity for making referrals into the NRM.

In addition to the risks above, a lack of First Responder capacity impacts in a specific way on Overseas Domestic Worker visa holders with serious implications for their time in the NRM and access to decent work. Since 2016 ODW visa holders who are referred into the NRM while their visa remains valid retain permission to work as a full-time domestic worker in a private household while they are in the NRM. Given that delays in decision making can equate to years, permission to work during the process can be key to rebuilding lives through decent work and preventing re-exploitation. Many domestic workers are not in possession of their passport, or are not aware of their immigration status, or visa expiry date, making this rule arbitrary at best. The lack of First Responder capacity means that workers' visas may expire while they are waiting for an NRM referral. It is FLEX's position that all potential victims should have access to work while in the NRM so they can benefit from the support provided during this period to access decent work and begin to recover from their exploitation. Conversely, a lack of access to work, and a period of limbo and waiting compounds the trauma of trafficking as well as the practical issues experienced by so many victims including building debt and precarity, so increasing vulnerability to re-trafficking.

Support while in the NRM & following a decision

In the UK victims are able to access statutory support via the NRM during the period between the first stage, Reasonable Grounds, decision and the final, Conclusive Grounds, decision. While previously a minimum of 45 days, in December 2022 the guidance was changed in order to reduce this to 30 days. This reduction goes against the Government's own assurances during the passage of the Nationality & Borders Act that they are '*committed to providing victims with at least a 45-day recovery period.*'¹⁷

While delays in NRM decision making are a significant problem, with waits of 2 years not being unusual, reducing the minimum period between decisions to 30 days is a backwards step. This is because this period, which is known as the 'recovery period' is the time when victims and their support workers know that the final, conclusive grounds, decision is pending and they are able to focus on recovery, and disclosure. This is more important than ever with the UK Prime Minister's focus on the need for increased 'evidence' of slavery, mentioned in the December 2022 Asylum Statement. To reduce this period increases pressure to disclose quickly (against the evidence of how victims and survivors of trafficking generally disclose their

¹⁷ Hansards, HL, Nationality and Borders Bill, Volume 818: debated on Thursday 10 February 2022, column 512 Accessible at: <https://hansard.parliament.uk/Lords/2022-02-10/debates/77D527E6-362A-4F96-9CDD-1BDD25FFA5EA/NationalityAndBordersBill-column-1863>; [https://hansard.parliament.uk/commons/2021-11-02/debates/c531a49a-d066-4009-bcef-94b03bf3fc67/NationalityAndBordersBill\(ThirteenthSitting\)](https://hansard.parliament.uk/commons/2021-11-02/debates/c531a49a-d066-4009-bcef-94b03bf3fc67/NationalityAndBordersBill(ThirteenthSitting))

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experience in reality) and risks negative decisions being made before victims have had any realistic opportunity to unpack and set out what has happened to them.

The negative effect of the reduced ‘recovery period’ is compounded by the lack of availability of therapy or counselling or access to specialist legal support. ATLEU have reported in depth on the issues with accessing legal advice.¹⁸ These short time frames increase the likelihood of individuals being removed from the NRM before being able to access these basic entitlements.

There is still no access to work for people in the NRM who do not already have permission to work. This is a missed opportunity for people to be able to access decent work to help rebuild their lives and move on from exploitation. Instead, their trauma is compounded as they wait in the system for years without being able to participate in society or provide for their own or family needs through work.

As set out above, grants of leave to remain to confirmed victims of trafficking remain disturbingly low. Where leave is granted, it is for a relatively short period with no route to settlement. This, combined with the long NRM delays, and various decision-making thresholds, is in stark contrast to government’s rhetoric around people ‘gaming the system’ to gain an immigration advantage.

Wider messaging/ Rhetoric

The UK published its ‘New Plan for Immigration’ in March 2021, which, surprisingly for an immigration policy document, included a section on “supporting victims of modern slavery”. The document did not address why slavery was being dealt with under immigration, given that the majority of NRM referrals in the UK are currently for British people. While insecure immigration status, combined with the UK’s hostile environment, certainly creates a context in which exploiters can assert control the ‘New Plan’ did not address this. Instead, it asserted that people are claiming to be victims of modern slavery to prevent or delay removal or deportation:

“Over recent years we have seen an alarming increase in the number of illegal migrants, including Foreign National Offenders (FNOs) and those who pose a national security risk to our country, seeking modern slavery referrals – enabling them to avoid immigration detention and frustrate removal from our country.”

This assertion is in stark contrast to the experience of potential victims, professionals and also the UK government’s own statistics for ‘duty to notify’ or MSI forms; when adults have not consented to an NRM referral. These increased by 47% between 2021 and 2022.¹⁹ In

¹⁸ ATLEU (2022), ‘It has destroyed me’: A legal advice system on the brink. p.15. Accessible at: <https://drive.google.com/file/d/15xlzaXCpN2eyXSlw7Ubx2Au1r6mRXRF/view>

¹⁹ UK Government. Home Office (2022), Official Statistics. Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2021. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2021#:~:text=In%202021%2C%20the%20NRM%20received,referrals%20since%20the%20NRM%20began>

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making the claims around ‘abuse of the system’ the government’s plan highlighted the increase in the number of NRM referrals and also the increase in positive trafficking decisions:

“NRM referrals more than doubled between 2017 and 2019 from 5,141 to 10,627. In 2019, of those referred into the NRM after being detained within the UK (totalling 1,949), 89% received a positive RG decision and 98% were released. More recently, child rapists, people who pose a threat to national security and illegal migrants who have travelled to the UK from safe countries have sought modern slavery referrals, which have prevented and delayed their removal or deportation.”

An increase in referrals to the NRM and from positive decision making is evidence that, despite its constraints and shortcomings, the system is beginning to work as it should. Figures are in line with estimated numbers of potential victims and what is clear is that many victims are still not being identified. Without any additional evidence, it is unclear why the UK government, is concluding from this increase that the system is being ‘abused’. Nor is the statement around risks posed by victims substantiated or explained; Sexual and terrorism offences are explicitly excluded from the UK’s modern slavery defence (section 45 of the Modern Slavery Act), and the government has refused to provide any evidence on the defence being misused. The UK’s statistics regulator wrote to the Home Office in December 2022²⁰ reprimanding them on this point. The government’s approach was also condemned by UN experts with the Special Rapporteurs on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children; and Special Rapporteur on the human rights of migrants condemning the attacks on the credibility of victims.²¹ They “*urged public officials to refrain from inflammatory and spurious rhetoric that delegitimises survivors of slavery and human trafficking and their legal representatives.*” and explained how such rhetoric “*has a chilling effect on those willing to come forward as victims and those willing to provide legal representation to victims, impeding efforts to identify and protect victims and persons at risk of trafficking and hold perpetrators accountable*”.

An inspection report on Adults at Risk in the context of Immigration Detention, by the Independent Chief Inspector for Borders and Immigration (ICIBI) published in January 2023²² reported that “The contention that safeguards are being abused on a wide scale is unevicenced.” and highlighted that this assumption ‘infected’ the response from the Home office with regard to safeguarding vulnerable people in immigration detention centres.

Data received from a Freedom of Information request made by FLEX on behalf of the Labour Exploitation Advisory Group (LEAG) to the Home Office shows that between 2017 and 2021 victims of modern slavery have been identified at increasing rates from within immigration detention. Immigration detention remains an unacceptable environment for victims of modern slavery, as detention can cause severe mental and physical suffering and victims of modern

²⁰ Office for Statistics Regulation (2022), Ed Humpherson to Maya Esslemont and Anna Powell-Smith: Modern slavery data. Available at: <https://osr.statisticsauthority.gov.uk/correspondence/ed-humpherson-to-maya-esslemont-and-anna-powell-smithmodern-slavery-data/>

²¹ OHCHR (2022) UK: UN experts condemn attacks on credibility of slavery and trafficking victims. Available at: <https://www.ohchr.org/en/press-releases/2022/12/uk-un-experts-condemn-attacks-credibility-slavery-and-trafficking-victims>

²² Independent Chief Inspector of Borders and Immigration, Third annual inspection of ‘Adults at risk in immigration detention’ (June – September 2022), January 2023.

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slavery are among those particularly vulnerable to harm in detention. Poor support, such as the denial of medication, being detained in a prison-like environment, and a culture of disbelief concerning detainees, is leading to long-lasting negative impacts on victims of modern slavery in immigration detention. Such conditions can also undermine disclosure of traumatic events including trafficking. It is important to consider the data on trafficking decisions in this context. The data provided in response to the FOI request shows that an increase in positive reasonable grounds decisions is evident since 2017, rising from 14% of cases, to 44% in 2018, before stabilising at 80.4% in 2019 and 83.2% in 2020. Though the statistics for 2021 are only available for the first quarter, they largely reflect the preceding two years, at 90.2%. Given the difficulties of disclosing their modern slavery victim status from detention and that the burden of proof is on the potential victim, these high numbers show that victims are disclosing trauma and being identified as trafficked against the odds. They show alarming failings in screenings for modern slavery indicators prior to detention and highlight the importance of ongoing access to information and specialist legal advice once in detention to ensure that victims of modern slavery who have been wrongly detained have opportunities to disclose.

Threshold for identification

In January 2023 the UK's statutory guidance for Modern Slavery was updated in the context of implementing the Nationality and Borders Act. This update increased the threshold for making a positive Reasonable Grounds or first stage National Referral Mechanism (NRM) decision in that it required potential victims who had been referred into the NRM to supply evidence so that "the decision maker must agree there are reasonable grounds to believe, based on objective factors, that a person is a victim of modern slavery".

This change to the guidance came under strong criticism for setting an unrealistic threshold at so early a stage of the NRM decision making process. There is no specialist government funded support available prior to an RG decision and referrals can only be made by a designated First Responder who has already identified the individual as a potential victim. To have been referred by a First Responder each individual should have already presented with indicators of trafficking, otherwise the First Responder isn't doing their job properly. The Reasonable Grounds (RG) decision is therefore necessarily low- previously set at 'suspect but cannot prove' on the basis that most trafficked people will not have been in the position, in part due to the nature of their exploitation, to collect 'objective evidence'. The Reasonable Grounds decision gives entitlement to some support to enable this process. It is well established that prior to receiving appropriate support many victims will not self identify as trafficked and may not be familiar with this term or concept of trafficking. They may not know what information is relevant to disclose and may have normalized their abuse in order to cope. To cope with their exploitation many people will bury memories of traumatic treatment, and disclosing this will take significant time and require the person to be in a position of safety. There may also be feeling of shame regarding their treatment requiring trust to be built before this can be disclosed. Statutory funding for legal aid and for interpretation is not available prior to a positive RG decision, further hindering disclosure.

The effect of this change to the Reasonable Grounds threshold can be seen in the dramatic increase of negative Reasonable Grounds decisions. April to June 2023 saw 75% of decisions being negative, in contrast to only 16% of negative first stage decisions during October to

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December 2022, before the guidance was updated. Concerns were compounded by the context of increasing use of rhetoric by government that the UK's slavery systems are being 'abused'. This rhetoric already makes potential victims believe that their accounts of trauma will be viewed with suspicion by decision makers. The effect is that victims are less likely to consent to an NRM referral, believing that it could undermine their credibility and would not be in their best interest.

The situation has worsened with the introduction of a two tier decision making system. The Immigration Enforcement Competent Authority (the 'IECA,' established in November 2021) has vastly increased its negative decisions at the final stage of the NRM process. The IECA was set up to make NRM identification decisions for adults who are subject to forms of immigration control, including any adults in respect of whom deportation is being pursued and those who are held in administrative immigration detention. In April to June 2023, the IECA rejected 66% of final stage NRM decisions, compared to 45% in October to December 2022 prior to the introduction of the NABA provisions.

Despite Government claiming the need to streamline decision-making as a reason for the creation of the IECA, the length of time taken by the IECA to make a first stage decision has increased from 19 days to 30 days. Home Office guidance states that these decisions should be made within five days where possible.

The creation of the IECA marked a regressive step back to a two-tier system, as we saw with the two -designated Competent Authorities when the NRM was first set up in 2009. In 2014, the Government's own review of the NRM found serious issues with having two separate decision making bodies (such as the conflation of asylum and trafficking matters), and in response set up a single, expert unit completely separate from the immigration system. After two years of this Single Competent Authority the Government established the IECA suddenly and without stakeholder consultation. The Taskforce on Survivors of Trafficking in Immigration Detention warned in November 2021 that this move could mean that immigration status could influence decision making, endangering victims and survivors of trafficking.

Two potential victims of modern slavery who had received negative Reasonable Grounds decisions brought a legal challenge against the policy increasing the RG evidence threshold soon after its introduction. This resulted in the Home Office at the end of June 2023 agreeing to withdraw, review and revise its policy. The updated guidance makes clear that decision makers should consider 'whether it is reasonable in all the circumstances' to expect supporting evidence or corroborating information. The guidance now makes specific reference to the reasons why victims' early accounts may be impacted by trauma and they may be distrustful of authorities and states that "a decision maker is entitled to consider all forms of evidence in reaching their conclusion – this is not restricted to objective evidence to prove or disprove an account".

The quarter 3 statistics for 2023 (July to September) show that there has been some reconfiguration of decision making following the policy change to the threshold. During this period 52% of reasonable grounds and 65% of conclusive grounds decisions were positive. However the Duty to Notify (DtN) figures make it clear that many adult potential victims

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do not see a referral into the NRM to be in their best interest with statistics showing that the Home Office received 1,317 reports of adult potential victims via the DtN process, the second highest since the DtN began in 2015. Duty to Notify is when a statutory First Responder identifies an adult as potentially trafficked but the person does not consent to an NRM referral. It is important to note that this figure is an under representation; only statutory First Responders complete DtN forms and not all may know to do so.

Rights-restrictive work visas

The conditions of an immigration visa can determine its holder's ability to access healthcare and labour law protections, including sick pay or state support when unable to work. In this way UK immigration policy creates risks of exploitation for workers through:

- **Visa restrictions, limited access to rights, and high visa costs:** Conditions attached to people's visas, including No Recourse to Public Funds (NRPF) and a time limit on the length of stay, combined with high visa costs, can result in workers being more dependent on their jobs to pay off debts and therefore being less able to push back against poor treatment.
- **Increased irregularity:** Tight immigration restrictions and limited routes available into low-paid sectors can push people into working undocumented or outside of the conditions of their visa. This is particularly important in the UK context where there is a lack of regularisation options and the criminalisation of irregular work and the failure to separate labour market enforcement from immigration enforcement can make workers fearful of reporting labour abuses and employers able to use the threat of reporting workers to immigration authorities as a tool for coercion.
- **Interaction with the labour market enforcement system:** The UK has one of the weakest labour market enforcement systems in Europe, resulting in unscrupulous employers profiting through the exploitation of workers due to gaps in enforcement. The system also prioritises immigration enforcement over safeguarding of workers and enforcement of labour rights and standards, meaning that workers that experience exploitation are unable to seek help for fear of being reported to the authorities.

The steps the Government should take to address the risks posed to workers by UK immigration policy include:

- Creating safe and fair immigration routes for sectors with high demand for labour
- Mitigating the effects of immigration restrictions
- Ensuring continued scrutiny of immigration policy decisions
- Acknowledging the interaction of immigration policy with different policies such as labour market enforcement and social security
- Ensuring all workers are able to safely report abuse and have options which provide access to redress.

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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 Pilot (SWP) for work in agriculture. Reports of exploitation on the Overseas Domestic Worker visa increased dramatically in 2012 when the route was further restricted²³, 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.

While not a short-term visa there is concerning evidence of high levels of exploitation of workers entering the UK on the Health and Social Care visa, another restrictive visa.

The Seasonal Worker visa Scheme

The Seasonal Workers Visa is a short-term visa scheme which restricts visa holders to work in a specific sector for a maximum duration of six months for horticulture and 3 months for poultry²⁴ and prohibits access to public funds. Workers on the visa can be recruited to the UK from potentially anywhere in the world by a Scheme Operator (sponsor)²⁵ to work in the UK's agricultural sector. As well as paying migration costs workers have also reported paying recruitment and other fees and arriving in the UK thousands of pounds in debt.²⁶ There are no guarantees of work during the duration of the visa meaning that workers are incurring significant financial risk. Nor are there clear options for compensation for workers who have paid these fees which, although illegal in the UK, may not be illegal in the country workers were recruited from.

While well-designed visa routes can enable safe travel and legal work, badly designed schemes can create significant risks by restricting workers' bargaining power. The UK needs to ensure it is not facilitating exploitation by treating workers as commodities who cannot access legal rights or safeguards. Otherwise, it is creating a two-tier workforce, with those entering on short term visa routes cut off from basic rights or access to employment law – both of which are key to preventing exploitation.

Research by FLEX has highlighted significant risks of exploitation on the horticultural Seasonal Worker visa scheme. This includes a 2021 Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot.²⁷ FLEX's assessment of the pilot scheme found significant risks of exploitation on this visa, with nine ILO indicators of forced labour being met by workers on the scheme. This included a strong risk of being deceived about the terms and conditions of employment at the instance of recruitment,

²³ <http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf>

²⁴ Recently increased from 2.5 months (9 March 2023)

²⁵ <https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker-accessible-version>

²⁶ <https://www.theguardian.com/uk-news/2022/nov/13/seasonal-fruit-pickers-left-thousands-in-debt-after-being-sent-home-early-from-uk-farms>

²⁷ <https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

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facing penalties and threats at work, and being unable to leave the employer due to risk of destitution and visa restrictions. The study found that workers had to incur significant debt to come to the UK and once here, struggled to earn enough while paying high accommodation costs. Subsequent research and reports by investigative journalists have highlighted issues around conditions of and availability of work, and accommodation standards. There remains a lack of clarity around access to healthcare for workers on the scheme in practice.

There are a number of improvements and structural changes we would like to see to the scheme, to reduce the risks born by workers migrating to support the UK's horticultural industry. One model we would encourage the government to look into is the [original Overseas Domestic Worker visa](#), which allowed workers to leave an employer, find a new job, and apply to extend their work visa on the basis of new employment. In absence of this, checks and balances should be implemented to ensure the scheme has a baseline level of safety and security.

- Establish clear **independently run complaints mechanisms** which are informed by the needs of workers to make sure they are accessible and enforceable in practice, and provide redress to workers within reasonable timescales.
- **Effective monitoring and enforcement of employer transfer pathways are needed.** Scheme operator guidelines make it clear that that operators should “establish a clear employer transfer pathway, including transparent criteria for making a transfer request and a process for considering such requests. This should be communicated to workers before they start to work on the farm.” The process for the supply of information for applying for and for the granting of transfers must be independently monitored and enforced. Workers should not be responsible for paying the costs of a transfer (eg transport costs) and should be financially supported during gaps between jobs.
- **Ensure a guaranteed income for workers who have travelled to the UK on the promise of work. Compliance with the National Living Wage and the provision of a minimum of 32 paid hours a week needs to be independently monitored** with compensation mechanisms in place if work is not available at any point during the 6 months of the visa.
- **Employees should personally not face any up-front costs to come to the UK, with consideration given as to who should pay for a migrant worker’s journey to participate in UK agriculture.** In the UK context, with profit margins squeezed in certain parts of the agriculture supply chain, it may be necessary to establish a wider definition of who should cover these costs. For example, the highly price-competitive supermarket sector may need to cooperate with farms and Labour Providers to meet the cost of bringing in workers.
- **Ensure secure reporting mechanisms and a separation between the enforcement and monitoring of working conditions and immigration enforcement,** recognising that people on insecure and temporary immigration statuses are often reluctant to report abuse due to fear of facing immigration consequences.

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- **Increase the resources for labour market enforcement** to ensure there is capacity to conduct regular proactive inspections of SWV participating workplaces with a focus on compliance with standards and UK laws, rather than only on breaches which reach the threshold of Modern Slavery.
- **Provide an independently managed emergency fund for workers** who have not received adequate work, or for whom the work has not been as described, who need to be able to return home and repay expenses. This should be costed into the scheme.
- **Improve the guidance for access to healthcare** (including the NHS) for workers on the scheme. Independently monitor access to GPs and other healthcare services and intervene if access is lower than expected.

Decisions made to date on the design and structure of the Seasonal Worker Visa scheme have come with little apparent consultation or scrutiny or lead in time before implementation. This creates unrealistic timeframes for planning and carrying out due diligence checks in countries of origin, developing information and advice services, or ensuring that labour market enforcement systems in the UK are resourced and up to the task. Investigations such as by the Bureau for Investigative Journalism²⁸ and the Guardian²⁹ have found workers alleging to have paid recruitment fees (which are banned under the scheme) amounting in some cases to over £5,000. Not only are workers who have borrowed high amounts of money at risk of debt bondage, the concerns around recruitment fees also exposes the many gaps around regulation and enforcement in international recruitment and raises questions around jurisdiction and accountability and what access workers have to rights, if any. Risks of debt bondage are compounded by the fact that despite paying often high migration costs, workers have no guarantees of work even for the 6-month duration of their visa.³⁰

Solutions

Visas which give workers more options would help to address some of these issues. For example, rather than compelling workers who would prefer to work and earn money to leave the UK and scheme operators to recruit a fresh cohort of workers every six months, a sensible immigration policy would give workers who have an offer of ongoing work the option of applying to renew their visas, should they wish to, and a route to settlement. Workers would then be able to earn for longer, to offset migration costs, and having longer in the UK

²⁸ Emiliano Mellino , Rudra Pangeni , Pete Pattison (2022), Migrant fruit pickers charged thousands in illegal fees to work on UK farms. Available at: <https://www.thebureauinvestigates.com/stories/2022-05-27/migrant-fruit-pickers-charged-thousands-in-illegal-fees-to-work-on-uk-farms>

²⁹ Emily Dugan (2022), Revealed: Indonesian workers on UK farm 'at risk of debt bondage'. Available at: <https://www.theguardian.com/uk-news/2022/aug/14/uk-farm-workers-kent-debt-indonesian-brokers>

³⁰ Emiliano Mellino and Shanti Das (2022), Seasonal fruit pickers left thousands in debt after being sent home early from UK farms. Available at: <https://www.theguardian.com/uk-news/2022/nov/13/seasonal-fruit-pickers-left-thousands-in-debt-after-being-sent-home-early-from-uk-farms>

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would increase options for accessing information and advice. Employers would also benefit from a larger number of more experienced workers who have had time to build their skills.

The Overseas Domestic Worker visa

In June 2022 UN Human Rights Experts [sent a formal communication](#)³¹ expressing their grave concerns over the treatment of migrant domestic workers in the UK.²

They expressed particular concern over a series of changes to the visa rules for domestic workers that have left them extremely vulnerable to abuse and exploitation:

- 2012: changes to the Overseas Domestic Worker visa were introduced. These limit overseas domestic workers to a 6 month, non- renewable visa and prohibit domestic workers from changing employers even in cases of abuse
- 2016: domestic workers are allowed to change employer but only for the remainder of her six-month visa and can only change employer to another single full-time job as a domestic worker in a private household.

The one exception to this is if a domestic worker has been trafficked. If the worker is referred into the NRM while her visa is still valid it will be extended while she is in the NRM. If she receives a positive conclusive grounds decision she can apply for a further 2 year long ODW visa.

In practice, it's virtually impossible for domestic workers to escape abuse by finding a new employer because:

- Potential new employers looking for someone to provide full-time personal care rarely want a worker with just 2 or 3 months left on her visa.
- Many domestic workers have difficulty proving their identity to potential employers because their passports were taken by their former employers.
- The visa only being extended if it was still valid when the worker entered the NRM is arbitrary. Many workers do not know when their visa expired and have no control over when they are able to leave an abusive employer or when or if they will be identified as trafficked and an NRM referral made. Workers whose visas have already expired may be deterred from consenting to an NRM referral without the prospect of work given the long delays in decision making.

Without employment the worker is left destitute and homeless because:

- The majority of migrant domestic workers have “live in roles” where accommodation is provided by the employer

³¹ UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children. (2022). Statement to the Human Rights Council June 2022. AL GBR 6/2022. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27215>

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- There is a 'No Recourse to Public Funds' condition on the ODW visa
- Many ODW visa holders migrated due to financial necessity - with family members dependent on their earnings they have chosen to 'sacrifice themselves' to support family and will ensure terrible working conditions, only leaving if they are not paid.

Recommendation

Migrant domestic workers and their allies are calling for the pre 2012 immigration rules to be reinstated. This means that Overseas Domestic Worker visa holders will be able to change employers, apply to renew their visas, subject to ongoing employment and would have a route to settlement.

The Health and Care worker visa

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 2022.³² 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.³³ The Migration Advisory Committee (MAC) has stated that the Government has tacitly accepted exploitation in the care sector.³⁴

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.³⁵ The Migration Advisory Committee (MAC) has

³² Unseen (2023), Who Cares?: a review of reports of exploitation in the care sector, p.4. Available at: <https://www.unseenuk.org/reports/care-sector-report/> (Accessed 29 November 2023).

³³ 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).

³⁴ The Guardian (2023), Exploitation of care workers in England is 'appalling', says government adviser

³⁵ 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).

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stated that “it’s now by far the biggest occupation that’s using the immigration system.”³⁶ 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 address labour shortages following the end of free movement.³⁷ 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.

Key risks to workers include the following:

Dependency on individual employers. Workers on this visa must have a job offer from an approved UK employer who is also their visa sponsor. They can change employer but must find a new employer who is also an approved visa sponsor within 60 days.

Repayment clauses. These clauses require workers to pay back the upfront costs the employer has paid associated with their migration to the UK if they leave their employment ahead of an agreed period. These clauses can be legal but many are unreasonable, with Unison reporting having seen workers being charged up to £15,000 on resigning.³⁸

Recruitment fees and debt. This includes allegations of large sums being paid to recruitment agencies in the country of origin. It has been reported that these illegal recruitment fees may then be split with the care operator in the UK.³⁹

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

³⁶ The Guardian (2023)

³⁷ 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).

³⁸ 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).

³⁹ 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).

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low.⁴⁰ 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.

Lack of secure reporting channels

Late January 2023 the UK government announced an increase in immigration enforcement to tackle ‘illegal working’.⁴¹ This approach is misguided and risks driving people in exploitation further underground, creating a fear of reporting exploitation due to the risks of immigration detention and removal. The Home Office’s failure to stop using data from victims and witnesses of crime for immigration enforcement purposes, despite the consistent evidence that this practice leaves those with insecure status too fearful to come forward, prevents victims of human trafficking from reporting crimes and empower exploiters and other perpetrators of abuse.

The hidden nature of trafficking makes it difficult to gain an accurate picture of its true scale and nature. As a result, anti-trafficking responses are dependent on victims coming forward about their experience. The continued absence of secure reporting options that enable people with insecure status to come forward as victims of crime undermines our ability to address trafficking and run counter to the UK’s stated ambition to ‘lead the way in defeating modern slavery’.⁴²

We strongly dispute the Home Office’s claim that Immigration Enforcement has any safeguarding role. On the contrary, prioritising immigration enforcement undermines safeguarding and leaves victims vulnerable to continued exploitation. The proposed Immigration Enforcement Migrant Victims Protocol offers just another example of an initiative that will continue to dissuade some of the most vulnerable victims from seeking help. The Home Office response states that no enforcement action will be carried out against victims of crime while their case is being investigated and prosecuted. However, this provision will do very little to reassure victims and nothing for the many cases of misidentification. The European Union Agency for Fundamental Rights 2019 research on eight countries including

⁴⁰ See: Samantha 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).

⁴¹ https://www.gov.uk/government/news/immigration-enforcement-surge-since-pledge-to-tackle-illegal-working?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=c1afee0a-15fa-4444-a89a-e4a8f2ff1c38&utm_content=daily

⁴² <https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery/>

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the UK, found that migrant workers rank their insecure status as the main reason they chose not to report exploitation.⁴³ The Home Office's approach plays into the hands of exploiters who target those with insecure immigration status with impunity. Organisations such as the Latin American Women's Rights Service (LAWRS) have highlighted that exploiters use the threat of deportation as a means to prevent victims from reporting their modern slavery.

Undocumented workers describe feeling caught between an abusive employer on one side, and the Home Office on the other, having no pathways to report workplace violations without the risk of losing the income upon which their families depend, being detained or removed from the country, as described by Angelica, a Venezuelan undocumented worker supported by LAWRS:

“When you are undocumented you are forced to choose between many impossible choices. You have to choose between letting your employer steal away half your wages or keeping your children fed. You have to choose to either stay with a violent man or choose to sleep on the street. You have to choose between being robbed because they know you are undocumented or being raided by the immigration officers. Your life becomes a series of impossible choices. You just have to choose the one that makes you sleep a little bit better at night.”⁴⁴

The establishment of secure reporting policies and procedures would mean that individuals with insecure migration status feel able to engage with criminal justice agencies in the first instance. As recognised by the Home Office, victims must be ‘treated first and foremost as victims’⁴⁵ regardless of their migration status.

While secure reporting pathways do not exist for victims the provision of support and protection will be fettered by the increase in distrust of authorities, a lack of victims coming forward, a reduction in identification of victims and perpetrators, and ultimately, the continued empowerment of exploiters who have an additional weapon in their arsenal to coerce victims. As set out in the explanatory report to Council of Europe Convention on Action against Trafficking in Human Beings 2005 (ECAT), ‘the greater victims’ confidence that their rights and interests are protected, the better the information they will give.’⁴⁶

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 recognising that it is ‘*vitaly important to maintain a clear dividing line between labour market enforcement and immigration enforcement.*’⁴⁷ FLEX

⁴³ European Union Agency for Fundamental Rights, Protecting migrant workers from exploitation in the EU: workers’ perspectives, 2019, p.74.

⁴⁴ Labour Exploitation Advisory Group, Opportunity Knocks: Improving responses to labour exploitation with secure reporting, April 2020. London: Focus on Labour Exploitation (FLEX), p.18.

⁴⁵ Home Office, (2021) ‘Guidance - Review of data sharing: migrant victims and witnesses of crime,’ para. 18.

⁴⁶ Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings – CETS 197 – Action against Trafficking in Human Beings, para. 181.

⁴⁷ DLME (2021), United Kingdom Labour Market Enforcement Strategy 2021/22, p.104. Available at: 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

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holds that the recommendations outlined in the DLME's 2021/2022 strategy should be implemented in full.⁴⁸

Legal Advice and representation

Access to legal advice and representation is critically important for survivors of trafficking. It is the key to being formally recognised as a victim, accessing safe housing and support, upholding rights, and accessing justice and remedy. Yet, an October 2022 report by the Anti Trafficking and Labour Exploitation Unit (ATLEU), *'It has destroyed me': A legal advice system on the brink*, reveals a legal advice crisis in the UK. There is a huge gulf between demand and supply of legal advice with the result that survivors are not able to access timely and quality legally aided advice and representation when they need it, with devastating consequences.

A staggering 90% of support workers surveyed by ATLEU had struggled to find a legal aid immigration lawyer for a survivor in the past year, with devastating impacts: 55% of respondents said it left survivors in destitution or unable to access appropriate accommodation or support; 97% said it caused survivors stress, anxiety or contributed to poor mental health; 64% said it resulted in the survivor being unable to meet a deadline in their case, for example with the Home Office; 57% said it left survivors in a position where they were unable to claim asylum, and others shared experiences of survivors being detained or at risk of removal ;and 29% said it had left survivors in a situation of exploitation. Significant capacity within the anti-trafficking support sector is spent on searching for legal representation, detracting from their ability to support the core needs of survivors.

The primary cause of this legal advice crisis is the legal aid funding system. Trafficking cases are uniquely complex, long-running and costly, and as such are ill-suited to payment by standard legal aid fixed fees which do not change to reflect the time taken or level of work carried out. The fixed fee structure also deters the development of specialist expertise, and actively encourages legal aid advisors to restrict the level of work they carry out on a case, which often leads to poor quality advice and representation. Three important areas of advice are currently excluded from the scope of legal aid for most survivors: pre-NRM advice, advice about trafficking identification, advice on the Criminal Injuries Compensation Scheme.

Lack of labour market enforcement to address labour abuses before they reach the threshold of trafficking

Absence of a Single Enforcement Body

We are disappointed by the Government's decision to shelve its plans for the Single Enforcement Body.⁴⁹ A well designed SEB offered an avenue to ensure that the risks of human trafficking are addressed before the harms could materialise and ensuring that such risks were

⁴⁸ *Ibid.*, pp. 35–36.

⁴⁹ The Telegraph (2022), Tories ditch manifesto pledge to create workers' rights super watchdog. Available at: <https://www.telegraph.co.uk/politics/2022/12/13/tories-ditch-manifesto-pledge-create-workers-rights-super-watchdog/>

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mitigated across the labour market as a whole as opposed to specific sectors or requiring levels of severity.⁵⁰

Having different enforcement bodies in place leads to confusion as to which body is responsible in any given circumstance and to consequent gaps in enforcement. This is compounded by a lack of resourcing for proactive enforcement and resulting reliance on reporting by workers or other whistle-blowers. It should be noted that existing labour market enforcement in the UK is severely under-resourced. While the International Labour Organisation's recommended ratio of inspectors to workers is one to 10,000, the UK's ratio is approximately 0.4 inspectors per 10,000 workers.

The current labour inspectorate landscape in the UK is highly fragmented. This can be a difficult landscape for both workers to navigate. For instance, workers experiencing underpayment of wages could find it logical to contact Acas for advice, the GLAA if it is a sector licensed by them, or HMRC. This complexity is compounded by the plural nature of how remits are split: they are not only split according to the specific labour abuse issue, but also according to i) severity (e.g., the GLAA's remit for severe exploitation that may contain within it instances of lower level abuses that would be dealt with by other bodies) and, ii) sector (e.g., the GLAA's three licensed areas, in which infractions may be present that would otherwise be addressed by other bodies).⁵¹ This is clearly an inefficient approach. It also fails to recognise the nature of abuse and exploitation: rather than taking a binary approach to understanding 'labour abuses' (that is, violations of labour law, such as underpayment of minimum wages) versus 'modern slavery' crimes, it is well recognised that there is instead a continuum of abuse and exploitation. By failing to establish a Single Enforcement Body, the UK is undermining its ability to counteract trafficking in a preventative and holistic manner, by targeting the drivers that produce vulnerability to trafficking.

Continuing hostile environment policies, for instance the Illegal Working Offence, also create vulnerabilities to exploitation and abuse. By driving individuals into informal work, it deters such workers from being able to come forward labour market enforcement authorities to access protection and support. These policies make it harder for all migrants to challenge unfair conditions, change employers, take time off for sickness or demand fair wages, for fear of being reported to immigration enforcement.⁵²

Immigration detention of victims of human trafficking

⁵⁰ A Single Enforcement Body: What an effective Single Enforcement Body Looks like

<https://labourexploitation.org/publications/a-single-enforcement-body-what-an-effective-single-enforcement-body-looks-like/>

⁵¹ FLEX (2019), FLEX response to the BEIS Single Enforcement Body consultation . Available at:

<https://www.labourexploitation.org/publications/flex-response-beis-single-enforcement-body-consultation>

⁵² JCWI (2021), Migrant workers' rights: Policy Briefing. Available at:

<https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=29b86e1f-12e2-47b4-b7eb-0004f538277f>

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The UK Home Office routinely detains people subject to immigration control, without judicial oversight, causing them significant harm.⁵³ This includes survivors of trafficking and modern slavery, who may be detained after imprisonment (having been wrongly convicted for offences their traffickers forced them to commit), and/or because they do not have permission to remain in the UK. Everyone under consideration for detention should benefit from independent judicial oversight of the decision to detain including provision to challenge.

Referrals of potential victims to the National Referral Mechanism (NRM) from immigration detention have tripled over the last five years from 501 in 2017 to 1,611 in 2021. In 2022, at least 2,516 people were referred into the NRM from detention (25% increase from 2021). In 2021, 92% (1,420) of referrals received a positive reasonable grounds (first stage) decision.⁵⁴ In 2022, the Immigration Enforcement Competent Authority made positive 'reasonable grounds' (first stage) decisions for adults in 93% of cases, and positive 'conclusive grounds' (final stage) decisions for adults in 79.4% of these cases.⁵⁵ In the first three quarters of 2023, the IECA made positive reasonable grounds decisions for adults in 79.4% of cases, and positive conclusive grounds decisions in 31.7% of cases, marking a significant drop in the number of positive decisions.⁵⁶ In the April to June 2023. period we saw an increase in the number of negative reasonable grounds NRM decisions. 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 Nationality and Borders Act, this rate has increased to 75% in April to June 2023. While the Government's retreat on the unrealistic 'objective evidence' threshold and the adverse ruling against the Home Office regarding 'Public Order' disqualifications should have significantly mitigated against some of the concerning trends we have seen, the increase in negative decisions has continued with 73% of conclusive grounds decisions being negative in the third quarter of 2023. Between Q1 2023 and Q3 2023, the median wait time for a decision increased from 7 to 24 days for the IECA for a reasonable grounds decision, marking a significant increase in the time for a decision to be made during a crucial period in the NRM process. For conclusive grounds decisions this number increased from 354 days in Q1 2023 to 510 days in Q3 for the IECA, leaving survivors of trafficking in limbo.

Home Office policy in 2019 stated that people with positive reasonable grounds decisions should be released unless there was a 'public order' reason not to release them. However, in 2021, trafficking survivors were brought entirely under the scope of the controversial 'Adults

⁵³ In the year ending March 2022, 25,282 people entered detention; there were only 3,447 enforced returns (14%). UK Government. Home Office (2022), National statistics - How many people are detained or returned? Available at: <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2022/how-many-people-are-detained-or-returned>.

⁵⁴ Freedom of Information (FOI) response 69730. The request asked for the number of people detained under immigration powers in prisons, Immigration Removal Centres, pre-departure accommodation or short-term holding facilities referred into the NRM between 1 January 2018 and 31 December 2021 and the outcomes.

⁵⁵ UK Government. Home Office (2022), Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 2 2022 - April to June. Available at: [https://www.gov.uk/government/statistics/national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2022-april-to-june#:~:text=In%20quarter%20%202022%2C%20the,2%20in%202021%20\(3%2C124\)](https://www.gov.uk/government/statistics/national-referral-mechanism-and-duty-to-notify-statistics-uk-april-to-june-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-2-2022-april-to-june#:~:text=In%20quarter%20%202022%2C%20the,2%20in%202021%20(3%2C124)).

⁵⁶ UK Government. Home Office (2023), Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 3 2023 – July to September. Available at: <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2023-july-to-september>.

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at Risk' (AAR) policy. Under AAR, decision-makers weigh evidence of vulnerability against immigration factors in deciding whether to continue detention, using three levels of evidence: 1) self-declaration of vulnerability 2) professional evidence of previous harm 3) professional evidence that detention is likely to cause further harm. 3) requires evidence of future harm which is inherently difficult to provide and, connectedly, “encourages a ‘wait and see’ approach whereby vulnerable detainees are left to deteriorate in detention until avoidable harm has occurred and can then be documented.”⁵⁷

AAR replaced a policy of only detaining vulnerable people under ‘exceptional circumstances’, and was ostensibly intended to strengthen the presumption against the detention of vulnerable people. However, being recognised under AAR at levels 1 and 2 rarely leads to release.⁵⁸ Placing trafficking under AAR has increased the detention of trafficking victims who now face increased evidential requirements to show that detention is harming them. Further, the change was brought in despite the government recognising it would result in more trafficking survivors being detained.⁵⁹ This change specifically means that people identified as potential victims of trafficking can routinely be kept in detention throughout the period designated for their recovery under the NRM. Consequently, survivors cannot benefit from their recovery period.

The detention gatekeeper also frequently fails to identify indicators of trafficking, evidenced by the large numbers eventually identified within detention. The screening process on arrival is also insufficient to identify survivors of trafficking, as highlighted by the Independent Chief Inspector of Borders and Immigration.⁶⁰

The use of detention under immigration powers must end. Until this occurs we recommend that: the Government scraps the AAR policy; vulnerable individuals should not be detained; improvements are made to screening processes for vulnerability in and at the point of detention; survivors of trafficking receiving positive reasonable grounds decisions within detention should be immediately released into appropriate and secure accommodation; no recognised victims should be detained.

We are deeply concerned by the passing of the Illegal Migration Act, as well as the introduction of the Safety of Rwanda (Asylum and Immigration) Bill to Parliament, which bolster the Government’s ability to detain and return of those who have entered the UK through irregular routes in violation of international law. This expedited process, combined

⁵⁷ Helen Bamber Foundation, et al. (2022), Abuse by the System: survivors of trafficking in immigration detention, p.24. Available at: https://www.helenbamber.org/sites/default/files/2022-10/Abuse%20by%20the%20system_survivors%20of%20trafficking%20in%20immigration%20detention_1.pdf

⁵⁸ Joint Committee on Human Rights (JCHR) (2019), Immigration detention Sixteenth Report of Session 2017–19, 81. Available at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148405.htm#_idTextAnchor015

⁵⁹ May Bulman, (2021), Home Office admits new immigration plans may see more trafficking victims locked up, The Independent. Available at: <https://www.independent.co.uk/news/uk/home-news/modern-slavery-traffickingdetention-home-office-b1820549.html>

⁶⁰ Independent Chief Inspector of Borders and Immigration (ICIBI) (2021), “Second annual Inspection of Adults at Risk in Immigration Detention - July 2020-March 2021, 7.23, 7.30. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027583/E02683602_ICIBI_Adults_at_Risk_Detention_Accessible.pdf

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with the failures in identification outlined above, means that victims of trafficking will be detained and will not be able to access proper support or protection prior to their removal.

Leadership and responsibility

Anti-trafficking, or Modern Slavery, falls under the remit of the Home Office in the UK. The Home Office has a Modern Slavery Unit but, as already submitted, during recent years, slavery has been increasingly framed as an immigration enforcement issue (with strong reliance on unevicenced claims about 'abuse of the system'). This creates concerning issues as already set out by UN experts in December 2022, including risks that victims will be discouraged from coming forward so undermining identification.

In 2022 responsibility for modern slavery was moved away from the Minister responsible for Safeguarding to sit under the portfolio of the Immigration Minister. This was a worrying continuation of the creation of a context which views potential victims as individuals attempting to 'game the system', particularly for an immigration advantage, providing a context where measures to narrow victim's access to identification and support can be justified. This move, which was widely condemned by the sector, has since been partially reversed, with Modern Slavery wider policy and safeguarding coming under the Safeguarding Minister. However there remains a separate responsibility for 'abuse of the modern slavery system' which continues to sit under the Minister for Migration, and is listed under their responsibilities 'related to illegal migration and asylum'.⁶¹ It is unclear why, in given the lack of evidence that the modern slavery system is being systematically 'abused', combined with the reprimand from the statistics regulator and the warning of the impact of such an approach from the UN experts, this specific responsibility exists, nor why it is to be dealt with separately to wider modern slavery policy and sit under 'illegal migration and asylum'.

The Independent Anti Slavery Commissioner post, created as part of the Modern Slavery Act 2015, was left vacant since the second Commissioner's term ended in April 2022 until December 2023, during which time both the Nationality and Borders Act and Illegal Migration Act passed into law.

While the UK government has stated its interest in listening to survivors, input from survivors has not been properly resourced, facilitated or supported. It is important to note that tokenistic consultation with survivors would risk being extractive and could be re-traumatizing.

Wider engagement has been lacking. The Modern Slavery Strategy and Implementation Groups (MSSIG) groups have been renamed Modern Slavery Engagement Forum (MSEF). Meetings are irregular and, rather than providing any forum for engagement to inform policy making, the groups are used to update stakeholders on decisions taken. Any engagement which does occur can be erratic and reactive, making it challenging to progress work, or raise concerns systematically. FLEX and other stakeholders have been calling for many

⁶¹ UK Government (2022) List of ministerial responsibilities: Including Executive Agencies and Non-Ministerial Departments. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1124948/2022-12-15_-_List_of_Ministerial_Responsibilities_final_for_publication.docx.pdf

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months for regular engagement with the responsible teams in DEFRA and the Home Office concerning the agricultural Seasonal Worker visa, in order to have a forum to flag issues early on. Despite stated commitments to engage this is not happening.

In conclusion, the UK is at risk of increased incidents of trafficking and modern slavery if the state fails to take urgent and proactive steps in the prevention space and instead proceeds with perusing an unplanned approach with regard to post Brexit immigration, relying on short term or restrictive visas in response to labour shortages. The prioritisation of immigration enforcement and the expansion of short-term visas which grant visa holders little security and few options provides opportunity for the exploitation and control of migrant workers. The Nationality and Borders Act and subsequent policy and guidance changes further muddles immigration enforcement with preventing and addressing slavery. This, combined with increased immigration enforcement, and an inaccessible identification and support system for victims of slavery drives back progress. Going forward, FLEX will continue to undertake research focused on the experiences of worker in understudied areas of the economy which are high risk for exploitation and will make informed recommendations to government as to practical measures it can take to effectively combat and prevent human trafficking in persons.

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