

**RESEARCH  
PAPER**

# **RISKY BUSINESS: TACKLING EXPLOITATION IN THE UK LABOUR MARKET**



**FOCUS ON  
LABOUR  
EXPLOITATION**

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Risky Business: Tackling Exploitation in the UK Labour Market  
FLEX 2017

Written by FLEX

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Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation.  
For more information, please visit our website: <http://www.labourexploitation.org>

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## EXECUTIVE SUMMARY

This report sets out Focus on Labour Exploitation's (FLEX) action plan for a UK response to exploitation in the labour market. It starts by identifying the picture of risk to individuals of exploitation in the UK labour market, then presents solutions to such exploitation through: labour inspection and enforcement; gateways to advice and remedy; and corporate accountability. In so doing the report provides a comprehensive guide to an effective response to human trafficking for labour exploitation in the UK.

Human trafficking for labour exploitation is at once a serious crime, a human rights breach and a violation of labour law. It takes place in almost every country in the world, yet is widely unrecognised, misunderstood and, as a result, neglected. Under both the United Nations Human Trafficking Protocol, and the ILO Forced Labour Protocol, the UK government has an obligation to prevent the exploitation of workers through abuse of their vulnerability. The ILO Forced Labour Protocol in particular requires States to address 'factors that heighten the risks of forced or compulsory labour', including by undertaking efforts to ensure that labour laws designed to prevent exploitation apply to all workers and all sectors of the economy.<sup>1</sup>

It is in this context that FLEX welcomes the role of the UK Director of Labour Market Enforcement (DLME). FLEX aims to ensure that the DLME establishes an evidence-based picture of risk in the UK labour market and devises worker and victim centred solutions to such risk to detect and prevent labour exploitation. To this end this report highlights examples of international best practice in the prevention of labour exploitation in comparable country contexts and highlights some of the obstacles to effective responses.

## OVERVIEW

Chapter One provides analysis of risk and vulnerability to exploitation in selected sectors of the UK labour market. These include labour abuses which leave workers impoverished or indebted and therefore increasingly reliant on work to survive, and employment relationships or structures that limit access to justice. The way in which a labour inspection and enforcement strategy designates 'high-risk' sectors provides the foundation for an effective response to labour exploitation.

Chapter Two focuses on strategies for preventing labour exploitation through inspection and enforcement, highlighting the extremely limited resources for labour inspection in the UK and noting the strategies that can be used by labour inspectorates to effectively prevent labour exploitation. Importantly, it sets out steps that should be taken by the labour inspectorates in order to understand risk of exploitation in highly feminised sectors.

Chapter Three looks at gateways to information, noting that the channels by which workers report abuse and exploitation are key to both identification and support.

Chapter Four covers supply chain oversight. It discusses the way in which the State can play a role in ensuring businesses are operating on a level playing field when it comes to addressing exploitation in supply chains. It also looks at the leadership role that governments should play in addressing their own procurement. Finally, it cautions against relying on voluntary schemes as the primary monitoring tool.

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<sup>1</sup> International Labour Organisation, *Protocol of 2014 to the Forced Labour Convention*, 1930, Article 2. Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029)

## **RECOMMENDATIONS**

### **CHAPTER TWO: PREVENTING EXPLOITATION THROUGH LABOUR INSPECTION**

#### **LICENSING**

1. Any new licensed sectors should be identified through a thorough and rigorous mapping of risk in the labour market.
2. The expansion of licensing should be carried out in a multi-stakeholder way that ensures detailed expertise can be applied to license standards and oversight.
3. GLAA licensing in new sectors should be guided by indicators of worker vulnerability to abuse and exploitation as set out in Chapter One.

#### **BALANCE OF PROACTIVE AND REACTIVE INSPECTION**

4. Labour inspection authorities should set a goal of at least 40 percent reactive and 60 percent proactive inspections, whilst ensuring worker complaints receive adequate responses.
5. The GLAA should have the power to make 'repayment orders' as suggested by the Government in 2012.

#### **NEW EMPLOYMENT MODELS, NEW OVERSIGHT MECHANISMS**

6. The UK needs an overarching labour inspectorate. The Director of Labour Market Enforcement should work towards a medium term goal to bring together disparate labour inspection authorities in to one central body.
7. The Director of Labour Market Enforcement should support the proposal made in the Taylor Review of Modern Working Practices, that the remit of the Employment Agency Standards Inspectorate be extended, along with an additional resource commitment, to cover umbrella companies.

#### **JOINT WORKING: THE POSITIVES AND NEGATIVES**

8. In order to ensure the UK meets its international obligations to identify human trafficking and forced labour there must be a strict firewall between immigration enforcement and labour inspection.

#### **RESOURCING FOR LABOUR INSPECTION**

9. Resources to UK labour inspection authorities should be greatly increased, at least meeting the ILO target of one inspector for every 10,000 workers in the short term, aiming to act as a best practice example in Europe in the long term.

#### **WOMEN WORKERS & EXPLOITATION IN HIGHLY FEMINISED LABOUR SECTORS**

10. The Director's Labour Market Enforcement Strategy should specifically address the impact of gender on risk of exploitation, and the structures that contribute to risk of exploitation in highly feminised sectors.
11. Each of the labour market enforcement bodies should develop and implement a gender policy and training programme that provides guidance on gender-related abuse and gender sensitivity in the monitoring, identification and enforcement of labour abuses.
12. A joint working group on labour market enforcement in feminised labour sectors with members from each of the labour market enforcement bodies should be established to facilitate the sharing of key learning and the development of a common strategy.

## CHAPTER THREE: GATEWAYS TO INFORMATION

### IMPROVING UK HELPLINES TO ADDRESS EXPLOITATION, ACAS

13. Acas should ensure that all information is available in the language of migrant callers, this must include any automated messages.
14. The preferred calling times of vulnerable workers should be piloted and Acas' opening hours extended accordingly.
15. The quality of guidance provided by Acas should be evaluated, with a particular focus on the guidance provided in cases of labour abuse and exploitation.
16. Acas' communications strategies in communities and industries with significant numbers of at risk workers should be evaluated and approaches adjusted accordingly.

### IMPROVING UK HELPLINES TO ADDRESS EXPLOITATION, GLAA HOTLINE

17. A separate budget, in line with the GLAA's increased remit, should be allocated to the GLAA hotline and the hotline should be resourced to provide advice in cases of labour abuse and exploitation.
18. The GLAA hotline should be widely communicated to vulnerable workers, migrant communities and to the general public.
19. The GLAA should have trained hotline respondents who speak the most common native languages of migrant workers and translation services should be available for other languages.

### CENTRALISED REPORTING SYSTEMS

20. The establishment of a centralised helpline under the office of the Director of Labour Market Enforcement should be considered.
21. All worker hotlines should allow for anonymous reporting.

### APPS

22. The development of an app with accessible information to workers and possibly a function to track hours and wages and report non-compliance anonymously should be considered.

## CHAPTER FOUR: BUILDING TRANSPARENCY & ACCOUNTABILITY IN SUPPLY CHAINS

### LAYERS IN SUPPLY CHAINS

23. A limit on the number of layers should be targeted at labour supply chains and first implemented in sectors with a high risk of abuse as a result of extended subcontracting, such as construction and cleaning.
24. Legislation limiting the number of vertical layers in supply chains should include provisions on joint and several liability.
25. Different approaches to limiting vertical supply chains should be considered, including the possibility of introducing a limit in public procurement.
26. The responsibilities for implementation of a potential limit on layers in supply chains should be clearly defined and the responsible authorities appropriately resourced.

### CERTIFICATION

27. Voluntary certification schemes should not be adopted in place of licensing or mandatory certification.
28. Mandatory certification or licensing systems established in high-risk sectors must set specific standards for work conditions, and monitor and enforce these standards through regular inspections.

#### **JOINT LIABILITY**

29. Joint and several liability for the payment of wages and holiday entitlements should be introduced into UK law.
30. The Director for Labour Market Enforcement should conduct a review to determine the scope of new joint liability legislation. The review should consider:
  - a. The types of workers to be covered by the legislation.
    - i. FLEX recommends that all workers, and in particular agency and temporary workers, should be covered.
  - b. The sectors to be covered by the legislation.
    - i. FLEX recommends that the legislation cover workers in all sectors, and at a minimum, covers workers in high risk sectors such as construction, cleaning, and care.
  - c. How the legislation will be enforced.
    - i. FLEX recommends that the legislation be monitored and enforced by HMRC and the GLAA.
    - ii. FLEX recommends that in addition workers be enabled to enforce the liability of principal or intermediate contractors through claims to the Employment Tribunal.

#### **HOT GOODS PROVISIONS**

31. The introduction of a 'hot goods' provision should be considered for compelling the payment of wages and other entitlements owed to exploited workers.

#### **PUBLIC PROCUREMENT**

32. The Public Contracts Regulations 2015 should be amended to require contracting authorities to exclude any economic operators found to be directly responsible for abuses of fundamental labour rights.
33. The UK government should develop a Code of Practice for Ethical Employment in Supply Chains, which requires contracting authorities to: a) have regard to employment practices as part of the procurement selection criteria; and b) exclude economic operators that do not have adequate policies or procedures to protect the labour rights of workers in their supply chain.
34. Suppliers contracted by the UK government should be contractually required to adhere to a Code of Conduct, and subject to termination of contract where breaches are identified and not adequately remedied.

## CHAPTER ONE

# UNDERSTANDING RISK IN THE UK LABOUR MARKET

In much of its work, FLEX has set out the link between labour abuses and labour exploitation. This has involved analysis of the way in which labour abuses make workers vulnerable to severe exploitation. Recent work sets out the gaps in protections and the created vulnerabilities that combine to increase the background risk of exploitation for workers. FLEX has also looked at how to increase individual resilience and close protection gaps as a means of preventing exploitation.

FLEX knows, through its engagement with individuals that have faced exploitation, that workers are placed in a position of vulnerability by labour market abuses or structures that disempower them. Our work is guided by international law on human trafficking, forced labour, slavery and servitude. The United Nations Human Trafficking Protocol (2003) establishes the concept of ‘abuse of a position of vulnerability’ as a means of exploitation, which occurs when an individual’s personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploitation. The United Nations Office on Drugs and Crime’s (UNODC) Guidance Note on ‘abuse of a position of vulnerability’ notes that ‘Circumstantial vulnerability may relate to a person’s unemployment or economic destitution’<sup>2</sup> and the UNODC Model Law on Trafficking in Persons notes that abuse of vulnerability may include the abuse of the economic situation of a person.<sup>3</sup>

Examples of created vulnerability include:

**Labour abuses** that leave workers impoverished or indebted and desperate to survive, such as: non-payment of minimum wage, excessive charges for accommodation, equipment or documentation or withholding passports;

**Employment relationships** that limit access to justice for abuses, including: long employment chains, precarious work including zero-hours contracts, and false self-employment;

**Migrant status** that places workers at risk of abuse by unscrupulous employers, such as tied visa status, temporary visas and access to the labour market with limited welfare provisions.

Under both the United Nations Human Trafficking Protocol, and the ILO Forced Labour Protocol, the UK government has an obligation to prevent the exploitation of workers through abuse of their vulnerability. The ILO Forced Labour Protocol in particular requires States to address ‘factors that heighten the risks of forced or compulsory labour’, including by undertaking efforts to ensure that labour laws designed to prevent exploitation apply to all workers and all sectors of the economy.<sup>4</sup>

Over the last year, FLEX has undertaken focused research across three UK labour sectors – **construction, bakeries and fishing** – examining the vulnerabilities of migrant workers to human trafficking for labour exploitation. Through its work on women workers and labour exploitation FLEX has also been assessing the level of risk of exploitation in highly feminised labour sectors, care, cleaning, hospitality and domestic work. Finally, FLEX has been looking at the contribution of Brexit towards EU citizens’ vulnerability to exploitation. This work has helped FLEX to start work on a risk analysis matrix to guide more focused and intelligence-driven monitoring and intervention in areas of the labour market where there is greatest risk of trafficking for labour exploitation. This matrix will ultimately enable FLEX to understand the level of general background risk in a given labour sector as well as to plot the way in which different indicators interact in a given exploitative situation.

<sup>2</sup> UN Office on Drugs and Crime, *Guidance Note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 2012, p.2. Available at [https://www.un.org/ruleoflaw/files/UNODC\\_2012\\_Guidance\\_Note\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability\\_E.pdf](https://www.un.org/ruleoflaw/files/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf)

<sup>3</sup> UN Office on Drugs and Crime, *Model Law against Trafficking in Persons*, p.9. Available at [https://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf)

<sup>4</sup> International Labour Organisation, *Protocol of 2014 to the Forced Labour Convention*, 1930, Article 2. Available at [http://www.ilo.org/dyn/normlex/en/f?p=NOR\\_MLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](http://www.ilo.org/dyn/normlex/en/f?p=NOR_MLEXPUB:12100:0::NO::P12100_ILO_CODE:P029)

**FLEX RISK INDICATORS**

CATEGORY	VULNERABILITY	RESILIENCE
<b>Migrant status</b>	No or limited right to remain; restrictions on work and access to public funds; registration requirements; tied visas	Right to work
<b>Unionisation</b>	Non-unionised	Unionised
<b>Community</b>	Limited community ties	Strong community support
<b>Contract</b>	Zero hours; short hours; extensive subcontracting	Worker contract hours and terms requirements met
<b>Terms</b>	Self-employment; agency work; part-time work	Employee, full time
<b>Pay</b>	Debts; deductions; mandatory unpaid time; non-payment of national living wage	Living wage
<b>Treatment</b>	Multiple, persistent labour abuses; health and safety breaches; discrimination	Accessible routes to remedy; worker awareness of advice gateways
<b>Oversight</b>	Deregulation; poor enforcement; prioritisation of immigration control	Strong, worker-centred labour inspection and enforcement; firewall between immigration control and labour inspection
<b>Welfare</b>	Homeless; destitute; no recourse to public funds	Access to benefits, housing and ongoing support

**a) INDICATORS OF VULNERABILITY**

**i. MIGRANT STATUS**

FLEX finds that migrant status is a relevant indicator of exploitation where the status of an individual bears a relationship to their ability to access their labour rights. It is obvious and yet important to note that migrants are not inherently vulnerable to exploitation. It is equally important to note that the vast majority of migrants that are exploited for their labour have the right to work in the UK as EEA nationals – 82% of all victims of labour exploitation, for which the country of origin was known, in the last National Crime Agency (NCA) Strategic Assessment were EEA nationals.<sup>5</sup>

Regardless of this fact, the approach adopted by UK immigration enforcement, which views undocumented working and modern slavery as two sides of the same coin, is now evidenced in many aspects of the UK response to labour exploitation. A major problem with such an approach is that it simplistically and dangerously attributes an individual's exploitation to their migrant status, rather than looking at the overarching labour market structures that permit exploitation of workers. It also seems to provide justification for an immigration led response to exploitation. This is misguided when the NCA statistics themselves demonstrate that there is limited justification for immigration status to be the overriding focus of a modern slavery response.

FLEX has seen the impact of undocumented migrant status on workers' rights particularly profoundly where workers face abuses and where their right to enforce their employment rights is denied on the grounds of their status. Additionally, workers that have been forced into undocumented status by their traffickers are often held in situations of exploitation through threats that they will be reported to the Home Office if they do not comply. There is a general belief in the UK

<sup>5</sup> National Crime Agency, *NCA Strategic Assessment, The Nature and Scale of Human Trafficking in 2014, 2015*, p. 22. Available at <http://www.nationalcrimeagency.gov.uk/publications/656-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2014/file>

that undocumented workers are not entitled to rights – this is felt nowhere more acutely than by undocumented workers themselves. However, at the international level all UN Member States, including the UK, have clearly committed to upholding the rights of all migrants regardless of status, most recently at the UN Summit for Refugees and Migrants.<sup>6</sup>

Migrants under tied visas have also been shown, in the UK context, to be made more vulnerable by their migrant status. The organisation Kalayaan, a member of FLEX's Labour Exploitation Advisory Group, has widely documented the poor treatment of overseas domestic workers as a result of their tied visa. In FLEX's recent report on the impact of Brexit on labour exploitation, evidence from Kalayaan shows that overseas domestic workers are left unable to challenge their employer about abusive treatment as a direct result of their tied status.<sup>7</sup> The tying of workers to particular employers, using Tier 2 and other sponsor-based visas, has also arisen in other sectors such as care and hospitality. FLEX has heard evidence of the impact of the worker registration scheme introduced for A8 nationals upon their entry in to the UK labour market. Some workers were charged large sums to facilitate their registration and non-registration meant workers did not have the same rights as UK workers – a fact that was used against workers by unscrupulous employers.

## ii. COMMUNITY AND UNIONISATION

Unions provide members with information on their rights, as well as mechanisms by which to exercise them, and low unionisation – or even awareness of unions – in low-paid professions leaves workers without support to access labour market protections. FLEX finds that the level of unionisation amongst individuals that end up in exploitation in the UK is extremely low, and that more frequently informal and formal migrant community support is present. In FLEX's experience many migrant workers depend upon support from their migrant community in order to address labour abuses and exploitation and yet there are very few formal migrant community support organisations outside London that have the capacity to offer advice on employment rights in the UK.

Evidence suggests that high levels of agency staff has a direct and negative impact on the ability of unions to establish a presence in a given workplace.<sup>8</sup> This is supported by the findings of FLEX's research of both UK and migrant agency staff working at a large bakery, who were all unaware that a bakeries union existed, despite significant union activity at the site. In most non-professional sectors, men are more likely to be union members than women, and amongst part-time workers, most of whom are women, union membership is low. The highly feminised sectors of cleaning,<sup>9</sup> hospitality, domestic work, and care<sup>10</sup> have low rates of union membership, particularly for low-level workers in those sectors. In the hotel sector only 4% of workers are represented by a trade union,<sup>11</sup> and attempts to unionise can lead to outsourcing, job cuts and other repercussions.

Migrant workers in the UK can often find themselves isolated without support networks, facing language barriers and without information available about employment rights and how to access them. FLEX's recent research on Brexit and labour exploitation demonstrated that some migrant support organisations are currently facing an unsustainable level of demand on their advice services, one reporting an increase of 734% demand for information since the Brexit referendum.<sup>12</sup>

## iii. CONTRACT AND TERMS

- **Flexible working:** Flexibility can be supported by workers, for example, where it can accommodate childcare needs or when workers wish to mix work and study.<sup>13</sup> However, for many, practices such as short notice shift cancellations, irregular working hours or mandatory self-employment offer low pay, poor conditions and irregular or unsociable hours. In the bakeries sector, there are high numbers of temporary agency staff, which often results in short-notice shift cancellations, irregular

6 See Global Alliance Against Trafficking in Women and UN New York Declaration for Refugees and Migrants, outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paragraphs 5 and 41. Available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1)

7 FLEX and Labour Exploitation Advisory Group (LEAG), *Lost in Transition: Brexit and Labour Exploitation*, 2017, p.12. Available at <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20POSITION%20Impacts%20of%20Brexit-Final.pdf>

8 Sam Scott, *Migrant-Local Hiring Queues in the UK Food Industry*. Population, Space and Place, 2013, 19, p. 459-471

9 Eurofound, *UK: The representatives of trade unions and employer associations in the cleaning activities sector*, 2012. Available at <https://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/united-kingdom/uk-the-representativeness-of-trade-unions-and-employer-associations-in-the-cleaning-activities>

10 Kristy McGregor, 'Alarm over lack of union membership among care workers', *Community Care*, 27.04.11, <http://www.communitycare.co.uk/2011/04/27/alarm-over-lack-of-union-membership-among-care-workers/>

11 Alex Balch and Glynn Rankin, *Facilitating Corporate Social Responsibility in the Field of Human Trafficking: The Hotel Sector in the UK*, 2014, p.24

12 FLEX and Labour Exploitation Advisory Group (LEAG), *Lost in Transition: Brexit and Labour Exploitation*, 2017, p.4.

13 Neil Carberry, 'A flexible workforce is key to the UK's economic prospects', *The Guardian* 14.03.14, <https://www.theguardian.com/careers/flexible-workforce-key-uk-economic-prospects>

shifts and low hours for those employed temporarily through labour providers. The construction sector is known for 'short term contracts, complex sub-contracting chains and informal employment practices, all of which leave workers open to exploitation'.<sup>14</sup> For many already on low pay and struggling to make ends meet, the loss of their job can easily result in homelessness, debt and other associated risks that can compound their vulnerability and even increase the likelihood of further exploitation as they look for more work. The possibility of being fired without notice or reason compounds fear and dependency, making it difficult to complain about abusive or exploitative treatment. As one FLEX interviewee explained, "you cannot complain about anything. Or if you do, you can go home."

- **Part-time working:** Care, hospitality and cleaning work is frequently part-time, with or without the use of zero hours contracts. In the cleaning sector 78% of work is part-time. In the hospitality sector, about half of all employment is part-time. Part-time work and flexible working arrangements can be beneficial for women workers, allowing them to combine work with family and other commitments. However, it can also cause financial hardship, uncertainty, underemployment, and the need for women to take multiple jobs to make ends meet.
- **Self-employment:** In the construction sector there is widespread use of self-employment as the preferred contracting arrangement. Self-employed workers have significantly fewer rights than those employed directly by a company. The former union for workers in the construction sector, UCATT – now merged with Unite – asserts that there is a direct link between these types of employment arrangements and exploitation, and in many instances employees are not really working for themselves.<sup>15</sup> The industry is also covered by a unique tax regime – the Construction Industry Scheme (CIS) – which allows employers to deduct and send tax to HMRC directly from self-employed workers' wages, but they do not deduct National Insurance or make National Insurance payments, which makes self-employed workers much cheaper to hire. According to UCATT, the CIS has institutionalised self-employment, as contractors register workers as self-employed to cut labour costs in order to remain competitive. This puts falsely self-employed workers at significant disadvantage in terms of rights and protections. In 2013, it was estimated that as a result of employment intermediaries facilitating false self-employment, 200,000 workers in the construction sector were wrongly designated self-employed.<sup>16</sup>
- **Umbrella companies:** In 2015, it was estimated that the wages of between 300,000 and 400,000 construction workers were managed through umbrella companies.<sup>17</sup> Though this system was intended to prevent abuse of self-employed status by agencies, a number of concerns have been raised about the way in which umbrella companies operate in the sector, including the charging of administration fees and other deductions which leave workers significantly worse off under the scheme.<sup>18</sup> UCATT has referred to umbrella companies as a 'con-trick' in a report detailing the sharp fall in workers' pay as a result of being moved onto this system,<sup>19</sup> and Unite the union has called for the government to ban umbrella companies entirely.<sup>20</sup>

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14 Union of Construction, Allied Trades and Technicians (UCATT), *The Hidden Workforce Building Britain*, 2011, p.12. Available at <http://ucatt.infobo.co.uk/files/publications/UCATT%20Report%20The%20Hidden%20Workforce%20Building%20Britain%202011.pdf>

15 Ibid

16 Antony Seely, *Self-employment in the construction industry*. House of Commons Library, Briefing paper No. 000196, 2016, p.9. Available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN00196>

17 BBC The One Show, 31.03.15. Available at <https://www.youtube.com/watch?v=IHRAgNsyNZo>

18 Samantha Downes, 'Umbrella companies: the latest way exploit Britain's temporary workers', *The Guardian*, 21.10.16, <https://www.theguardian.com/money/2016/oct/21/temporary-workers-umbrella-companies-extra-costs-dodging-ni-cutting-rights-supply-teachers>

19 Union of Construction, Allied Trades and Technicians (UCATT), *The Umbrella Company Con Trick*, 2014, p.1. <https://www.ucatt.org.uk/files/publications/141023%20Umbrella%20Company%20Con-Trick%20Report.pdf>

20 Unite the Union, 'Unite demands government outlaws umbrella companies' 24.02.17. Available at <http://www.uniteunion.org/news/unite-demands-government-outlaws-umbrella-companies/>

- Subcontracting:** The construction industry's reliance on often complex subcontracting arrangements has de-centralised both control and oversight by creating multiple layers of contracting and subcontracting at the same site. This means that a large national building company may be in charge of the site and establishing subcontracting agreements, but will have little oversight over working conditions for those working for subcontractors. The Labour Exploitation Advisory Group (LEAG) have identified long employment chains, such as those common in the construction sector, as a key driver of exploitation, due to lack of accountability for abuse and confusion about who workers are ultimately employed by.<sup>21</sup> When responsibility for working conditions is obscured by layers of subcontracting and mechanisms for remedying abuse are unclear, workers are left with little recourse to address problems and claim their rights. Long subcontracting chains, often combined with use of agencies and umbrella companies, can mean that workers don't know who their employer is or who is ultimately responsible for a construction site or project, which makes it extremely difficult to take an employment case or seek enforcement of rights.

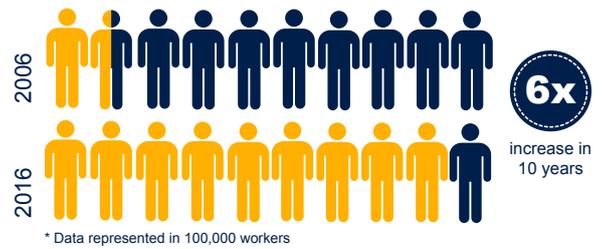
**iv. PAY**

Low pay and excessive deductions for services, living costs or transport can mean workers being paid well below the national living wage. Further, the employment status of individuals can also contribute to a reduced salary and limited ability to foresee income and plan living costs. FLEX's research has found that workers on zero or short hours contracts are particularly likely to be on the borderline of poverty, whereby small fluctuations in working time offered has an impact on survival. In many cases, the paying of proper wages is avoided or undermined by common and deliberate business practices. For example, in the cleaning sector, a hospital contractor reportedly uses temporary agency staff to avoid paying NHS rates to cleaners.<sup>22</sup> In the care sector, the common refusal to pay travel time to workers who spend significant time travelling between clients means those workers are frequently paid for only a fraction of the time spent working.<sup>23</sup> As workers are frequently on zero hours contracts, cancelled appointments or last minute shifts also mean that workers take home less than expected.<sup>24</sup>

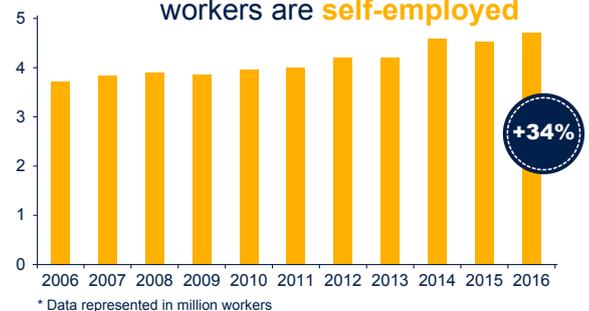
FLEX research found agency workers in the bakeries sector earning less than non-agency colleagues doing the same job. Coupled with the fact that agency workers are often given



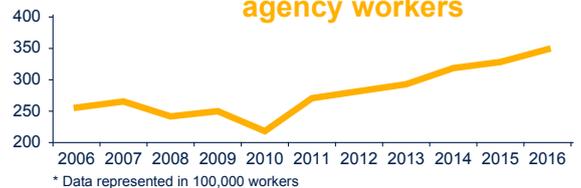
almost **1 million** workers in **zero hours contracts**



over **4.6 million** workers are **self-employed**



**36%** increase in **agency workers**



Source: Office of National Statistics, Labour Force Survey

21 FLEX and the Labour Exploitation Advisory Group (LEAG), *Labour Compliance to Exploitation and the Abuses In-Between*, 2016, p.5. Available at <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20position%20paper%20001.pdf>

22 Equality and Human Rights Commission, *The Invisible Workforce: Employment Practices in the Cleaning Sector*, 2014, p.69. Available at [https://www.equalityhumanrights.com/sites/default/files/the\\_invisible\\_workforce\\_full\\_report\\_08-08-14.pdf](https://www.equalityhumanrights.com/sites/default/files/the_invisible_workforce_full_report_08-08-14.pdf)

23 Baroness Denise Kingsmill CBE, *The Kingsmill Review: Taking Care*, 2014, p. 24. Available at [https://www.policyforum.labour.org.uk/uploads/editor/files/The\\_Kingsmill\\_Review\\_-\\_Taking\\_Care\\_-\\_Final\\_2.pdf](https://www.policyforum.labour.org.uk/uploads/editor/files/The_Kingsmill_Review_-_Taking_Care_-_Final_2.pdf)

24 See Hilary Osborne, 'A day in the life of a care worker: 23 house calls in 12 hours for £64.80', *The Guardian*, 17.11.16, <https://www.theguardian.com/uk-news/2016/nov/17/day-in-the-life-of-a-care-worker-zero-hours-contracts>

fewer hours than expected, FLEX found a strong risk of in-work poverty for such workers. Equally, in the construction sector the existence of umbrella companies was found to contribute to workers being paid below minimum wage. Self-employed workers that are not being paid a living wage have reported to FLEX researchers that their fear of losing work acts as a deterrent to their reporting labour abuses.

Being paid below minimum wage is common in highly feminised sectors cleaning, care, hospitality and domestic work. In the hospitality sector some workers are paid below minimum wage, and it is common for workers not to be paid for 'extra' time worked, such as time spent finishing required tasks (for example number of rooms per shift), waiting to start work or attending staff meetings.<sup>25</sup> Some staff are paid fixed weekly or monthly amounts which do not specify or reflect the hours worked, making it impossible to calculate whether they are being paid minimum wage. Workers in the hospitality industry also frequently have deductions from their wages for 'training', uniforms, accommodation or equipment costs.<sup>26</sup>

The Kingsmill Review found that evasion of National Minimum Wage in the care sector was 'rife', and came in numerous forms. In addition to low pay rates, care workers are also frequently not paid for travel time, for training time, for overtime, or for being on call. A 2013 report by HMRC entitled 'National Minimum Wage Compliance in the Social Care Sector' found that 48% of employers investigated were not complying with NMW law and owed over £300,000 in unpaid wages.<sup>27</sup> Care workers may also experience deductions from pay for uniforms or for accommodation.<sup>28</sup> In the domestic work sector, figures compiled by Kalayaan suggest that underpayment is endemic, and show that at least a third of workers coming into contact with Kalayaan were paid less than £50 per week.<sup>29</sup>

#### **v. TREATMENT**

Hate speech and discrimination by employers and colleagues creates fear and misinformation which increases vulnerability as migrants feel insecure and unsupported in the jobs they rely on, and therefore less able to speak out about abuse. FLEX's recent research into the impact of Brexit on labour exploitation identified incidents in workplaces of migrants told they could not speak out as they would soon be deported and become 'illegal'. Incidents in workplaces ranged from discrimination linked to being a European national, to being threatened and physically abused.<sup>30</sup>

In FLEX's research into the bakeries sector extremely poor and distinctive treatment of agency workers was evidenced. Workers at three separate sites spoke of agency staff being made to wear distinguishing clothing to separate them from full-time staff. Some expressed concerns that these clear distinctions created animosity between the two groups, and in some cases led to bullying and harassment against agency staff. One survey respondent wrote that she had experienced "some bullying" by older staff, which included "stares, comments and discrimination between blue hats (company) and red hats (agency)" saying that "they treat red hats differently."<sup>31</sup> One Polish worker who began his employment with the agency before being directly employed by the company claimed that he had been subjected to verbal abuse and threats of dismissal while employed by the agency, but that this had stopped once he was directly employed. Workers at two separate sites stated that management at their facilities treated agency staff much worse than those directly employed, including pressuring staff to work more quickly, shouting and losing their tempers, as well as allowing directly employed staff to take shifts from agency workers at very short notice.

Agency workers interviewed near one of the sites were also required to be at work 15 minutes before their shift, which was unpaid, under threat of dismissal. One worker relayed the contents of an SMS received:

*"For the ones who have been late, your shift starts at 10pm on the line, not by the gates. I will ring the security tomorrow at 9.50, and if you have not signed in by then you will be replaced.' There's texts like that all the time."*

25 Alex Balch and Glynn Rankin, *Facilitating Corporate Social Responsibility in the Field of Human Trafficking: The Hotel Sector in the UK*, 2014, p.24

26 Ibid

27 HMRC, *National Minimum Wage Compliance in the Social Care Sector*, 2013, p.3. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262269/131125\\_Social\\_Care\\_Evaluation\\_2013\\_ReportNov2013PDF.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262269/131125_Social_Care_Evaluation_2013_ReportNov2013PDF.PDF)

28 Baroness Denise Kingsmill CBE, *The Kingsmill Review: Taking Care*, 2014, p. 24. Available at [https://www.policyforum.labour.org.uk/uploads/editor/files/The\\_Kingsmill\\_Review\\_-\\_Taking\\_Care\\_-\\_Final\\_2.pdf](https://www.policyforum.labour.org.uk/uploads/editor/files/The_Kingsmill_Review_-_Taking_Care_-_Final_2.pdf)

29 Kalayaan, *Still enslaved: The migrant domestic workers who are trapped by the immigration rules*, 2014, p.2. Available at <http://www.kalayaan.org.uk/documents/tied%20visa%202014.pdf>

30 FLEX and Labour Exploitation Advisory Group (LEAG), *Lost in Transition: Brexit and Labour Exploitation*, 2017, p.5. Available at <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20POSITION%20Impacts%20of%20Brexit-Final.pdf>

31 FLEX survey

Some workers also expressed concern over the way employees were treated by the agency itself, often being threatened with dismissal if unable to attend shifts at short notice or treated aggressively should they have a query. These factors can contribute to a perceived lack of power on the part of workers, and the clear demarcation between directly employed and agency workers within the workplace undermines workers' sense of being an employee with equal rights.

In FLEX's research into the construction sector, the majority of interview participants reported being the subject of discrimination or abuse as a result of their nationality. One interviewee stated:

*"It depends a lot on your nationality. If you're Romanian, Bulgarian, Albanian, you know, from poorer countries, they take you for a fool. You don't have the same rights as everybody else. Or you do, but they won't give them to you."*

This quote illustrates the chilling impact that discrimination can have on an individual's perception of their rights, in the sense that one's rights are there to be given or taken away by others. Another interviewee felt consistently disadvantaged as a result of discrimination:

*"There's another huge problem: racism. If you're Romanian, actually, no, if you're anything else but English, you're down by 100 points to begin with. No matter how much you prove to them ... I'm more competent and earn less, but that incompetent guy earns more just because he's English."*

This kind of discrimination can contribute to a situation of unequal power between workers and increase the power differential between workers and employers, leaving the most vulnerable workers feeling entitled to less, and less able to challenge unfair or abusive treatment.

For women workers, issues of gender discrimination particularly arise around pregnancy and maternity leave, when they may suffer unfavourable treatment, a reduction of pay or hours, and termination of employment. A number of female cleaners reported to the Equality and Human Rights Commission in 2014 that they had been dismissed, treated unfavourably or threatened with dismissal when they became pregnant or lost their employment while on maternity leave.<sup>32</sup> In addition, women are more likely to experience sexual discrimination and harassment in the workplace, and these risks are increased where there exists a significant power imbalance between the employer and the woman worker. Women may be made to feel that sexual harassment is 'part of the job', particularly in sectors such as hospitality or domestic work, where women workers are expected to be accommodating and servient.

## **vi. OVERSIGHT**

Lack of awareness of employment rights in the UK is frequently cited as a barrier to workers reporting or challenging abuses in the workplace. Citizen's Advice has suggested that a 'growing variation in working patterns and contracts' has meant 'understanding employment rights has become more difficult.'<sup>33</sup> In addition, they suggest that 'options for enforcing rights have become less accessible, with ... a confusing and often poorly-resourced set of enforcement bodies, including HMRC, Acas, GLAA and EASI. This leaves many workers unaware of, unsure about, or unable to enforce their rights.'<sup>34</sup>

During a research discussion forum hosted by FLEX on the construction sector, the consensus among trade unions and community organisations supporting migrant construction workers was that a key barrier to remedy for abuse is lack of enforcement of employment rights across the sector. Put simply by one support worker "if there's no effective enforcement and you are really desperate to be in a job, it doesn't matter if you know all your rights." This assertion is borne out by testimony from workers who were aware that their treatment was unlawful, but felt unable to challenge abuses due to a combination of fear and lack of available support, oversight or mechanisms to access justice.

<sup>32</sup> Equality and Human Rights Commission, *The Invisible Workforce: Employment Practices in the Cleaning Sector*, 2014, p.26. Available at [https://www.equalityhumanrights.com/sites/default/files/the\\_invisible\\_workforce\\_full\\_report\\_08-08-14.pdf](https://www.equalityhumanrights.com/sites/default/files/the_invisible_workforce_full_report_08-08-14.pdf)

<sup>33</sup> Citizen's Advice, *'How can job security exist in the modern world of work?'*, 2017, p.2. Available at <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-policy-research/how-can-job-security-exist-in-the-modern-world-of-work/>

<sup>34</sup> Ibid

Discussion forum participants stressed the need for improved oversight and enforcement of labour rights in the sector. They expressed concern that the GLAA does not currently have the resources or knowledge to effectively enter the construction sector given a number of industry-specific challenges such as the high number of contractors and subcontractors on site, the short-term nature of projects, and off-site location of documents relating to workers and their employment. This area will be covered in more detail in Chapter Two.

#### **vii. WELFARE**

At a FLEX roundtable on vulnerability and resilience to trafficking for labour exploitation with trafficked persons' support providers in July 2017, a number of welfare factors were cited as increasing individual vulnerability to exploitation. Particularly notable was how specific welfare exclusions for certain categories of migrants or discrimination on the grounds of migrant status increases vulnerability to exploitation. This provides a really clear example of how any assessment of risk in the labour market should take into account the importance of the intersection of a number of risks and vulnerabilities in combination, in order to really understand how risks of exploitation arise in a particular sector. Key findings from FLEX's workshop on this issue are as follows:

- Homelessness: Participants spoke about how the effect of marginalisation and isolation on the street greatly increases individual vulnerability. A recent study commissioned by the Independent Anti-Slavery Commissioner has shown that the homeless population in Britain is extremely vulnerable to exploitation.<sup>35</sup> This vulnerability is compounded for EU nationals by threat of removal, and makes them much more likely than UK nationals to enter unsafe work and end up in situations of exploitation.<sup>36</sup>
- Mental health issues and learning disabilities: People are often targeted by people they know on the grounds of a mental health issue, learning disability or pre-existing childhood trauma. Traffickers may target children's homes or foster homes for vulnerable individuals.
- Inability to access information: Key information is often not translated, including information on work conditions, expectations and rights, and particularly culturally relevant information. For many it is important that they are assisted to access information, for example where literacy is a challenge.
- Injury or occupational health issue: Asylum seekers or undocumented workers who suffer a serious injury whilst working often cannot access help or report an injury for fear of immigration repercussions. This has an impact on individual vulnerability and impedes documentation of risks and hazards in workplaces that affect all workers.

## **CONCLUSION**

The Director of Labour Market Enforcement's strategy presents a key opportunity to address current gaps in enforcement, to ensure workers are informed and protected, and to establish a joined-up, robust inspection system, which effectively identifies and prevents exploitation in the UK labour market. In order to do this, it is crucial to understand and address the pervasive labour abuses and employment practices that exploit and increase worker vulnerability to labour exploitation.

In this chapter FLEX has provided an analysis of risk in the labour market based on a system of predictive indicators that, when taken in combination, contribute to increased vulnerability or resilience in workers. Any analysis of risk in labour sectors must adopt a worker-centred approach, seeking to understand what labour market structures or protection gaps serve to make individual workers more vulnerable to exploitation. In so doing it is possible to develop a solutions orientated response tailored to the drivers of vulnerability. The following three chapters outline FLEX's proposed solutions to the picture of risk set out in this chapter.

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<sup>35</sup> The Passage, *Understanding and responding to modern slavery within the homelessness sector*, 2017, p.5. Available at <http://passage.org.uk/wp-content/uploads/2017/01/The-Passage-anti-slavery-document.for-web.24.01.17.pdf>

<sup>36</sup> FLEX and Labour Exploitation Advisory Group (LEAG), *Lost in Transition: Brexit and Labour Exploitation*, 2017, p.7. Available at <http://www.labourexploitation.org/sites/default/files/publications/LEAG%20POSITION%20Impacts%20of%20Brexit-Final.pdf>

## CHAPTER TWO

# PREVENTING EXPLOITATION THROUGH LABOUR INSPECTION

### a) LICENSING TO PREVENT LABOUR EXPLOITATION: THE GLAA

For those working to prevent labour exploitation, at the national and international level, the Gangmasters and Labour Abuse Authority (GLAA) has continuously been cited as an example of best practice. At the international level, in its first ever evaluation of the UK response to human trafficking, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) notably commended the UK for establishing the Gangmasters Licensing Authority (GLA) (the initial name for the now re-named 'Gangmasters and Labour Abuse Authority') and called it 'an example of good practice'.<sup>37</sup> At the national level important initial evaluations of the GLA's approach and particularly its licensing system were conducted in its first years of operation both by academics at the University of Liverpool and Sheffield and as part of the Government's 'Hampton Review' of regulators. Both evaluations were broadly positive about the GLA having done a 'good job in difficult circumstances'<sup>38</sup> and its impact on 'improving working conditions for some vulnerable workers'.<sup>39</sup> Unfortunately the baseline system for evaluation established in the University of Liverpool and Sheffield Annual Review of the GLA was not revisited in the years that followed. However, the latest regular government review of the GLA noted that:

*the functions of the GLA are still necessary, that the GLA remains the right body for delivering them and that the GLA should remain an NDPB.*<sup>40</sup>

Despite such wide-ranging support for the GLAA's work, there have been some who have applied ongoing and consistent pressure against licensing before it was even established:

*The DTI argued that licensing schemes: "...are burdensome for business and public authorities alike and the burden falls especially heavily on small enterprises"*<sup>41</sup>

Yet repeated reviews of the GLAA's function on the grounds of regulatory burden have commended its work to protect vulnerable workers. Indeed, many experts in the field of human trafficking have gone even further and called for the GLAA's licensing powers to be extended into sectors beyond food processing, agriculture, horticulture and shellfish gathering. In its first evaluation report, for example, GRETA recommended that the GLA could be extended to 'sectors such as hospitality (including catering companies and hotels) and construction'<sup>42</sup> and added in its second evaluation that it should have extra resources to match its expanded remit underlining:

*the significant role of workplace inspections, including on health and safety, compliance with labour standards and revenue laws, in deterring instances of human trafficking for forced labour and identifying possible victims of THB.*<sup>43</sup>

The United States Annual Trafficking in Persons Report, 2016, called upon the UK to increase labour exploitation investigations:

*by passing and enacting draft legislation that would expand the jurisdiction of the Gangmasters Licensing Authority*<sup>44</sup>

37 Council of Europe Group of Experts against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, 2012, p.30. Available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/greta\\_report\\_united\\_kingdom\\_2012\\_en\\_0.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/greta_report_united_kingdom_2012_en_0.pdf)

38 Balch *et al*, *Gangmasters Licensing Authority Annual Review 2008: Executive Summary*, 2009, p.127. Available at <http://gla.defra.gov.uk/PageFiles/922/ExecSummaryFinal.pdf>

39 Department for Business Innovation and Skills, *Gangmasters Licensing Authority: A Hampton Implementation Review Report*, 2009, p.4. Available at [http://labourproviders.org.uk/wp-content/uploads/2012/11/Hampton\\_gangmasters\\_report\\_44\\_pp.pdf](http://labourproviders.org.uk/wp-content/uploads/2012/11/Hampton_gangmasters_report_44_pp.pdf)

40 Department for Environment, Food and Rural Affairs, *Report of the Triennial Review of the Gangmasters Licensing Authority*, 2014, p.4. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/318841/Triennial\\_ReviewGangmastersLicensingAuthority.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318841/Triennial_ReviewGangmastersLicensingAuthority.pdf)

41 Geddes *et al*, *Gangmasters Licensing Authority Evaluation Study: Baseline Report*, 2007, p.27. Available at [http://gla.defra.gov.uk/PageFiles/922/BaselineReview\\_Aug2007.pdf](http://gla.defra.gov.uk/PageFiles/922/BaselineReview_Aug2007.pdf)

42 Council of Europe Group of Experts against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, 2012, p.30. Available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/greta\\_report\\_united\\_kingdom\\_2012\\_en\\_0.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/greta_report_united_kingdom_2012_en_0.pdf)

43 Council of Europe Group of Experts against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, 2016, p.25. Available at <https://rm.coe.int/16806abcd>

44 United States Department of State, *Trafficking in Persons Report*, 2016, p.385. Available at <https://www.state.gov/documents/organization/258876.pdf>

During the passage of the Modern Slavery Act 2015 through parliament, the Centre for Social Justice, FLEX and the Migration Advisory Committee all called for the GLA's remit to be extended to sectors including hospitality and construction.<sup>45</sup> It should be noted that such calls for an expanded remit for the GLA were always coupled with calls not to undermine existing licensing efforts and for adequate resources to be provided to ensure that expansion would not come at the cost of diluting its work. Such pleas were made, notably, in a joint briefing from a diverse range of stakeholders: FLEX, the British Retail Consortium, the Association of Labour Providers, the Trade Union Congress, the Ethical Trading Initiative and the Institute for Human Rights and Business during the passage of the Immigration Act 2016.<sup>46</sup>

The success of the GLAA in protecting vulnerable workers from exploitation aligns with some of the prominent thinking on the role of labour inspection and enforcement to prevent labour exploitation. Notably the International Labour Conference revisited and updated the Forced Labour Convention of 1930 by adopting a new Protocol to the Forced Labour Convention in 2014 for which labour inspection was a key focus. The Protocol states unequivocally that:

*measures for the prevention of forced or compulsory labour shall include...*

*(c) undertaking efforts to ensure that:*

- (i) the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and*
- (ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened.<sup>47</sup>*

The UK was one of the first countries to ratify the Protocol to the Forced Labour Convention in January 2016. The approach adopted by the GLAA meets with a number of what expert David Weil considers to be core components for 'strategic enforcement': firstly, a strong mapping of the terrain to identify the key problem areas; secondly, joint working with 'key third parties' such as migrant worker support centres and trade unions – something that was integral to the GLA's initial structure with its representative Board and which the GLAA has sought to replicate through its recently established liaison groups; and finally, using complaints to 'help achieve broader regulatory priorities rather than being forced into a purely reactive role' – as solidified in the GLAA's license standards.<sup>48</sup>

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<sup>45</sup> See FLEX, *Preventing Trafficking For Labour Exploitation*, Working Paper 01, 2013; Centre for Social Justice, *It Happens Here*, 2013, p.139; and Migration Advisory Committee, *Migrants in Low Skilled Work*, 2014, p.5

<sup>46</sup> See Immigration Bill: Part 1 – labour market enforcement, business, trade body and NGO briefing. Available at <http://www.labourexploitation.org/sites/default/files/publications/Briefing%20on%20Immigration%20Bill%20-%20Business%2C%20Trade%20Union%20%26%20NGO.pdf>

<sup>47</sup> See P029, Protocol of 2014 to the Forced Labour Convention 1930, entry into force 09 Nov 2016. Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORML\\_EXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](http://www.ilo.org/dyn/normlex/en/f?p=NORML_EXPUB:12100:0::NO::P12100_ILO_CODE:P029)

<sup>48</sup> David Weil, *A strategic approach to labour inspection*. International Labour Review, 2008, 147(4), p.372. Available at [http://www.ilo.org/public/english/revue/download/pdf/s3\\_weil.pdf](http://www.ilo.org/public/english/revue/download/pdf/s3_weil.pdf)

## Comparative examples of licensing

### NORWAY: LICENSING OF CLEANING COMPANIES

The Norwegian Labour Inspection Authority operates a licensing system for the cleaning industry. All companies offering cleaning services must be licensed. A list of licensed cleaning companies divided by region is available on the Inspectorate's website.<sup>49</sup> It is illegal to purchase cleaning services from providers that are not included in the register or that have the status 'not approved'. Companies offering cleaning services must apply for authorisation online.<sup>50</sup> They must meet the following criteria:

- The company must be registered with an authorised occupational health service (these are licensed by the Inspectorate and a list is available);
- Have an appointed safety representative and a working environment committee;
- Written employment contracts must be in place for all workers;
- Minimum wage requirements must be met; and
- An insurance scheme must be in place.

Documentary evidence is required for each criterion and is evaluated by the Inspectorate. Cleaning service providers can be licensed without inspection, but should the company be inspected at a later stage and breaches found, the license may be withdrawn.<sup>51</sup> The Labour Inspection Authority has noted that the health and safety procedures of several licensed companies are found to be insufficient upon inspection, leaving some to question the impact of the system of licensing without inspection on occupational health and safety.<sup>52</sup>

### BELGIUM: MULTI-STAKEHOLDER APPROVAL OF LICENSE APPLICATIONS

In Belgium, employment agencies are subject to authorisation. The authorisation process is managed at the regional and community level and the criteria for authorisation vary between the regions.<sup>53</sup> In the Flemish region, lists of licensed agencies are provided online. Agencies are required to apply for a license by completing an online form and providing documentation. The application covers tax payments, social insurance, the owner's background and other information about the company. Applications are considered monthly by an advisory committee with members including trade unions and employers' organisations, who are represented in equal numbers. Whilst other observers are part of the committee, only the trade union and employers' organisation representatives have the right to vote. A list of licensed companies is available on the website of the regional Labour Department.<sup>54</sup>

The licensing system operated by the GLAA in the agriculture, horticulture, shellfish gathering and associated processing and packaging sectors has been widely regarded as effective in monitoring labour providers to these sectors and detecting cases of exploitation. In other sectors, there are fewer gangmasters, but other labour providers operate as intermediaries in the labour supply chain, including employment agencies, gangmasters, and umbrella companies.

49 See Approval Scheme for Cleaning Companies. Available at <https://www.arbeidstilsynet.no/registre/renholdsregisteret/godkjenningsordning-for-renholdsvirk-somheter/?Feedback=posted#FeedbackForm>

50 See Application for authorisation of a cleaning company. Available at <https://www.altinn.no/en/Forms-and-Services/Etater/Labour-Inspection-Authority/Application-for-authorisation-of-a-cleaning-company/>

51 See Approval Scheme for Cleaning Companies. Available at <https://www.arbeidstilsynet.no/registre/renholdsregisteret/godkjenningsordning-for-renholdsvirk-somheter/?Feedback=posted#FeedbackForm>

52 Norwegian Labour Inspector Authority, *Annual Report 2016*, available at <http://www.arbeidstilsynet.no/rapport.html?tid=90119>

53 Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg, *FOD Werkgelegenheid, arbeid en sociaal overleg: Activiteitsverslag 2015*, 2015, p. 13-15, available at: <http://www.werk.belgie.be/publicationDefault.aspx?id=46322>

54 Werk.be, 'Wat gebeurt er met je aanvraag?' <https://www.werk.be/online-diensten/bureaus-private-arbeidsbemiddeling/erkenning-van-uitzendbureaus/wat-gebeurt-er-met-je-aanvraag>

Where these intermediaries operate, there is greater complexity and a diffusion of responsibility in the employer-employee relationship, and greater scope for exploitation to occur. Extending this system to cover all such labour providers across the labour market, would ensure thorough and consistent monitoring of these agencies against employment standards and create a level playing field for businesses to prevent undercutting by unscrupulous operators.

GLAA licensing forms a critical component of its proactive response to preventing risk of exploitation in the labour market. FLEX strongly advocates the expansion of the current licensing system, on a gradual, informed and adequately resourced basis. Future licensing should follow the model set out by David Weil: mapping; joint working; and establishing regulatory priorities.

### RECOMMENDATIONS

1. Any new licensed sectors should be identified through a thorough and rigorous mapping of risk in the labour market as per FLEX's outline in Chapter One.
2. The core strength of the GLA when first established was its representative and multi-stakeholder make up – the expansion of licensing should be carried out in a multi-stakeholder way that ensures detailed expertise can be applied to license standards and oversight.
3. GLAA licensing in new sectors should be guided by indicators of worker vulnerability to abuse and exploitation as set out in Chapter One.

## b) APPROACHES TO LABOUR INSPECTION AND ENFORCEMENT

### i. PROACTIVE VS REACTIVE INSPECTION

The ILO regards proactive inspection of workplaces as a core activity of labour inspectorates for the prevention of exploitation.<sup>55</sup> According to the World Bank, inspectorates should 'aim for a goal of 60 percent proactive inspections, and 40 percent reactive (accidents, complaints) based on an application of risk prioritization towards highest risk workplaces.'<sup>56</sup>

FLEX's survey of labour inspection systems revealed that proactive inspection and investigation forms a central part of preventive enforcement strategies in many national contexts including Canada, Poland, Norway, the Netherlands, and Brazil, with some inspectorates such as the Norwegian Labour Inspection Authority dedicating as much as 90% of their inspection activity to proactive inspections. Proactive inspections targeting high-risk sectors of the labour market, particularly when combined with powers to enforce penalties immediately, can provide a strong disincentive to non-compliance for businesses, as well as enabling the detection of violations before they develop into severe exploitation. However, the UK currently lags far behind many of its European counterparts, as the Migration Advisory Committee has warned that 'on average, a firm can expect a visit from HMRC inspectors once in every 250 years and expect to be prosecuted once in a million years.'<sup>57</sup>

#### Proactive enforcement: reaching the most vulnerable

FLEX's work with frontline organisations and primary research has shown that self-identification amongst victims of labour exploitation is extremely low and that many who experience abuse are too afraid to come forward. A proactive approach to identifying cases of labour abuse from non-compliance to severe exploitation is essential to ensure that the most vulnerable are protected and cases of exploitation are detected in all labour sectors.

The changing nature of the UK labour market, as set out in the Taylor Review of Modern Working Practices, 2017, requires a proactive approach to enforcement, as workers' bargaining power, awareness of and ability to enforce their rights is continually eroded by factors such as decreasing levels of unionisation, stigmatisation and marginalisation of migrant workers in UK society and a shift towards more precarious and isolated forms of work. Reactive enforcement relies on workers knowing their rights, which is increasingly difficult in many sectors due to a combination of factors

55 International Labour Organisation, *Labour inspection: what it is and what it does*, 2010. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/instructionalmaterial/wcms\\_141400.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/instructionalmaterial/wcms_141400.pdf)

56 The World Bank, *International Experiences in Reforming Labour Inspection Services*, 2011, p.3. Available at <http://siteresources.worldbank.org/UKRAINE/UKRAINE/EXTN/Resources/455680-1310372404373/UkraineLaborInspectorateEng.pdf>

57 Migration Advisory Committee, *Migrants in Low-Skilled Work*, 2014, p.4. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/333083/MAC-Migrants\\_in\\_low-skilled\\_work\\_Full\\_report\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333083/MAC-Migrants_in_low-skilled_work_Full_report_2014.pdf)

including lack of legal clarity around employment status, and the proliferation of complex employment relationships (for example use of subcontracting and outsourcing of employment services) which obscure responsibility for workers' rights, as well as workers not receiving clear information from employers about their entitlements. It also depends upon the availability of reporting channels, which will be covered in more detail in the section on hotlines and advice. For example, the Low Pay Commission has reported that the numbers of complaints about underpayment are extremely low in comparison to their estimate of the scale of the problem, citing lack of awareness as one of the main reasons why workers do not complain.<sup>58</sup>

Reactive approaches also place the onus on the worker to report violations, but FLEX has found that the most vulnerable to abuse are also often the least likely to come forward for a number of reasons. FLEX has found that workers vulnerable to exploitation are often in one of a few situations that serve to increase the power of unscrupulous businesses and to isolate workers. Many of these were outlined in Chapter One and include: in work poverty as a result of persistent labour abuses and precarious work limiting a worker's willingness to speak up for fear of destitution; temporary work situations reducing the ability of workers to gain information about their rights; and any uncertainty about migrant status (however unfounded) coupled with a hostile environment to migrants meaning workers are ever fearful of immigration repercussions.

Proactive approaches are seen as particularly critical to the detection and prevention of human trafficking as by nature these crimes are largely hidden. Trafficked persons face a number of barriers to reporting, including threats from exploiters, insecure status, language barriers, fear of criminalisation, and lack of understanding of the system. In its 2016 report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, GRETA underlined 'the significant role of workplace inspections, including on health and safety, compliance with labour standards and revenue laws, in deterring instances of human trafficking for forced labour and identifying possible victims of THB.'<sup>59</sup> They therefore recommended that the UK authorities take measures to 'strengthen the capacity and remit of the relevant inspectorates' to 'enable proactive identification and referral of human trafficking cases for labour exploitation.'<sup>60</sup>

## Examples of proactive approaches

### CASE STUDY: NORWAY

The Norwegian Labour Inspection Authority is a single authority, responsible for all labour inspections across the labour market. Whilst the inspectorate takes a combined approach to labour inspections, acting both on reports from workers or the public and estimates of risk, reactive inspections account for only a small proportion of its activity, with over 90% of inspections in 2016 based on risk assessment rather than individual complaints.

The authority conducted 15,265 inspections in 2016, this equates to about 8 inspections per 100 companies. In sectors considered high risk for labour exploitation, such as construction, this number is considerably higher (21.2 per 100).<sup>61</sup>

### CASE STUDY: UK

#### MORE PROACTIVE INSPECTION IMPROVES LABOUR ENFORCEMENT

The Low Pay Commission has reported that a recent shift by HMRC towards more proactive investigations had accounted for significant increases in workers and arrears identified in 2015/16 and 2016/17. This increase in proactive enforcement activity was seen as important in "not only counterbalancing the low volume of complaints and enquiries that workers make about underpayment but also addressing imbalances across different groups of workers"<sup>62</sup>

58 Low Pay Commission, *Non-compliance and enforcement of the National Minimum Wage*, September 2017, p.4. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/645462/Non-compliance\\_and\\_enforcement\\_with\\_the\\_National\\_Minimum\\_Wage.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645462/Non-compliance_and_enforcement_with_the_National_Minimum_Wage.pdf)

59 Council of Europe Group of Experts against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: Second Evaluation Round*, 2016, p.25. Available at <https://rm.coe.int/16806abdc8>

60 Ibid, p.28

61 Norwegian Labour Inspection Authority, *Annual Report 2016*, available at <http://www.arbeidstilsynet.no/rapport.html?tid=90119>

62 Low Pay Commission, *Non-compliance and enforcement of the National Minimum Wage*, September 2017, p.3. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/645462/Non-compliance\\_and\\_enforcement\\_with\\_the\\_National\\_Minimum\\_Wage.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645462/Non-compliance_and_enforcement_with_the_National_Minimum_Wage.pdf)

**Reactive approaches**

UK labour market enforcement activity has been largely reactive, focussed on responding to complaints received. However, the fragmented and complex nature of the UK enforcement model, whereby different agencies are responsible for enforcing different aspects of labour law, make it difficult for workers to navigate the system in order to complain and access remedy. According to Citizens Advice, who helped 380,000 people with employment-related enquiries in 2015-2016,<sup>63</sup> 'options for enforcing rights have become less accessible, with ... a confusing and often poorly-resourced set of enforcement bodies, including HMRC, Acas, GLAA and EASI. This leaves many workers unaware of, unsure about, or unable to enforce their rights.'<sup>64</sup>

The Labour Exploitation Advisory Group also find that long waiting times for cases to be processed and lack of anonymity frequently deter workers from making complaints. FLEX has heard evidence that cases of non-payment of minimum wage referred to HMRC can take up to two years to complete, and that many workers choose not to report as a result.<sup>65</sup>

**REACTIVE ENFORCEMENT: COMPLAINTS DO NOT MATCH SCALE OF NON-COMPLIANCE**

The Low Pay Commission estimate that between 300,000 and 580,000 workers are underpaid at the peak point of the year. In 2016/17, Acas received 4660 enquiries about underpayment on NMW – representing only 0.8% of potentially affected workers.

**Non payment of NMW: estimated scale 2016/17**



When labour market enforcement is largely reactive it is dependent upon intelligence from workers and therefore can only be effective if workers come forward to report abuse. It also provides a limited picture of non-compliance. Members of the Labour Exploitation Advisory Group who directly support workers experiencing abuse and exploitation have identified key actions which would improve the effectiveness of reactive enforcement activity and encourage more workers to report these crimes:

**1. Inspections: impose immediate penalties for non-compliance**

Labour inspectors should be empowered to impose penalties upon identification of violations. The possibility of being fined 'on the spot' or ordered to pay remuneration due to an employee acts as a strong disincentive to non-compliance for businesses and an incentive to report abuse for workers who know they will not have to wait months or years for an outcome. For example, in Poland, orders to pay remuneration for work and other benefits due to an employee are immediately enforceable by the labour inspector. This system is regarded as highly effective in particular for recovering unpaid wages.

63 Citizen's Advice, *Annual Report and Accounts 2015-2016*, p.7. Available at [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Governance/CAB347\\_Annual\\_Report\\_v9\\_WEB%20FINAL.pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Governance/CAB347_Annual_Report_v9_WEB%20FINAL.pdf)

64 Citizen's Advice, *'How can job security exist in the modern world of work?'*, 2017, p.2. Available at <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/work-policy-research-surveys-and-consultation-responses/work-policy-research/how-can-job-security-exist-in-the-modern-world-of-work/>

65 FLEX interview with migrant support worker

## **2. Set reduced deadlines for action**

Setting deadlines and issuing guidance to workers on such deadlines for responding to complaints and completing cases ensures that workers can access remedy quickly. LEAG members report that knowing that a complaint could take many months to achieve an outcome is frequently off-putting to workers, particularly if they are on short-term contracts or don't know where they will be in a year's time. Having a strict timeframe for action to investigate and remedy cases of abuse would encourage more workers to report.

## **3. Anonymity**

Some workers do not report abuse because they are afraid that their employer will find out and they will lose their job as a result, or that their information will be passed to other authorities. Such workers have told LEAG members that they would be more likely to complain if they could be sure their details would not be shared. A secure, anonymous reporting system which triggers an inspection of the employer could encourage many more workers to report cases of labour abuse.

### **CASE STUDY: POLAND**

When a complaint is filed to the Polish National Labour Inspectorate (NLI), the NLI has 30 days to inspect the workplace in question.

When filing a complaint workers must give their personal data, but this is not shared without written permission.

Labour inspectors are empowered to “apply legal measures upon identification of offences of labour law”, including issuing fines and penalty tickets and ordering the employer to pay wages owed to workers. These orders are immediately enforceable.<sup>66</sup>

In cases of false self-employment, NLI inspectors can take employers to court. This takes the onus off workers, who in the UK often face barriers to taking cases to court including; lack of legal representation, lack of understanding of the system and, until recently, prohibitive fees for employment tribunals.

### **Integrated approaches to labour inspection**

The ILO recommends an integrated approach to labour inspection which is aimed at “centring the existing resources, providing better services and increasing the presence of inspectors at the workplace”.<sup>67</sup> Article 4 of the ILO Labour Inspection Convention (No. 81) states that “labour inspection shall be placed under the supervision and control of a central authority.”<sup>68</sup> Many countries have adopted centralised labour inspection models – whereby one body is responsible for all labour inspection functions including health and safety inspection. Countries with a centralised inspectorate include the Netherlands, Poland, Norway and Spain.

The UK model comprising disparate enforcement bodies split by function and sector remit has been criticised for being confusing and inaccessible to workers. Many organisations that provide support to migrants and vulnerable workers, who face the greatest difficulty navigating this system, believe that having a single agency responsible for dealing with all workers' rights complaints would significantly improve accessibility for those most at risk of exploitation.

Much of the UK model of labour market enforcement now depends upon workers to raise the alarm in cases of abuse and exploitation. This is inadequate to meet the needs of those workers that are extremely vulnerable to exploitation. The goal of at least 60 percent proactive inspections, and 40 percent reactive (accidents, complaints) would mean the UK is stepping up to prevent abuses of workers' rights from descending into exploitation. Furthermore, a broad overarching labour inspectorate would provide clarity, and improve accountability. Finally, the ability to enforce unpaid wages through on the spot penalties would mean workers could receive remedies for abuses suffered and move on rather than remaining in situations of underpayment and potential destitution, and therefore at risk of further exploitation.

<sup>66</sup> Polish National Labour Inspectorate, *Report on the National Labour Inspectorate's activity in 2016 (summary)*, p.3

<sup>67</sup> Gerd Albracht, *Integrated labour inspection systems: The strategy of the ILO*, Labour Education, 2005, Vol. 3-4(140-141), p.67. Available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protrav/@safework/documents/publication/wcms\\_108666.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@safework/documents/publication/wcms_108666.pdf)

<sup>68</sup> Article 4, International Labour Organisation Labour Inspection Convention (No.81). Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C081](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081)

## RECOMMENDATIONS

4. Labour inspection authorities should set a goal of at least 40 percent reactive and 60 percent proactive inspections, whilst ensuring worker complaints receive adequate responses.
5. The GLAA should have the power to make 'repayment orders' as suggested by the Government in 2012.<sup>69</sup>

### ii. NEW EMPLOYMENT MODELS, NEW OVERSIGHT MECHANISMS

The increase in outsourcing of recruitment, employment and payroll services brings with it a number of challenges for enforcement, and should be met with an increased focus on monitoring outsourcing practices and the agencies operating in this market. Examples of issues workers face include lack of clarity about employment status, complex pay structures, confusing and often high deductions for services, and lack of accountability in cases of abuse. This highlights the need not only for increased clarity about employment relationships and responsibilities, but also improved oversight of the intermediaries operating between end users and those working for them.

#### Umbrella companies

Introduced in 2014 following new government rules designed to crack down on false self-employment, umbrella companies provide payroll and act as the employer on behalf of agencies or companies, paying employees through PAYE. Though this system was intended to prevent abuse of self-employed status by agencies, a number of concerns have been raised about the way in which umbrella companies operate in sectors such as construction and education, including the charging of administration fees and other deductions which leave workers significantly worse off under the scheme.<sup>70</sup>

The main concern about the widespread use of umbrella companies in sectors such as construction is the way in which employment agencies are able to use umbrella companies to effectively pass on costs to the worker which would normally be paid by the employer, such as employers' National Insurance contributions. Combined with high administration fees charged by the umbrella companies themselves, this results in the worker receiving significantly less after deductions than the rate they agreed when taking the job.<sup>71</sup> In some cases, this can take the hourly rate received by the worker to well below the National Minimum and National Living Wage.

In the construction sector workers report having no choice about whether or not to subscribe to an umbrella scheme, if they want work. This lack of choice over whether or not to become employed under the umbrella scheme combined with some confusion over the employment status of workers under this system makes it very difficult to challenge the negative consequences for workers and ensure that rights are understood and upheld.

There appears to be a gap in monitoring and oversight of some such companies, as those providing only payroll services are not legally defined as employment agencies or employment businesses and so do not come under the remit of the Employment Agency Standards Inspectorate (EAS). In a response to a parliamentary question in 2015 about the number of umbrella companies which had been subject to enforcement action by the EAS, the government clarified that "Umbrella companies acting as employers are still required to comply with employment law and where individuals feel that their statutory employment protections have been breached, they are able to seek redress through the normal routes."<sup>72</sup> However, the government acknowledged that under this scheme "it can be difficult for individuals to be sure of whether they are "employees" or "workers" and which employment protections they have."<sup>73</sup>

This confusion over workers' employment status, their employment protections and who is responsible for upholding these protections in practice results in a lack of accountability and recourse to justice which leaves workers less able to address abuse. Combined with the extremely low wages sometimes received as a result of deductions, increased dependency on work stemming from the resulting in-work-poverty and the lack of choice for many but to work under this

69 House of Commons Hansard, Gangmasters Licensing Authority (Red Tape Challenge). The Minister of State, Department for Environment, Food and Rural Affairs (Mr James Paice), column 84WS, 24 May 2012. Available at <https://publications.parliament.uk/pa/cm201213/cmhansrd/cm120524/wmstext/120524m0001.htm#12052447000008>

70 Samantha Downes, 'Umbrella companies: the latest way exploit Britain's temporary workers', *The Guardian*, 21.10.16, <https://www.theguardian.com/money/2016/oct/21/temporary-workers-umbrella-companies-extra-costs-dodging-ni-cutting-rights-supply-teachers>

71 BBC Democracy Live, 'Umbrella companies debate', 04.02.15, <http://www.bbc.co.uk/democracylive/scotland-31138060>

72 House of Commons Debate, 12 February 2015, cW. 223607. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-02-05/223607/>

73 Ibid

scheme, the widespread use of umbrella companies can in some circumstances create or exacerbate the conditions of poverty and uncertainty which put workers at risk of exploitation.

Though the practices described above are not technically illegal, as with other vulnerability indicators discussed in Chapter One they can be understood as a ‘gateway’ to abuse and therefore should be closely monitored in order to prevent exploitation. FLEX supports the proposal made by Matthew Taylor in the Taylor Review of Modern Working Practices, that the remit of the Employment Agency Standards Inspectorate be extended, along with an additional resource commitment, to cover umbrella companies.<sup>74</sup>

### Agencies

In FLEX’s research the increased use of agency workers has been shown to weaken resilience to exploitation in a number of ways, including: weakened union representation; increase in insecure or precarious work; confusion about employment status and rights; and lack of accountability for abuses. With the number of agency workers in the UK estimated at 1.2 million,<sup>75</sup> resourcing for enforcement by the Employment Agency Standards Inspectorate is particularly low, at just one inspector per 100,000 workers. Other countries have opted for different approaches to monitoring compliance of agencies, including integrating responsibility for agency inspection within the remit of the main labour inspectorate (Poland, the Netherlands), and operating licensing systems for employment agencies (Ireland, Belgium).

#### CASE STUDY: LICENSING LABOUR PROVIDERS

**Ireland:** Under the Employment Agency Act 1971, all employment agencies in Ireland must hold a licence. Licensing is administered and monitored by the Workplace Relations Commission. In order to ensure licence holders are in compliance with relevant legislation, inspectors may enter and inspect premises and check records at any time.

**Belgium:** In Belgium, labour providers are subject to authorisation. The authorisation is managed at regional and community level and the criteria for authorisation varies between the regions. In the Flemish region, agencies are required to apply for a license and this must be renewed regularly. Applications are considered by an advisory committee including trade union and employers’ organisation representatives.

#### RECOMMENDATIONS

6. The UK needs an overarching labour inspectorate. The Director of Labour Market Enforcement should work towards a medium term goal of bringing together disparate labour inspection authorities in to one central body.
7. The Director of Labour market Enforcement should support the proposal made in the Taylor Review of Modern Working Practices, that the remit of the Employment Agency Standards Inspectorate be extended, along with an additional resource commitment, to cover umbrella companies.<sup>76</sup>

<sup>74</sup> Matthew Taylor, *Good Work: The Taylor Review of Modern Working Practices*, 2017, p.58. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

<sup>75</sup> Ibid, p.24

<sup>76</sup> Ibid, p.58

### iii. JOINT WORKING: THE POSITIVES AND NEGATIVES

FLEX supports a more coherent approach to labour inspection and enforcement and views the work of authorities like the Health and Safety Executive to be of particular relevance to efforts to identify vulnerability to exploitation in the workplace. The sharing of intelligence between authorities that are duty bound to ensure compliance with employment rights and to protect the rights of workers will assist in the development of understanding of risk in the labour market. There is also merit in labour inspection authorities collaborating with other stakeholders where there are gaps in its expertise or in areas where it might not be best placed to represent or engage with workers.

For example, the Dutch labour inspectorate uses collaborative approaches to labour inspection to help fill the gaps in its expertise on particular labour sectors, for example, when it designated the care sector for attention it engaged the Ministry of Health in joint work.<sup>77</sup> The Norwegian Labour Inspection Authority operates collaboratively with other State enforcement bodies to provide advice at the Service Centre for Foreign Workers.<sup>78</sup> The objective of this multi-agency operation is to ensure migrant workers can get everything they need to work in Norway in one place. The centre offers migrant workers assistance on employment contracts and their labour rights. In Brazil a central intelligence database, entitled the Slave Labour Oversight System, enhances efforts to address labour exploitation.<sup>79</sup> The system contains information on complaints received by the Secretariat of Labour Inspections, operational data from inspections and information from the Inspection Activity Report.

Whilst joint working is important in order to enhance expertise, or ensure greater protections for workers, there are times where joint working can actively undermine the work of labour inspectorates. The ILO makes clear that the role of labour inspectors is to ensure workers' rights are upheld and protected, not to combat undocumented working. ILO Convention 81, the Labour Inspection Convention 1947, which the UK has ratified, states that the scope of duties of labour inspectors should be focussed on enforcement and compliance with labour law and notification of abuses of such law. Convention 81 expressly prohibits labour inspectors from carrying out duties beyond this scope where they interfere with the inspectors' impartial workplace inspection activity.

Indeed, in its observations to governments on the implementation of Convention 81, the ILO has made the following recent remarks:

*Bulgaria and Finland – ‘the association of the inspection staff in joint operations with authorities in charge of the national security, including the police, is not conducive to the relationship of trust that it is essential to enlisting the cooperation of employers and workers with the labour inspectorate, as workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as being fined, losing their job or being expelled from the country. The Committee therefore considers that the participation of the labour inspection staff to such joint operations is incompatible with Article 3(2) of the Convention.’<sup>80</sup> (emphasis added)*

The Special Rapporteur on the Human Rights of Migrants, François Crépeau, detailed the reasons for this in 2014:

*A migrant who is either irregular and fears detection and deportation, or who has a precarious legal status and fears losing his/her job and subsequently becoming irregular, will be very reluctant to report workplace violations to labour inspectors, unless there is a “firewall” in place which prevents labour inspectors from communicating information about potentially irregular migrants to immigration enforcement.<sup>81</sup>*

<sup>77</sup> Ministerie van Sociale Zaken en Werkgelegenheid, *Meerjarenplan Inspectie SZW 2015-2018*. Available at <https://www.inspectieszw.nl/publicaties/jaarplannen/2014/09/15/meerjarenplan-2015-2018>

<sup>78</sup> See Service Centre for Foreign Workers. <http://www.sua.no/en/>

<sup>79</sup> International Labour Organisation, *The good practices of labour inspection in Brazil: The Eradication of Labour Analogous to Slavery*, 2010, p.33. Available at [http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms\\_233484.pdf](http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms_233484.pdf)

<sup>80</sup> International Labour Organisation, *Report on the Application of International Labour Standards (Conventions and Recommendations): General Report and observations concerning particular countries*, 2017, p.453. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_543646.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543646.pdf)

<sup>81</sup> UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants*, François Crépeau: Labour exploitation of migrants, 2014, p.16. Available at <http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

## Case studies: joint working

### USA: MOU PREVENTS IMMIGRATION CONTROL AND LABOUR INSPECTION OVERLAP

In the USA there is a Memorandum of Understanding (MoU) between the Department of Labor and the Department of Homeland Security. The purpose of this MoU is to ensure that immigration control does not interfere with the protection of workers' rights. For example, when the Wages and Hours Directorate investigates cases of unpaid wages they must not ask for immigration documents. The clear separation of roles, and the fact that workers' rights are protected in the USA regardless of immigration status, prevents retaliation and intimidation by employers who threaten to report undocumented workers when exercising their labour rights.<sup>82</sup>

### BRAZIL: OVERCOMING THE THREAT OF IMMIGRATION CONTROL TO TRAFFICKING RESPONSES

In Brazil, labour inspectors, labour prosecutors and federal police officers collaborate to investigate complaints of slave labour. This productive relationship has not always been easy. Previously the police prioritised a hostile position towards undocumented workers, who in turn, ceased to seek assistance or come forward during inspections for fear of immigration repercussions. Regional Superintendencies of Labour and Employment regularly highlighted the impact of immigration enforcement on labour inspections and some avoided collaborating with the police, advocating a separation of duties.<sup>83</sup> As a result of this impasse, in 2013 the National Commission for the Eradication of Slave Labour developed guidance that established best practices to be followed by different government agencies. The guidance<sup>84</sup> highlights the need to protect undocumented workers' rights, and requires the federal police to communicate all potential cases of human trafficking or what Brazil terms 'work analogous to slavery' to their Human Rights Division.<sup>85</sup> Since then, law reforms were put in place to guarantee the rights of migrant workers. The most significant is Law 13.445/2017, which gives permanent residence rights to migrant workers who are victims of labour exploitation, irrespective of their collaboration in criminal investigations.

FLEX supports a more coherent approach to labour inspection and enforcement, where joined-up responses are centred on advancing the worker's rights. This section has also detailed examples of labour inspection authorities collaborating with experts where there are gaps in its expertise in a given labour sector. However, all too frequently in the UK overlap between labour inspection and immigration enforcement acts to prevent vulnerable workers from coming forward, serves to divert attention from worker rights towards worker criminality and contravenes ILO Convention 81.

## RECOMMENDATIONS

- 8. In order to ensure the UK meets its international obligations to identify human trafficking and forced labour there must be a strict firewall between immigration enforcement and labour inspection.**

<sup>82</sup> National Employment Law Project and National Immigration Law Center, *Immigration and Labor Enforcement in The Workplace: The Revised DOL-DHS Memorandum of Understanding*, 2011. Available at <http://www.nelp.org/publication/immigration-and-labor-enforcement-in-the-workplace/>

<sup>83</sup> FLEX interview with Brazilian Labour Inspection Official, September 2017

<sup>84</sup> Presidência da República, Secretaria de Direitos Humanos. *Manual de recomendações de rotinas de prevenção e combate ao trabalho escravo de imigrantes*, 2013. Available at <http://reporterbrasil.org.br/wp-content/uploads/2013/10/Manual-Trabalho-Escravo-Imigrantes.pdf>

<sup>85</sup> Ibid, p. 33

**c) RESOURCING FOR LABOUR INSPECTION**

The ILO recommends a target of one inspector for every 10,000 workers.<sup>86</sup> In a survey of comparable countries in the European Economic Area, FLEX found that the UK’s labour inspection capacity falls well below the ILO target and far behind others such as Ireland and Norway.

**AT A GLANCE: LABOUR INSPECTION RESOURCING<sup>87</sup>**



\*Including health & safety

The UK has one of the poorest resourced labour inspectorates in Europe. In a climate of deregulation there have been repeated efforts, some successful, to cut the budget of the GLAA, EAS and HSE. The Deregulation Act 2015 brought in changes to rules governing health and safety for self-employed workers and curtailed the powers of employment tribunals and the main UK labour inspection authorities. Many of these measures had an impact on protections for workers. The Employment Agencies Standards Inspectorate, Health and Safety Executive and Gangmasters’ Licensing Authority were hard hit by the 2010 Spending Review. This coupled with general moves against regulatory measures seen to be acting as barriers to growth and productivity has meant UK labour inspection has been under attack in recent years. FLEX has repeatedly highlighted the disconnect between weakened labour inspection and enforcement and UK commitments to end modern slavery and to combat trafficking for labour exploitation in particular.<sup>88</sup>

**RECOMMENDATIONS**

- Resources for UK labour inspection authorities should be greatly increased, at least meeting the ILO target of one inspector for every 10,000 workers in the short term, aiming to act as a best practice example in Europe in the long term.**

<sup>86</sup> David Weil, *A strategic approach to labour inspection*. International Labour Review, 2008, 147(4), p.372. Available at [http://www.ilo.org/public/english/revue/download/pdf/s3\\_weil.pdf](http://www.ilo.org/public/english/revue/download/pdf/s3_weil.pdf)

<sup>87</sup> Labour inspection staffing and funding figures sourced by FLEX from 2016 annual reports and direct contact with labour inspection officials. For labour force participation rates see The World Bank estimated Workforce 2016. <http://data.worldbank.org/indicator/SL.TLF.TOTL.IN>

<sup>88</sup> See FLEX, *Policy Blueprint: Combatting Labour Exploitation through Labour Inspection*, 2015. Available at <http://www.labourexploitation.org/sites/default/files/publications/Flex%20Labour%20Inspection%20Blueprint.pdf>

#### **d) WOMEN WORKERS AND EXPLOITATION IN HIGHLY FEMINISED LABOUR SECTORS**

As noted in Chapter One, women workers and workers in highly feminised sectors are subject to specific structural risk factors and to gendered forms of abuse and violence. Historically, the GLAA has only inspected and investigated abuses in agricultural sectors, that are dominated by male workers. As the GLAA follows its expanded remit to investigate labour market offences in sectors such as cleaning, care and hospitality, which are dominated by female workers, it will encounter varied and wide ranging forms of discrimination on the grounds of gender, an area on which the GLAA is yet to develop expertise.

Women are more likely to experience sexual discrimination and harassment in the workplace, and these risks are increased where there is a significant power imbalance between the employer and the worker. Recent research by the TUC found that more than half of women workers surveyed had experienced some form of sexual harassment, and more than one in ten had experienced unwanted sexual contact.<sup>89</sup> Such harassment may be linked with other labour abuses, and is likely to make it difficult for women workers to report any such abuses internally or externally.

Women may also be vulnerable to exploitation due to their need to provide and care for others. Approximately 66% of single parents are in work, the vast majority of whom are women.<sup>90</sup> Where a family depends upon a woman's employment for survival, her ability to leave or challenge abusive working conditions is likely to be significantly reduced. In these cases the danger of losing employment, or even a reduction of hours, as a result of complaining may be too significant to risk making a complaint. As one hotel worker said, "I asked for a paid break... and the next day I was sent home and told there was no work. You soon learn."<sup>91</sup>

These gendered cultural and structural issues serve to disempower women and may make it less likely that women will be prepared to report or discuss labour abuses against them. Women who have suffered workplace abuse, particularly sexual harassment or abuse, may face a culture of disbelief, bullying or intimidation from abusive employers or fellow staff. In such cases women, and particularly migrant women, often feel that they won't be believed by authorities, and may be reluctant to speak about abuse with men in a position of authority.

An understanding of these issues, and of the particular abuses and vulnerability factors that exist in highly feminised sectors, will be key to the success of the GLAA as it begins to operate in these sectors. If the GLAA is not able to gain the trust of women workers, to understand their experiences and engage with them appropriately, then its ability to gather information and identify exploitation will be severely hampered. An understanding of the gendered structures that exist in highly feminised sectors, and their relationship to social attitudes to women's work, is also essential in understanding the pattern of risk in these sectors.

#### **RECOMMENDATIONS**

- 10. The Director's Labour Market Enforcement Strategy should specifically address the impact of gender on risk of exploitation, and the structures that contribute to risk of exploitation in highly feminised sectors.**
- 11. Each of the labour market enforcement bodies should develop and implement a gender policy and training programme that provides guidance on gender-related abuse and gender sensitivity in the monitoring, identification and enforcement of labour abuses.**
- 12. A joint working group on labour market enforcement in feminised labour sectors with members from each of the labour market enforcement bodies should be established to facilitate the sharing of key learning and the development of a common strategy.**

<sup>89</sup> TUC, 2016, *Still just a bit of banter? Sexual harassment in the workplace* in 2016, p.4.

<sup>90</sup> See <https://gingerbread.org.uk/content/365/Statistics>

<sup>91</sup> Yvonne Roberts, 'Britain's hotel workers – bullied, underpaid and with few rights', *The Guardian*, 30 May 2015, Available at <https://www.theguardian.com/business/2015/may/30/hotel-workers-bullied-underpaid-few-rights-uk>

## CHAPTER THREE

### GATEWAYS TO INFORMATION

#### a) REPORTING NON-COMPLIANCE AND RAISING AWARENESS

FLEX research has identified several barriers to addressing abuse and exploitation in the UK labour market. These include: lack of access to reporting mechanisms, lack of awareness of rights and unwillingness to report abuse due to fear of repercussions.<sup>92</sup> While advice gateways exist for information on work-related issues, several of these are not accessible or suitable for migrant workers in precarious situations. The success of advice and reporting mechanisms, including hotlines and workers' rights apps, will depend on these being trusted by workers. Mechanisms should be established to ensure that workers may report all types of labour abuses anonymously. Furthermore, workers are highly unlikely to report abuses if there is a risk that the information they provide could lead to an investigation that could result in them losing their right to work in the UK. Therefore, the effectiveness of such measures will ultimately depend on a strict distinction between labour enforcement and immigration control.

#### b) UK HELPLINES

##### i. ACAS HELPLINE

The Acas helpline provides information on employment rights and is generally considered the main gateway for advice on labour rights in the UK. In 2016-17, 886,929 calls to the Acas helpline were registered.<sup>93</sup> While this is a considerable number, there are notable differences between the numbers of calls made within each category of issues noted by Acas and FLEX has concerns that the Acas helpline is not accessible to vulnerable migrant workers.

According to members of the FLEX Labour Exploitation Advisory Group (LEAG), the Acas helpline is inaccessible to workers with little understanding of the UK employment rights system and poor English language skills. The main barriers to vulnerable migrant workers seeking advice through Acas are considered to be the opening hours, which make it challenging for those who work long hours to call, and the difficulty of accessing advice in languages other than English. Currently, workers calling Acas are met by a recorded message in English before they have to hold for about 10 minutes, depending on the availability of advisors.<sup>94</sup> LEAG member organisations have also raised concerns about incorrect information being provided by Acas to the migrant workers they support. There is considerable variation in the service provided, and differences in the level of detail of the guidance provided is of particular concern.

The role of the Acas helpline as an advisory service, unable to directly assist users, prevents some vulnerable workers from calling. This issue must be seen in the context of the lack of practical support provided and the long waiting times for specific non-compliances to be resolved. The issue of non-payment of wages illustrates this point; workers are unlikely to call Acas for advice as HMRC advisors have told support organisations that they can take up to two years to resolve cases.<sup>95</sup>

There appears to be a lack of awareness of the Acas helpline amongst migrant workers. Posters and accessible information materials in community centres, schools and other strategic locations, as well as in the workplace, could help to raise the profile of the helpline amongst vulnerable workers. FLEX has been advised that Acas staff have told support providers that they do not have capacity to deal with the calls that would result in their helpline number being included on information cards handed out to migrant workers in the cleaning sector. This is of concern, and Acas' communications strategies in communities and industries with significant numbers of migrant workers might require further attention. FLEX further recommends that a review is launched into the nature of queries received by Acas with a focus on queries related to labour exploitation, and that the profile of callers is considered. The 2016 evaluation of pay and rights calls to the Acas helpline found that 92% of respondents stated English to be their first language. More detail on migrants' use of the hotline would allow for a more targeted effort to reach these workers.<sup>96</sup>

92 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>

93 Advisory, Conciliation and Arbitration Service (Acas), *Annual Report and Accounts 2016-17*, p.27. Available at <http://www.acas.org.uk/media/pdf/e/s/Acas-annual-report-2016-2017.pdf>

94 FLEX research, September 2017

95 FLEX interview with support worker

96 Advisory, Conciliation and Arbitration Service (Acas), *Research paper: Evaluation of pay and work rights calls to the Acas Helpline*, 2016, p.27. Available at [http://m.acas.org.uk/media/pdf/p/3/Helpline\\_PWR\\_calls\\_evaluation\\_Final\\_Report.pdf](http://m.acas.org.uk/media/pdf/p/3/Helpline_PWR_calls_evaluation_Final_Report.pdf)

While Acas' stated aim of increased online support is a welcome additional source of information, it is essential that such targets do not affect efforts to encourage the use of the helpline amongst migrant workers in precarious work. Acas' target for calls to the helpline is consistently set lower than the number of calls received the year before (e.g. 840,000 calls target 2017-18 vs. 863,280 calls received in 2016-17). This could indicate that there is a move towards online support at the expense of support via the phone. This is problematic if it is found to have an impact on access for vulnerable migrant workers. Those who are the most vulnerable to labour exploitation may not have access to computers, and if they do, may require support to navigate the available advice. FLEX has heard several examples of migrant workers who currently rely on in-person support from community organisations to use the Acas helpline. A move to online services without considering the impact on this group is likely to make the service less accessible, placing workers at risk of exploitation.

### **RECOMMENDATIONS**

- 13. Acas should ensure that all information is available in the language of migrant callers, this must include any automated messages.**
- 14. The preferred calling times of vulnerable workers should be piloted and Acas' opening hours extended accordingly.**
- 15. The quality of guidance provided by Acas should be evaluated, with a particular focus on the guidance provided in cases of labour abuse and exploitation.**
- 16. Acas' communications strategies in communities and industries with significant numbers of at risk workers should be evaluated and approaches adjusted accordingly.**

#### **ii. GLAA HOTLINE**

The Gangmasters & Labour Abuse Authority (GLAA) operates a confidential reporting hotline for cases of labour abuse and exploitation. The GLAA has specialist knowledge of labour abuses, combined with a remit to act on suspicions of exploitation. The authority, therefore, is well placed to operate a reporting hotline for cases of non-compliance in the labour market. With the GLAA's extended remit, the GLAA hotline is likely to become more relevant for workers in different sectors. As businesses are starting to respond to concerns of modern slavery in their supply chains, the GLAA is increasingly promoted as the first port of call for suspicions of labour exploitation by individual companies and collaborative initiatives such as Stronger Together.<sup>97</sup>

The GLAA hotline, however, is not widely advertised in migrant communities and members of LEAG reported that the helpline is not commonly used by their clients. This is confirmed by the low number of calls currently received by the GLAA hotline. There is currently no separate budget or staff allocated to the hotline, meaning that any significant increase in the number of calls under the current system could be a considerable strain on the GLAA's already limited resources.<sup>98</sup> Therefore, to encourage the reporting of non-compliance, the hotline should be appropriately resourced and the existence and function of the hotline should be widely advertised, with a particular focus on targeting migrant workers. Here, lessons can be learned from the Netherlands, where in 2015 the Ministry of Labour launched a campaign encouraging people to report labour exploitation using their hotline and online reporting tool. While the campaign reached a large number of people, it was targeted at the general public rather than at vulnerable workers specifically.<sup>99</sup> According to a labour rights NGO in the Netherlands, while the campaign was effective in raising awareness of labour exploitation amongst the public, it is unlikely to have raised workers' awareness of the hotline.<sup>100</sup>

The GLAA must develop innovative strategies for ensuring that potential victims of labour abuse and exploitation have access to their hotline details. At an EU strategy meeting on prevention and identification of labour exploitation convened by FLEX in 2015, NGOs from across Europe suggested that advertisements should be placed on the back of coach seats so that migrant workers travelling to the UK are made aware of helpline numbers, advertisements should be placed on online forums used by those looking for work, and messages should be sent out via social media channels used by migrant workers. The NGO Ban Ying in Germany successfully used a motorbike billboard in areas with high density of vulnerable migrant workers to advertise a hotline number and reached migrant domestic workers by giving

<sup>97</sup> See <http://stronger2gether.org/>

<sup>98</sup> FLEX correspondence with GLAA, September 2017

<sup>99</sup> FLEX correspondence with Fair Work, August 2017

<sup>100</sup> Ibid

them bars of soap that included hotline details on the inside of the box. Any information campaign must of course be translated in to the native languages of vulnerable migrant workers. In line with the recommendations of the Labour Exploitation Advisory Group, an accessible hotline would include support in different languages and opening hours suitable for workers with long shifts.

### RECOMMENDATIONS

17. A separate budget, in line with the GLAA's increased remit, should be allocated to the GLAA hotline and the hotline should be resourced to provide advice in cases of labour abuse and exploitation.
18. The GLAA hotline should be widely communicated to vulnerable workers, migrant communities and to the general public.
19. The GLAA should have trained hotline respondents who speak the most common native languages of migrant workers and translation services should be available for other languages.

### iii. THE MODERN SLAVERY HELPLINE

THE MODERN SLAVERY HELPLINE RECEIVED 339 cases of modern slavery and people with other vulnerabilities between January and March 2017. 38% of the reported cases of modern slavery related to forced labour.<sup>101</sup> FLEX believes the Modern Slavery Helpline is critical for victims of trafficking or for those who suspect modern slavery. However, it is important to recognise that the helpline is not specifically targeted at the spectrum of labour abuses that lead to severe exploitation. There is a need for an advice service that informs and supports people about their rights at work and allows them to report non-compliances before highly exploitative working conditions develop.

### c) CENTRALISED REPORTING SYSTEMS

While the provision of advice and reporting of non-compliance in the UK are placed within separate agencies, including Acas, GLAA, the Modern Slavery Helpline and HMRC, in several countries, including the Netherlands and Canada, these activities fall under the remit of the national labour inspectorate. FLEX recommends that the establishment of a centralised helpline under the office of the Director of Labour Market Enforcement is considered. As mentioned, some vulnerable workers are discouraged from seeking advice from Acas due to the helpline's inability to address their concerns. FLEX finds Acas to be a valuable source of information for workers, but considers that a centralised helpline allowing for complaints against an employer to be raised directly, would provide a more practical solution for vulnerable workers.

#### ALBERTA, CANADA: A CENTRALISED HOTLINE AND A HELPLINE FOR MIGRANT WORKERS

In Alberta, Canada, a regional hotline is operated by the regional Ministry of Labour. In addition to this, Alberta has established an information office for migrant workers. The Temporary Foreign Worker Advisory Office provides free and confidential advice to help workers 'understand their rights and find solutions to situations involving unfair, unsafe or unhealthy working conditions'.<sup>102</sup> The Advisory Office also operates the Temporary Foreign Worker Helpline.

#### BELGIUM: IN-PERSON DROP-IN ADVICE

In Belgium, providing advice is an important part of the labour inspectorate's work. The Directorate for Control of Social Laws (Toezicht op de Sociale Wetten) organises weekly drop-in days at regional offices, during which workers may seek in-person advice about labour rights issues. During these sessions, workers may have their employment contracts checked, and they can file complaints against their employers. The regional offices receive around 30,000 visitors per year. The Directorate also operates a hotline, which receives around 150,000 calls annually.<sup>103</sup>

<sup>101</sup> See <https://www.modernslaveryhelpline.org/uploads/20170530212246225.pdf>

<sup>102</sup> See Alberta's Temporary Foreign Worker Advisory Office. <https://work.alberta.ca/immigration/temporary-foreign-worker-advisory-office.html>

<sup>103</sup> Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg, Activiteitsverslag van de Algemene Directie Toezicht op de Sociale Wetten, 2015, p.13-15. Available at: <http://www.werk.belgie.be/publicationDefault.aspx?id=46322>

### RECOMMENDATIONS

20. The establishment of a centralised helpline under the office of the Director of Labour Market Enforcement should be considered.
21. All worker hotlines should allow for anonymous reporting.

#### d) APPS

As an addition to helplines and in-person advice, a phone application may help to raise awareness of workers' rights and responsibilities and possibly increase the reporting of non-compliances.

A simple version of a workers' rights app could contain accessible information about workers' rights, similar to the app 'Migration and domestic work' developed by the International Labour Organization (ILO) for domestic workers in Argentina.<sup>104</sup> The app could also contain information about contact points, such as the GLAA and Acas, local migrant and community organisations and basic information about the services, such as whether it is possible to report cases anonymously.

A more advanced version of this app could allow workers to track their working hours and wages. Examples of this can be found in the USA<sup>105</sup> and Australia.<sup>106</sup> This type of application could provide anonymous intelligence that would feed into the database established by the Director of Labour Market Enforcement and support the enquiry into the extent of non-compliance in the labour market. The information could also feed into the relevant agency's intelligence and support their operations.

#### USA: WORKERS REPORT WAGE THEFT WITH THE APP JOURNALERO

In the USA, a multi-stakeholder group involving workers, lawyers and unions, have developed the phone application Journalero. This app allows day workers to log their hours and wages and to rate their employers. The data they share is linked to a phone number, but is otherwise anonymous. The intelligence gathered is used by lawyers to contact the employer, without the worker having to be identified. The information recorded on the app also supports workers' compensation claims against their employers.<sup>107</sup>

### RECOMMENDATIONS

22. The development of an app with accessible information to workers and possibly a function to track hours and wages and report non-compliance anonymously should be considered.

<sup>104</sup> See 'Migración y trabajo doméstico' <https://play.google.com/store/apps/details?id=com.pasaporte.informativo&hl=en>; 'Global Action Programme on Migrant Domestic Workers and their Families' [http://www.ilo.org/global/topics/labour-migration/projects/WCMS\\_222567/lang--en/index.htm](http://www.ilo.org/global/topics/labour-migration/projects/WCMS_222567/lang--en/index.htm)

<sup>105</sup> Liz Robbins, 'New Weapon in Day Laborers' Fight Against Wage Theft: A Smartphone App', *The New York Times* 01.03.16, <https://www.nytimes.com/2016/03/02/nyregion/new-weapon-in-day-laborers-fight-against-wage-theft-a-smartphone-app.html?smid=tw-share>

<sup>106</sup> Jarni Blakkarly, 'An app to protect worker's rights', *German*, 27.03.17, <http://www.sbs.com.au/yourlanguage/german/en/article/2017/03/27/app-protect-workers-rights>

<sup>107</sup> Liz Robbins, 'New Weapon in Day Laborers' Fight Against Wage Theft: A Smartphone App', *The New York Times* 01.03.16, <https://www.nytimes.com/2016/03/02/nyregion/new-weapon-in-day-laborers-fight-against-wage-theft-a-smartphone-app.html?smid=tw-share>

## CHAPTER FOUR

# BUILDING TRANSPARENCY AND ACCOUNTABILITY IN SUPPLY CHAINS

### a) LAYERS IN SUPPLY CHAINS

The complexity of supply chains is often presented as the key challenge to achieving labour market compliance. Writing on forced labour's business models, Allain et al found that 'while product supply chains in the UK are relatively short, labour supply chains have a greater propensity to become complex. This complexity allows forced labour to thrive'.<sup>108</sup> FLEX recommends consideration of a limit on the number of layers in labour supply chains for high-risk sectors. This would be in line with the approach adopted in Spain and Norway, where a limit on the number of layers in labour supply chains has been introduced in sectors such as construction and cleaning, in which the risk of labour exploitation is considered high.

#### i. THE NATURE OF UK SUPPLY CHAINS

With approximately 1.2 million people employed by agencies,<sup>109</sup> the UK has the highest proportion of agency workers in Europe.<sup>110</sup> The provision of labour is also highly fragmented. While a reliance on labour agencies allows companies flexibility, it also increases the risk of non-compliance and exploitation. This is particularly the case in sectors where the demand for labour fluctuates considerably, such as in construction and agriculture. Subcontracting is common when a high number of workers is urgently required to meet a set deadline or a sudden increase in demand. Labour providers face pressure to lower prices and the costs of the intermediaries' services may be borne by workers.<sup>111</sup>

Allain et al, in their research on the business models of forced labour, found that:

*where forced labour arises in the context of intermediaries, the labour supply chain is likely to be relatively long and complex, and the forced labour component is likely to be several steps removed from the core labour force.*<sup>112</sup>

According to Crane et al, in the UK context, the 'labour supply chain is equally, if not more important' than the product supply chain and 'forced labour often occurs within very simple product supply chains'.<sup>113</sup> Despite the crucial role of labour supply chains, non-compliance is rarely detected by companies themselves; the social auditing regime, which is already fairly poor at spotting abuse in product supply chains, is not built for labour supply chains.<sup>114</sup> Considering the significance of labour supply chains in the UK and the failure of companies to identify and address exploitation within these chains, there is a strong argument for increasing the oversight and enforcement of labour supply chains in the UK.

FLEX's Labour Exploitation Advisory Group (LEAG) has identified long employment chains as a key driver of exploitation in sectors such as construction and cleaning. LEAG members report that migrant workers are unsure who their employer is, and this acts as a barrier for raising grievances.<sup>115</sup> Furthermore, the issue of accountability is crucial, as primary contractors currently may deny knowledge of and responsibility for labour abuses. Several such cases of companies denying responsibility for abuses experienced by agency workers have been highlighted by LEAG members.<sup>116</sup> Therefore, FLEX recommends that any potential limitation on the number of layers in labour supply chains should be introduced in conjunction with joint liability.

108 Allain et al, *Forced Labour's Business Models and Supply Chains*, 2013, p.5. Available at <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/forced-labour-business-full.pdf>

109 Matthew Taylor, *Good Work: The Taylor Review of Modern Working Practices*, 2017, p.24. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

110 Paul Gallagher and Seónadh O'Leary, *Recruitment 2020: How Recruitment is Changing and Why it Matters*, 2007.

111 Allain et al, *Forced Labour's Business Models and Supply Chains*, 2013, p.5. Available at <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/forced-labour-business-full.pdf>

112 Ibid, p.43

113 Crane et al, *Governance gaps in eradicating forced labor: from global to domestic supply chains*, Working paper, 2017, p.7.

114 Ibid, p.14

115 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>

116 Ibid

## Examples of limiting layers in supply chains

Recognising the relationship between long labour supply chains and poor labour standards, some European countries have introduced restrictions on the use of agency workers in certain sectors or for specific high-risk work.<sup>117</sup> Spain and Norway are examples of States that have adopted legislation limiting the number of layers in supply chains.

### CASE STUDY: SPAIN LIMITS SUBCONTRACTING IN CONSTRUCTION SECTOR

The Spanish Law (32/2006) on Subcontracting in the Construction Industry limits the number of subcontractors in a supply chain to three, not including the head contractor.<sup>118</sup>

This means that the head contractor (A) may subcontract a part of a project to subcontractor (B), who again may subcontract to (C), who could again subcontract to (D). At this stage, however, the supply chain ends as (D) may not subcontract work. While work may be subcontracted to self-employed workers, self-employed workers may not subcontract.<sup>119</sup>

Some exceptions to the law exist and further layers may be permitted in the case of complex construction issues arising, requiring specific expertise. Importantly, Law 32/2006 bans the use of subcontractors whose main task is the provision of labour.<sup>120</sup> Employment agencies therefore may not be used in the construction sector.

The law was introduced as a response to rising concerns about health and safety and grew out of a recognition that small actors without the infrastructure needed to ensure workers' health and safety were operating in the industry.<sup>121</sup> The law has introduced compulsory health and safety training and company registration has been made dependent on completed training.<sup>122</sup> Trade unions and employers' organisations were actively involved in the development of the law and this has been recognised as crucial to its success.<sup>123</sup>

The failure to comply with the provisions set out in the law gives rise to joint liability on the part of the subcontractor that has failed to comply, as well as the relevant contractor.<sup>124</sup> Article 7(2) of the Law on Subcontracting in the Construction Industry requires that the head contractors for construction works monitor compliance with the law by its subcontractors or self-employed workers, and that relevant information on compliance is provided by the subcontractor to the head contractor. If subcontracted workers have not been paid, they may take legal action jointly against their own employer and against the relevant contractor.<sup>125</sup>

A representative of a Spanish construction union describes the law as a crucial step in the fight against the deregulation of the construction sector and highlights the increased clarity with regard to companies' responsibilities as key. However, he highlights implementation as a concern as this depends on a well-resourced labour inspectorate.<sup>126</sup>

117 International Labour Organisation, *Private employment agencies, temporary agency workers and their contribution to the labour market*, 2009, p.8. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/meetingdocument/wcms\\_162740.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_162740.pdf)

118 European Foundation for the Improvement of Living and Working Conditions, *Liability in Subcontracting Processes in the European construction sector: Spain*, 2008, p.1. Available at [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0887en8.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0887en8.pdf)

119 Comunidad de Madrid, Normativa sobre la Subcontratación en el sector de la construcción, 2010. Available at [http://www.madrid.org/cs/Satellite?blobcol=urldata&blobheader=application/pdf&blobheadername1=Content-Disposition&blobheadervalue1=filename=construccion\\_def.pdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1272024751105&ssbinary=true](http://www.madrid.org/cs/Satellite?blobcol=urldata&blobheader=application/pdf&blobheadername1=Content-Disposition&blobheadervalue1=filename=construccion_def.pdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1272024751105&ssbinary=true)

120 Paragraph 5f, Spanish Law 32/2006, of 18 October, Regulating the Subcontracting in the Construction Sector. Available at <https://www.global-regulation.com/translation/spain/1446168/law-32-2006%252c-of-18-october%252c-regulating-the-subcontracting-in-the-construction-sector.html>

121 Ibid, preamble

122 Meardi *et al.*, 'Construction Uncertainty: Unions and Migrant Labour in Construction in Spain and the UK', *Journal of Industrial Relations*, 54(1), 2012, p.5-21

123 European Foundation for the Improvement of Living and Working Conditions, *Liability in Subcontracting Processes in the European construction sector: Spain*, 2008. Available at [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0887en8.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0887en8.pdf)

124 Ibid, p.1

125 European Foundation for the Improvement of Living and Working Conditions, *Liability in Subcontracting Processes in the European construction sector: Spain*, 2008, p.9. Available at [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0887en8.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0887en8.pdf)

126 FLEX correspondence with Daniel Barragan Burgui, CCOO, September 2017

### NORWAY AND THE 'OSLO MODEL': MANAGING SUPPLY CHAIN LENGTH THROUGH PUBLIC PROCUREMENT

In Norway, a new regulation adding to the existing framework on public procurement came into force in January 2017. While the law on public procurement (73/2016)<sup>127</sup> allows for limits to supply chain length in sectors with high risk of work-related crime, the new regulation introduced limitations on the layers in supply chains in the construction and cleaning sector.<sup>128</sup> Generally, a head contractor may not have more than two layers of subcontractors in their supply chain, limiting the vertical chain to three layers. The regulations apply to contracts worth NOK 1.1-1.75 million (£104,000-£165,800) or more, depending on the type of organisation purchasing a product or service.<sup>129</sup> The rules also allow the possibility of limiting the supply chain length further due to concerns about factors such as work-related crime. In the case of contracts which include high-risk construction work, the client has the right to require that specific high-risk work is carried out directly by the contractor.<sup>130</sup>

The recently introduced 'Oslo Model' sets out additional requirements for public procurement for the City of Oslo and limits vertical supply chains to two layers, including the contractor. The regulations apply to all contracts with the City of Oslo with a value of NOK 500,000 (£47,400) or more. The 'Oslo Model' also introduces a requirement of at least 80% permanent employees (on at least 80% contracts) as a general rule in contracts with the City.<sup>131</sup> With this and other measures, the City of Oslo is attempting to raise labour standards in the region. The Model has been welcomed by trade unions and employer organisations and they have taken an active role in the development of the new regulations.<sup>132</sup>

Spain and Norway provide interesting case studies of how labour standards in domestic supply chains may be improved by limiting the number of layers. FLEX recommends that different approaches to limiting vertical supply chains are considered and that this evaluation includes the question of how such measures may be combined with joint and several liability provisions.

It is important to note that in both the Spanish and Norwegian case, trade unions and employer organisations have been involved in the development of the laws and this has been linked to their effectiveness. Furthermore, the success of such laws will depend on their implementation and therefore a strong labour inspectorate is key. At the same time, particularly in the case of Norway where the laws apply to public procurement, if staff are adequately trained in the procurement regulations, the burden on the labour inspectorate may be less as more responsible contractors are awarded public contracts.

### ii. UNAUTHORISED SUBCONTRACTING AND HORIZONTAL SUPPLY CHAINS

Research produced by the University of Leicester, commissioned by the Ethical Trading Initiative (ETI) in 2013, found 'sufficient evidence to confirm unauthorised subcontracting as a standard practice in apparel manufacturing' in the UK.<sup>133</sup> The same research found the average wage of workers in the garment manufacturing industry to be as low as £3 per hour.<sup>134</sup>

A limit on the number of layers in supply chains could facilitate the oversight of supply chains and make the process of identifying unauthorised subcontracting easier for companies and labour inspectors. However, to effectively address unauthorised subcontracting, a considerable challenge in the UK garment industry, an effective and appropriately resourced labour inspectorate is essential.

127 Paragraph 5, Lov om offentlige anskaffelser (anskaffelsesloven). Available at <https://lovdata.no/dokument/NL/lov/2016-06-17-73?q=anskaffelsesloven>

128 Paragraph 19.3, Forskrift om offentlige anskaffelser (anskaffelsesforskriften). Available at <https://lovdata.no/dokument/SF/forskrift/2016-08-12-974>

129 See Direktoratet for forvaltning og IKT, *Hva sier regelverket?*, <https://www.anskaffelser.no/samfunnsansvar/sosial-dumping/hva-sier-regelverket>

130 Ibid

131 See Oslo Kommune, 'Oslo modellen'. <https://www.oslo.kommune.no/politikk-og-administrasjon/for-leverandorer-til-oslo-kommune/oslo modellen/#gref>

132 Oslo Kommune, *Byrådet med klare krav for et seriøst arbeidsliv*, 2017. Available at <https://www.oslo.kommune.no/getfile.php/13217509/Innhold/Politikk%20og%20administrasjon/Politikk/Byr%C3%A5det/For%20pressen/Pressemeldinger/Byr%C3%A5det%20med%20klare%20krav%20for%20et%20seri%C3%B8st%20arbeidsliv%20-%20Oslo modellen.pdf>

133 University of Leicester, *A New Industry on a Skewed Playing Field: Supply Chain Relations and Working Conditions in UK Garment Manufacturing*, 2013, p.28. Available at <https://www2.le.ac.uk/offices/press/for-journalists/media-resources/Leicester%20Report%20-%20Final%20-to%20publish.pdf>

134 Ibid, p.10

In the context of garment manufacturing, academics from the University of Leicester have recommended the introduction of joint and several liability.<sup>135</sup> Joint and several liability is also an important measure to address accountability in horizontal supply chains, which are unlikely to be covered by a limitation on layers. A company with a short vertical supply chain may still have a large horizontal supply chain, such as in cases where the head contractor subcontracts work to a number of actors, who do not themselves subcontract. While not all of the concerns regarding vertical supply chains apply to horizontal chains, a high number of actors complicates oversight. To address unauthorised subcontracting and to ensure accountability for all actors in supply chains, FLEX recommends that any regulation limiting the number of vertical layers in supply chains includes provisions on joint and several liability.

### RECOMMENDATIONS

23. A limit on the number of layers should be targeted at labour supply chains and first implemented in sectors with a high risk of abuse as a result of extended subcontracting, such as construction and cleaning.
24. Legislation limiting the number of vertical layers in supply chains should include provisions on joint and several liability.
25. Different approaches to limiting vertical supply chains should be considered, including the possibility of introducing a limit in public procurement.
26. The responsibilities for implementation of a potential limit on layers in supply chains should be clearly defined and the responsible authorities appropriately resourced.

## b) CERTIFICATION

The ILO Forced Labour (Supplementary Measures) Recommendation 2014 states that governments should promote 'coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion'.<sup>136</sup> The ILO has also made clear that systems for the licensing or certification of employment agencies must include 'adequate machinery' for the investigation of complaints, and should be monitored for compliance by 'labour inspection services or other competent public authorities'.<sup>137</sup> This means that any licensing or certification system must be properly enforced, and that agencies tasked with enforcement must have the remit and resources that allow them to both monitor and enforce compliance.<sup>138</sup>

Voluntary certification schemes already exist in the UK, such as the Clearview scheme established by the Association of Labour Providers, which itself operates in the agriculture and fresh produce sector. Under this scheme, labour providers select their own auditor from a list of providers approved by Clearview, and the auditor conducts an audit based on information provided by the labour provider. There are also initiatives at the international level, such as the International Recruitment Integrity System, currently being developed by the International Organisation for Migration. Under this system, a front end assessment and certification is followed up with a monitoring and compliance system that is supposed to 'support certified labour recruiters in maintaining their commitment to ethical recruitment'.<sup>139</sup>

Voluntary and private certification schemes have a role in helping willing labour providers or recruitment agencies to improve their practices and better understand their obligations. However, voluntary schemes will not change the practices of providers and agencies who currently lack the interest or incentive to respect labour standards. Without a strong monitoring, inspection and enforcement system, there is insufficient incentive for some labour suppliers to comply with labour standards. As has been pointed out on numerous occasions, auditing conducted as part of voluntary schemes is too often of poor quality, insufficiently rigorous, or unable to uncover the true conditions of workers, to be relied upon for maintaining the integrity of certification systems.<sup>140</sup>

<sup>135</sup> Ibid

<sup>136</sup> Paragraph 4(i), International Labour Organisation Forced Labour (Supplementary Measures) Recommendation (No. 203), 2014. Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:3174688](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3174688)

<sup>137</sup> Articles 10 and 14, International Labour Organisation Private Employment Agencies Convention, 1997 (No. 181). Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326)

<sup>138</sup> International Labour Organisation, *Guide to Private Employment Agencies: Regulation, monitoring and enforcement*, 2007. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/instructionalmaterial/wcms\\_083275.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_083275.pdf)

<sup>139</sup> See International Recruitment Integrity System, 'Certification of Labour Recruiters'. <https://iris.iom.int/certification-labour-recruiters>

<sup>140</sup> See a summary of these criticisms in the *Report of the Special Rapporteur on trafficking in persons, especially women and children* (28 March 2017) (A/HRC/35/37)

An extensive review, recently conducted by the Government of Victoria (Australia) on the labour hire industry, concluded that a sector-specific system of licensing (closely modelled on that of the GLAA) was necessary to address the problem of 'rogue' and exploitative labour hire operators in the horticultural, meat and cleaning industries.<sup>141</sup> In so doing it specifically rejected proposals for formal industry codes of conduct implemented under competition and consumer legislation and including an accreditation system.<sup>142</sup>

In sectors where there are currently high rates of non-compliance and a high risk of exploitation, voluntary certification of recruitment agents and labour providers will not be sufficient to identify and address labour abuses. In such sectors, a system of licensing or mandatory certification, that sets specific standards for working conditions and monitors and enforces these standards through regular inspections, is required.

### RECOMMENDATIONS

27. Voluntary certification schemes should not be adopted in place of licensing or mandatory certification.
28. Mandatory certification or licensing systems established in high-risk sectors must set specific standards for work conditions, and monitor and enforce these standards through regular inspections.

### c) JOINT LIABILITY

Joint liability regimes impose shared or ultimate liability for labour rights and other regulatory breaches on entities higher up the supply chain. Such regimes already exist in a variety of forms throughout Europe, including Austria, Belgium, Finland, France, Germany, Italy, the Netherlands and Spain, and in numerous non-European jurisdictions, including the United States, the Philippines and Argentina. Currently there is no system for joint liability for wages or holiday entitlements in the UK. Many workers are unable to pursue claims against their direct employer, due to the employer's insolvency or inability to identify or locate the employer. In these circumstances, the principal contractors and clients benefit from the worker's labour and from the outsourcing of responsibility, and the worker suffers through the inability to obtain owed wages.

Joint liability regimes operate to overcome the dilution of responsibility and deterioration of working conditions that occurs in labour supply chains involving significant subcontracting. In each of the above-mentioned countries, joint liability regimes were introduced to address gaps in accountability and barriers to enforcement that arise when companies outsource some or all of their labour. In most cases the regulations were introduced against a background of employers failing in their obligations and employees suffering abuses of their rights, either in particular sectors or in general throughout the labour market. The regulations also have the secondary aim of securing required payments into tax systems and social security schemes.<sup>143</sup>

Joint liability regimes may cover a range of subject areas, including liability for wages, for tax and social security contributions, and for health and safety. The scope of the regime may also vary, both in terms of the employers and employees. In some countries, such as Austria and Spain, liability for unpaid wages applies only to the 'principal contractor', who is the main or head contractor. In other countries, liability applies to all contractors and subcontractors within the chain, and in some cases may extend to the client who hires the principal contractor.<sup>144</sup>

Joint liability regimes may also be targeted at a specific sector, or at specific types of employees. In most cases, the regulations will cover all temporary and agency workers, though in some countries (e.g. Spain and Austria) the scope is much broader to include all workers, and in other countries legislation particularly addresses the duties towards undocumented workers. In at least 13 EU countries there are specific regimes to cover workers in the construction sector, where particular issues with subcontracting exist.<sup>145</sup>

<sup>141</sup> Government of Victoria, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report*, 2016, p.25. Available at [https://economicdevelopment.vic.gov.au/\\_data/assets/pdf\\_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf](https://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf)

<sup>142</sup> Ibid, p.234

<sup>143</sup> European Foundation for the Improvement of Living and Working Conditions, *Liability in Subcontracting Processes in the European construction sector: Spain*, 2008, p.11. Available at [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0887en8.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0887en8.pdf)

<sup>144</sup> Ibid, p.14-15

<sup>145</sup> Yves Jorens, Saskia Peters and Mijke Houwerzijl, *Study on the protection of workers' rights in subcontracting processes in the European Union*, 2012, p.37-44. Available at <http://www.ec.europa.eu/social/BlobServlet?docId=7921>

## Joint liability: International case studies

### CASE STUDY: BELGIUM

In Belgium the Law Concerning the Protection of Wages of Workers establishes joint and several liability for contractors for the unpaid wages of subcontracted workers in the construction sector. Under Article 35.2, outsourcers, contractors and subcontractors are jointly and severally liable for the payment of compensation to workers. This liability arises when businesses have been informed in writing by labour inspectors of the serious failure of their contractors or subcontractors to meet their obligation to pay their workers on time, and remedial action has not been taken.<sup>146</sup>

Articles 35.7 to 37.13 of this Act also apply to the employment of foreign workers who do not have the required permission to work in Belgium. These articles lay down some specific rules on the joint liability of wage payment for the employment of these workers. The principal or the intermediate contractor are jointly liable for paying any wages that have not yet been paid by their subcontractors. There is an exception to liability if the principal or the intermediate contractor has a written declaration from their subcontractors stating that they will not employ third country nationals who are undocumented. However, the exception will not apply and the principal and the intermediate contractor will be jointly liable if they knew, as a matter of fact, that their subcontractors were employing foreign workers who did not have the required permission to work in Belgium.

### CASE STUDY: GERMANY

In Germany there is broad and extensive chain liability for unpaid wages, in which the client, principal contractor, and subcontractors are all joint and severally liable.<sup>147</sup> The Minimum Wage Act provides that the client or principal contractor may be liable to pay the employees of subcontractors who have not received the statutory minimum wage, even if the client or contractor had no knowledge of this failure. In such a case, the employee may bring a claim directly against the client or principal contractor.<sup>148</sup> The regulatory framework also includes due diligence requirements, under which the principal contractor should ask for written confirmation from the subcontractor that it and any other subcontractors in the chain will respect the requirements of the applicable collective labour agreement.<sup>149</sup>

<sup>146</sup> See FLEX, *Labour Exploitation Accountability Hub*, <http://accountabilityhub.org/provision/art-35-2/>

<sup>147</sup> Yves Jorens, Saskia Peters and Mijke Houwerzijl, *Study on the protection of workers' rights in subcontracting processes in the European Union*, 2012, p.39. Available at <http://www.ec.europa.eu/social/BlobServlet?docId=7921>

<sup>148</sup> Allen and Ovary, *Customer Liability under the Minimum Wage Act : Recommendations for Reducing Liability Risks*, 2015. Available at [http://www.allenoverly.com/SiteCollectionDocuments/ClientAlert\\_Customer%20Liability%20under%20the%20Minimum%20Wage%20Act.pdf](http://www.allenoverly.com/SiteCollectionDocuments/ClientAlert_Customer%20Liability%20under%20the%20Minimum%20Wage%20Act.pdf)

<sup>149</sup> European Foundation for the Improvement of Living and Working Conditions, *Liability in Subcontracting Processes in the European Construction Sector*, 2008, pp.57-58. Available at [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef0894en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef0894en.pdf)

### **RECOMMENDATIONS**

29. Joint and several liability for the payment of wages and other worker entitlements should be introduced into UK law.
30. The Director for Labour Market Enforcement should conduct a review to determine the scope of new joint liability legislation. The review should consider:
  - a. The types of workers to be covered by the legislation.
    - i. FLEX recommends that all workers, and in particular agency and temporary workers, should be covered.
  - b. The sectors to be covered by the legislation.
    - i. FLEX recommends that the legislation cover workers in all sectors, and at a minimum covers high risk sectors such as construction, cleaning, and care.
  - c. How the legislation will be enforced.
    - i. FLEX recommends that the legislation be monitored and enforced by HMRC and the GLAA.
    - ii. FLEX recommends that in addition workers be enabled to enforce the liability of principal or intermediate contractors through claims to the Employment Tribunal.

### **d) 'HOT GOODS' PROVISIONS**

So called 'hot goods' provisions may be used to prevent the transportation or sale of goods made using exploited labour. Such provisions can be effective in preventing the distribution of, and profiting from, these tainted goods, but can also be used as a tool to compel the payment of owed wages or other forms of remediation.

Section 344 of the New York Labour Law creates liability for manufacturers and contractors who contract with other manufacturers or contractors for the production of apparel, and knew or should have known that the goods were produced in breach of minimum wage requirements.<sup>150</sup> Importantly, this law also includes a 'hot goods' component. Under Section 344 of the law, a Court may stop the shipping, delivery or sale of apparel made in breach of wage requirements, in order to force the payment of due wages.

Throughout the United States a 'hot goods' provision in the Fair Labor Standards Act (FLSA), allows the Department of Labor to seek a court order to prevent the interstate shipment of goods that were produced in violation of the minimum wage, overtime or child labour provisions of the Act. This provision has not often been used to stop the shipment of goods, though there are recent examples of its use to compel employers to pay wages owed to workers following the identification of violations.<sup>151</sup>

The problem of enforcing back-payment of wages owed to workers in the UK is significant. As HMRC does not keep data on the proportion of identified wage arrears that have been recovered, it is difficult to say how many workers continue to be denied wages that they are owed. The problem of enforcement of Employment Tribunal awards is widely known, with at least a third of awards being unpaid. A 'hot goods' provision could therefore be useful in compelling non-compliant and reluctant employers to pay wages owed to workers. Such a provision could be imposed in conjunction with a Labour Market Enforcement Undertaking, or in cases of breach of a Labour Market Enforcement Undertaking.

### **RECOMMENDATIONS**

31. The introduction of a 'hot goods' provision should be considered for compelling the payment of wages and other entitlements owed to exploited workers.

<sup>150</sup> See FLEX, *Labour Exploitation Accountability Hub*, <http://accountabilityhub.org/provision/new-york-labour-law-section-344/>

<sup>151</sup> See <https://www.dol.gov/opa/media/press/whd/WHD20122378.htm>

## e) PUBLIC PROCUREMENT

Public procurement presents not only an opportunity but an obligation on the part of government to protect against human rights abuses committed by businesses in supply chains. More than £200 billion (approximately a third of government spending) is spent on the procurement of goods and services. The government has an obligation to ensure that this huge purchasing power is used to protect the human rights of workers producing those goods and services, by significantly increasing and strengthening the focus on labour exploitation in its public procurement processes.

Currently, the extent to which labour standards are considered in UK government's procurement is a matter of policy only, rather than legislation. Contracting authorities have the power under Regulation 57(8)(a) of the Public Contracts Regulations 2015 to exclude a bidder if the contracting authority can 'demonstrate' a violation by the bidder of environmental, social or labour obligations. Individuals who have been convicted of a slavery or trafficking offence under the Modern Slavery Act will also be excluded from participation in public procurement procedures. However, there is no legislative requirement that the UK government exclude companies from contracting who have a history of labour rights abuses, or who have failed to report under section 54 of the Modern Slavery Act, and no requirement that labour standards be considered as part of procurement decision-making. In March 2017 the Joint Committee on Human Rights recommended that all companies found to be responsible for human rights abuses, or companies that have not undertaken appropriate and effective human rights due diligence, should be excluded from public contracts.<sup>152</sup> The government has said that it intends to publish cross-government guidance on social, labour law and environmental aspects of the public procurement regulations, however this has not yet happened.<sup>153</sup>

In other countries, including Wales, governments have taken a more proactive approach to addressing exploitation in public procurement.

### CASE STUDY: WALES

In March 2017 the Welsh Government launched a new Code of Practice for Ethical Employment in Supply Chains in the Welsh public sector. The Code contains 12 commitments covering six key subjects: Modern slavery and human rights abuses; blacklisting (on the basis of union membership); false self-employment; unfair use of umbrella schemes and zero hours contracts; and paying the Living Wage. Under the Code, organisations commit to producing a written policy on ethical employment in supply chains, and ensuring that employment practices are considered as part of the procurement process. Organisations also commit to ensuring that the procurement process itself does not contribute to unethical employment practices, for example by placing undue cost or time pressures on suppliers.<sup>154</sup> All public sector organisations in Wales, businesses and third sector organisations in receipt of Welsh public sector funding will be expected to sign up to the code.

## Public procurement: International case studies

### CASE STUDY: UNITED STATES

Executive Order 13627 prohibits federal contractors from engaging in practices that relate to or may lead to human trafficking, including confiscating immigration documents, charging recruitment fees, or failing to provide adequate housing. The order also imposes certain requirements for the prevention of human trafficking on contracts and subcontracts for materials or services outside the United States. Failure to comply with the requirements may result in suspension/debarment, termination of the federal contract, imprisonment for false certification, False Claims Act liability and civil litigation. The Order also tasks the President's Interagency Task Force to Monitor and Combat Trafficking in Persons with establishing a process for evaluating and identifying high-risk industries or sectors.

<sup>152</sup> Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability, Sixth Report of Session 2016-17*, HL Paper 153 / HC 443

<sup>153</sup> See House of Lords Hansard, Modern Slavery (Transparency in Supply Chains Bill), Volume 773, 08 July 2016. Available at [https://hansard.parliament.uk/lords/2016-07-08/debates/7149F3BA-3E4B-47E6-BBA0-89FD4357224E/ModernSlavery\(TransparencyInSupplyChains\)Bill\(HL\)](https://hansard.parliament.uk/lords/2016-07-08/debates/7149F3BA-3E4B-47E6-BBA0-89FD4357224E/ModernSlavery(TransparencyInSupplyChains)Bill(HL))

<sup>154</sup> Welsh Government, *Code of Practice: Ethical Employment in Supply Chains*, 2017. Available at <http://gov.wales/docs/dpsp/publications/valuewales/170502-ethical-en.pdf>

Where the estimated value of the supplies or services required to be performed outside the United States exceed \$500,000, contractors and subcontractors must create and publish a 'compliance plan' (at the workplace and on the contractor or subcontractor's website). Contractors must certify prior to receiving an award and annually thereafter, that their contract or subcontract contains a compliance plan, and that to the best of their knowledge, neither they nor their subcontractors have engaged in any trafficking activities.

The requirements of a compliance plan under this section include:

- (i) An awareness program to inform employees of a policy against human trafficking and that actions will be taken against employees who violate this plan;
  - (ii) A process for employees to report trafficking activity without fear of retaliation;
  - (iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees and ensures that wages meet the applicable legal requirements;
  - (iv) A housing plan that meets host country housing and safety standards; and
  - (v) Procedures to prevent subcontractors from engaging in human trafficking.
- However, this provision does not apply to contracts or subcontracts for commercially available off-the-shelf items.

#### **CASE STUDY: AUSTRIA**

In Austria, Sect. 19(1) of the Federal Act on Public Procurement 2006, provides public contractors can only hire authorised, capable and reliable (sub)contractors, and such contractors are screened against the central Administrative Penalty Register of the Federal Ministry of Finance. Contractors may be excluded for serious professional misconduct, especially non-compliance with tax, labour and social law.<sup>155</sup> Under section 129 of the law, contracting authorities may also exclude bids by bidders whose price or cost offers lack a 'plausible composition' of the price. This includes, for example, for the price to reflect a realistic composition whereby staff costs (based on the minimum wage) can be covered. Bids with prices that would not cover staff costs can be excluded if no further explanation is provided.<sup>156</sup>

#### **RECOMMENDATIONS**

- 32. The Public Contracts Regulations 2015 should be amended to require contracting authorities to exclude any economic operators found to be directly responsible for abuses of fundamental labour rights.**
- 33. The UK government should develop a Code of Practice for Ethical Employment in Supply Chains, which requires contracting authorities to a) have regard to employment practices as part of the procurement selection criteria, and b) exclude economic operators that do not have adequate policies or procedures to protect the labour rights of workers in their supply chain.**
- 34. Suppliers contracted by the UK government should be contractually required to adhere to a Code of Conduct, and subject to termination of contract where breaches are identified and not adequately remedied.**

<sup>155</sup> Yves Jorens, Saskia Peters and Mijke Houwerzijl, *Study on the protection of workers' rights in subcontracting processes in the European Union*, 2012, p.29. Available at <http://www.ec.europa.eu/social/BlobServlet?docId=7921>

<sup>156</sup> See FLEX, *Labour Exploitation Accountability Hub*, <http://accountabilityhub.org/country/austria/>



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