

Executive Summary

February 2024

“So I decided to carry on...”: The continuum of exploitation in practice



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LEAG is a coalition of frontline, research and policy organisations which promotes discussion, information-sharing and collaboration among organisations working directly with people who have experienced or are at risk of labour exploitation in the UK. LEAG members include Focus on Labour Exploitation, Latin American Women’s Rights Service, Unite the Union, East European Resource Centre, British Red Cross, Kalayaan, Kanlungan Filipino Consortium, Work Rights Centre, and Glass Door Homeless Charity.

Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation.

Indoamerican Refugee and Migrant Organization (IRMO) works to enable the development, agency, and participation of Latin Americans and other Spanish and Portuguese speakers, by responding to both immediate needs and structural inequalities.

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Executive Summary

A range of often intersecting factors determine an individual's vulnerability to labour exploitation. In order to prevent, and respond holistically to labour exploitation, it is essential that workers are equipped with the ability to push back against labour abuse and to exit exploitative situations.

This briefing summarises research undertaken by the Labour Exploitation Advisory Group (LEAG)¹ which suggests that labour exploitation in the UK should be addressed through an approach based on the 'continuum of exploitation'. That is, that labour exploitation should be recognised as part of a continuum of experiences which range from decent work through to minor and major labour law violations, all the way to severe exploitation, including human trafficking. The full report, of the same title, is available at www.labourexploitation.org/publications.

Limits of the 'modern slavery approach'

The UK's approach to labour exploitation has a disproportionate focus on (increasingly limited) anti-trafficking support and protections, with less focus or resources given to labour abuses which don't, or haven't yet, reached the slavery threshold, or to addressing the structural causes of exploitation. The resulting lop-sided system takes a largely 'after-the-fact' approach that fails to remove or mitigate the structural drivers of exploitation, or effectively prevent exploitation or re-exploitation.²

Even where victims and survivors of exploitation meet the threshold for protection and support under the anti-trafficking system, the gaps in support may impede recovery, re-traumatise survivors and often create vulnerabilities to exploitation and abuse. LEAG is finding that the system is failing to meet victims' and survivors' needs.

What is the continuum of exploitation?

Workers' experiences can be understood as existing on a "continuum". At one end there is decent and well-paid work, with bad practices such as breaches of employment rights (e.g., unpaid wages, discrimination etc.) situated along the continuum, culminating at the opposite end in severe labour exploitation, such as human trafficking and forced labour. Where minor breaches of rights occur and are not sufficiently addressed, it increases the risk of more severe exploitation along the continuum.

One of the consequences of the UK's focus on 'modern slavery' has been that the UK has primarily viewed labour exploitation as a criminal law matter, rather than focusing on the structural drivers that produce the conditions in which forced labour occurs in the first place. If we look towards areas such as employment rights and immigration policy as central to the question of labour exploitation, a fuller array of policy levers become visible.

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² The UK government does record any data regarding re-trafficking rates. (University of Nottingham Rights Lab and Independent Anti-Slavery Commissioner (IASC), 2021, p. 12).

The factors that produce vulnerabilities at the shallow end of the continuum create risks across the continuum as a whole. For instance, the inability to challenge wage theft from an employer may make someone financially precarious, and therefore less able to leave exploitative employment. Similarly, a failure to have proactive monitoring of a workplace may facilitate a culture of impunity, with employers feeling emboldened to exploit their staff without repercussion.



Fig: Graphic produced by Focus on Labour Exploitation (2022) - continuum of exploitation

At one end of the continuum there is decent and well-paid work,³ with bad practices such as breaches of employment rights (such as unpaid wages, discrimination etc.) situated along the continuum, culminating at the opposite end of the continuum in severe exploitation, such as human trafficking and forced labour.⁴ The purpose of the continuum of exploitation approach is not to give a precise legal analysis of specific situations, but rather to understand the structural causes and fundamental problems that allow exploitation to take place in order that these can be addressed.

The interventions and remedies available to each worker may vary across the continuum of exploitation. For instance, in some instances criminal law might be the applicable legal framework, such as when an employer has stolen the employee's passport. In other situations, employment law may be the relevant framework, such as in the case of discrimination, or non-payment of wages.

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An approach which focuses only on intervention or the provision of assistance when exploitation reaches the trafficking or modern slavery threshold places a significant focus on the act of exploitation

³ Decent work is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also respects the physical and mental integrity of the worker in the exercise of their employment. (UN Committee on Economic, Social and Cultural Rights (CESCR), 2006, para. 7).

⁴ Severe labour exploitation takes place when a work situation deviates significantly from standard working conditions as defined by legislation or other binding legal instruments, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment, and is criminal where the exploitation occurs. Severe labour exploitation includes as a minimum coercive forms of exploitation, such as slavery, servitude, forced or compulsory labour, and trafficking. (European Union Agency for Fundamental Rights (FRA), 2019, p. 10)

as an exception to the norm. Instead, adopting a graduated understanding of exploitation can also allow us to appreciate how ‘external or indirect coercion’ are able to drive people into exploitation, for instance through the need to work in order to earn one’s living, even if that work is exploitative. External constraints and indirect coercion limits the ability to ‘freely’ make choices, and those decisions and actions that appear to be uncoerced, may take place against a backdrop of indirect coercion. For instance, many undocumented workers report that as a result of the illegal working offence, they are forced to accept any work that they are able to get and therefore accept practices they may not otherwise accept. When the choice is between destitution or abusive work, this is not really a choice.

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The question of whether these indicators are present often does not have a simple ‘yes’ or ‘no’ answer. Instead, the complex dynamics of the real-world situation prevents straightforward identification. Many workers have restricted or even no options to challenge, or to leave, exploitation. Unscrupulous employers are, in this sense, enabled by the wider social context. For instance, the absence of options available to migrants restricted by the immigration rules to a particular employer or sector limits the decisions open to them, often compelling them to continue exploitative work. Even where an employer is not actively and deliberately taking advantage of an individual’s immigration status, workers may still experience indirect structural coercion by which an individual with limited options is forced into, or to continue, exploitative labour. The penalty of immigration detention or removal to another country by the state may be viewed by the exploited worker as more severe than any penalty an individual unscrupulous employer could deploy. This dynamic is being exacerbated by recent legislation such as the Nationality and Borders Act 2022, as well as the Illegal Migration Act 2023. In addition to denying access to UK employment law, these instruments act to freeze victims and survivors of trafficking out of protection and support under the modern slavery system, increasing their risk of harm and re-trafficking, while also amplifying rhetoric against migrants more generally.

Recommendations

LEAG advocates for an approach to labour exploitation which is centred on both prevention through early options as well as a higher threshold response which prioritises victim and survivor wellbeing. This must be focused on identifying the issues that create risks of exploitation and ensuring early access to support where necessary.

For any response to be effective, at any stage of the continuum, it must address the factors which have led to the situation of exploitation, and offer better options.

Financially, I needed the job, so I decided to carry on, to put up with it, and I put up with a lot.

Mariana, Female, Latin American domestic worker

Proactive Labour Market Enforcement

To the UK Government:

- The UK's labour market enforcement system must be accessible to workers in practice, and provided with robust enforcement powers. These reforms, which may take the form of a Single Enforcement Body, must be grounded in the principles of protected reporting, evidence-based resourcing, compliance with international standards at a minimum, fair and efficient remediation, gender sensitivity, and meaningful worker participation.
- Resourcing of UK labour market inspection authorities should be greatly increased, at minimum exceeding the ILO target of one inspector for every 10,000 workers in the short term. They must have effective enforcement powers.

To the DLME and labour market enforcement authorities:

- LMEA's should set a goal of at least 40 percent reactive and 60 percent proactive unannounced inspections, whilst ensuring worker complaints receive adequate responses within reasonable timeframes.

Creating a safe and fair immigration system

To the UK Government:

- Repeal section 24B of the Immigration Act 1971 which criminalises the act of working without required documentation in the UK (the illegal working offence).
- Ensure that all migrant work visas meet minimum standards of fairness and safety and do not create risks of exploitation through migration debts.

To the Home Office:

- Ensure that all work visas allow for workers to change employers in practice, are

renewable in-country subject to ongoing employment, and have a route to settlement. Visas must not restrict workers to specific employers or workplaces.

- Bridging visas or the ability to apply to renew a visa once expired, (alongside safeguards from any immigration enforcement action and protection from impact on any future visa / citizenship application), should be provided to workers who became undocumented as a result of no longer being in employment.
- Specialist legal advice together with options for regularisation should be available to workers in the UK with irregular status.
- The Home Office should ban or regulate the use of repayment clauses that require workers to pay back the upfront costs that the employer has invested in recruiting staff if they leave employment.
- While short term work visas continue to be used, the Home Office should provide access to specialist independent advice and a ‘fast-track’ labour abuse reporting channel and resolution mechanism.
- The Home Office should not have a role in monitoring labour market compliance.

Secure reporting pathways for migrant workers

- Labour market and immigration enforcement activity should be separated.
- Labour rights should be at the centre of all inspections conducted by labour inspectorates;
- Labour market enforcement agencies should not report immigration offences to the Home Office, as this is shown to interfere with their primary duties and efficiency;
- Labour market enforcement agencies should not establish bulk data-sharing agreements or make their databases available to the Home Office for immigration enforcement purposes as this undermines trust and prevents workers from reporting exploitation. Combined with a lack of proactive enforcement this creates the conditions for further exploitation to thrive
- Remove responsibility for human trafficking from the Home Office, and place under a more suitable department such as the Ministry of Justice.

Exercising agency

To Government:

- Repeal anti-trade union legislation and policies such as the Trade Union Act 2016 and Strikes (Minimum Service Levels) Act 2023 and strengthen trade union rights;
- Ensure meaningful access to English for Speakers of Other Languages (ESOL) classes for all migrants with English language needs.

To Trade Unions:

- Consider how trade unions can better engage, represent and organise with migrant workers, including reviewing their membership models.

Legal frameworks

To Government:

- Fully incorporate the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) and the Anti-Trafficking Directive into domestic law
- Ratify ILO Convention 189 on Domestic Workers

To the Ministry of Justice:

- Extend the scope of legal aid to cover employment advice and representation in Employment Tribunals. Improve access to legal aid by making the financial eligibility criteria less stringent and ensuring it is sustainable for legal aid practitioners to continue providing this service. Extend the scope of immigration legal aid to cover independent legal advice and representation for those on restricted visas who meet the legal aid financial thresholds.
- There should be no capital or income tests for eligibility for legal aid for people in the NRM.
- Extend the timeline for bringing all Employment Tribunal claims including unlawful deduction of wages claims and claims under the Equality Act 2010 cases, from three months minus one day to six months, at a minimum. This should be done in recognition of the many barriers workers face, which often delay reporting, including the psychological impact of trauma caused by severe forms of abuse.
- Ensure workers on short-term visas have access to a fast-track complaints mechanism through which workplace grievances may be aired and remedied during their time in the UK.

Enforcing employment rights

To the DLME and Labour Market Enforcement Authorities

- Labour Market Enforcement Authorities need to be aware of racialisation and gendered dynamics within their work. Rather than discrete and siloed teams, it needs to be built into the lens they take to labour exploitation and abuse, including in relation to the higher percentage of women and minoritised groups in precarious and low-paid work, having dependencies.
- Labour Market Enforcement Authorities should have trained hotline respondents who speak the most common native languages of migrant workers and translation services should be available for other languages. Labour market enforcement authorities should ensure that all information is available in the language of migrant callers. This must include any automated messages.

Social protections and unfair costs

To the Home Office:

- Repeal the No Recourse to Public Funds (NRPF) policy, which has been shown to create and exacerbate risks of exploitation.
- Set immigration fees no higher than their administrative cost in line in line with the principles of fairness and affordability/reasonability

- Scrap the Immigration Health Surcharge.

To the Department for Work and Pensions:

- Extend Statutory Sick Pay to all workers who are currently not entitled to this provision so that people can afford to take time off when they are ill.
- Reform Universal Credit so it effectively protects against poverty and destitution, enabling people to negotiate decent work and leave exploitative jobs in the knowledge that they have a safety net to fall back on.

Community

To funders:

- Invest in long-term unrestricted funding for community support organisations that provide advice and support to migrant workers. This should seek to build capacity for complex case work, including legal advice and representation on employment rights and immigration issues. It should also allow for community-based outreach programmes targeted to migrant communities.

To the Foreign, Commonwealth and Development Office (FCDO) and Home Office:

- While information about employment rights in the UK can only be effective if those rights can be accessed in practice, FCDO, and all visa issuing centres should properly inform workers applying for entry clearance of their rights as workers (and how to enforce them) in the UK.

Pay


To Government:

- Determine National Minimum Wage/National Living Wage rates based on what workers and their families need to meet the cost of living, as modelled by the Living Wage Foundation.
- Remove the current lower rates for young workers, thereby ensuring the same minimum wage for all workers.
- Remove the two-year backstop on national minimum wage claims.

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