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Joint Committee on Human Rights

Oral evidence: [Human Rights and Business](#), HC 443

Wednesday 1 February 2017

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Baroness Hamwee; Baroness Lawrence of Clarendon; Jeremy Lefroy; Baroness Prosser; Lord Trimble; Lord Woolf.

Questions 77 - 94

Witnesses

I: David Isaac, Chair, Equality and Human Rights Commission; Margaret Beels, Chair, Gangmasters Licensing Authority; Karen Jochelson, Director, Economy and Employment programme, Equality and Human Rights Commission.

Written evidence from witnesses:

— [Equality and Human Rights and Commission](#)

Examination of witnesses

David Isaac, Margaret Beels and Karen Jochelson.

Q77 Chair: A warm welcome to you all. I will start by explaining to you that this is the Joint Committee on Human Rights. We are half Lords and half Commons, and obviously we are cross-party. We are looking at protecting human rights from the point of view of UK businesses and the extent to which they can protect human rights and the extent to which they are abusing human rights. We are very grateful to you for coming along to give evidence to us on these issues. Perhaps I could ask you to introduce yourselves one by one and then say what you think are the most significant human rights issues affecting UK businesses.

Margaret Beels: I am Margaret Beels. I chair the Gangmasters Licensing Authority, which I have chaired for the past five and a half years. It might be appropriate, first, to thank you all. We appreciate the support that the



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Gangmasters Licensing Authority has had from both Houses of Parliament. It has been important to us. The fact that we have cross-party support is also something that we particularly value.

I am sure you will be aware that we are in the middle of quite a significant transition, from the Gangmasters Licensing Authority to the Gangmasters and Labour Abuse Authority. We are very much in the midst of that at the moment. Our name was changed formally last July. With the national minimum wage team and the Employment Agency Standards Inspectorate we have started the pattern of joint working that was envisaged under the Act.

Some new sanctions have already come in, which we can talk about as we go through your questions. We now have labour market undertakings and labour market orders, which allow us to require companies to adhere to employment standards. The Gangmasters and Labour Abuse Authority will announce itself when it gets its complete new powers, which we are told will be in the spring. Nobody has told us when the spring is, but we are hoping it will be April. That will give us powers under the Modern Slavery Act to investigate forced and compulsory labour. It will also give us police and criminal evidence powers to collect data and to interview. Those will be very important in gathering more evidence where labour exploitation, labour abuse and slavery issues are happening.

This widening of powers means that we will be looking at labour across the entire labour market. At present, the Gangmasters Licensing Authority deals only with temporary labour in agriculture and food. But under the new powers we could be investigating any form of exploitation, whether it is of permanent or agency workers, and whichever sector it is in. In preparation for that, we have undertaken a threat assessment of where we think the greatest risks are, and we can come back to the outcome of that threat assessment.

Another important development for us is the appointment of the director of labour market enforcement, Sir David Metcalf, whose appointment was announced on 5 January. We will be working with him and will have to take account of his strategy and his priorities. He will have an information hub that will gather information across the entire piece, and that will be helpful to us. Lastly on the transition, we have been given some more money. It was announced on 15 December and that was the best Christmas present that we could have had.

I will say a little about the changes that we are going through. We will present our strategic plan in the next month or so. That will talk about the things that we are doing. One important thing for us is stakeholder engagement, by which I mean working with businesses to ensure compliance with employment rights and legislation. We have already established liaison groups that deal with businesses, trades union people, workers and NGOs. We want to build on that, because obviously our purview has expanded. We very much believe in going out there, so we are in the middle of what we call pop-ups: we go round the country telling people what we are doing. The important thing is to try to prevent



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the exploitation of labour. The best way of doing that is to make sure that people understand their obligations. We will be doing a lot more of that in the next year.

Q78 Chair: I thank you very much for that. Can I ask you to say a bit more? You very helpfully set out the processes and the transition that you are undergoing. I have two questions. The first is fundamental. What do you actually think is going on? What do you mean by labour market abuses? What are you talking about? Obviously we have our own sense, but we would like to hear from you. What is going on out there that makes you necessary? I know that you are doing a threat assessment more widely. What are the industries, and what sorts of abuses, are you concerned about? Without asking you to pre-empt the publication of any threat assessment, what are you actually talking about? What is going on out there, in what regions and in what sectors? What sorts of abuses are you lying awake at night worrying about? Secondly, you said that you have been given extra resources. Are they sufficient to enable you to deal with the wider remit you now have?

Margaret Beels: The sectors that we flag as the highest-risk sectors in our threat assessment are: cleaning, care homes, construction, the catering industry, even things like car washes, and farming and agriculture is still a high-risk area. If you are thinking about the types of circumstances, bogus self-employment is an area that we are concerned about. Citizens Advice did a survey of that and it reckoned that about 10% of self-employed people are bogus self-employed and are therefore not being granted their proper employment rights. There is a concern about the Traveller community employing people, particularly in the low-skill, basic construction-type industries. Those are areas where we think the greatest risk is; by risk we mean people not being paid properly, not being housed properly, and being subject to physical and mental abuse through their employment.

Chair: Thank you. David, perhaps you could answer those questions in relation to the Equality and Human Rights Commission.

David Isaac: I am David Isaac. I am chair of the Equality and Human Rights Commission. On the question of what I think is going on and what our main areas of focus are, in relation to the role of the EHRC I probably do not need to go into the same sort of detail as Margaret did. We are here to promote human rights and equality, and the commission has been involved in various activities in relation to human rights and business. We have done inquiries into some of the sectors that Margaret identified as the sectors that have perhaps caused and continue to cause the most concern. We have done work in the meat and poultry area, in relation to care in the home, and in relation to cleaning. Those are the three big inquiries. We work by seeking to influence where we do not have statutory powers to intervene directly. In relation to our human rights work, we can intervene on UK issues where discrimination is at the heart of a particular matter. I am keen that the commission now operates with a more muscular regulatory approach, which I have talked about when I have been before you previously, but we can that only in relation



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to cases of actual discrimination. We do not have the powers to do any more than that.

On the question of influencing, we are doing a lot of work with business, government and trade unions to move the agenda forward. As to the issues that we would say are current, the UK has made good progress with the national action plan, although we think that there is more to be done. We think that the Modern Slavery Act is a huge advance, but there are areas where things could be improved; we made some suggestions in our written submission. We think that a lot more could be done in procurement. Speaking personally, I think we need to ensure that there is much more transparency in supply chains. We need to drive change starting at the top and moving down. By that means, we can address the wider human rights issues but more particularly modern slavery and, I would go so far as to say, sometimes child labour.

Chair: May I follow up by asking you the resources question, David? I think that your annual budget, which was around £70 million in 2010, is set to fall to £17.5 million by 2020. Whereas in 2010 you had 525 staff, you now have 148. How will that affect the work that you have talked about and what are the prospects for the future of that work?

David Isaac: The information that you have just recited is from 2008. When we were set up—in 2007-08—we indeed had a budget of £70 million. In 2010, it had been reduced to £55 million. You are right that currently we have a budget of £21 million, with that reducing probably to £18 million over the next four financial years. We are concerned about the 25% reduction in our funding. We were asked to model a 40% reduction, but we sought to resist that and we have now been told that our reduction will be 25%. It obviously has a huge impact on our ability to operate, but I would ask you to look at the 25% against the recent figures rather than the 2007-08 figure, because that has reduced incrementally. We have obviously had to take steps to deal with a reduced budget. That means that we have had to reorganise our staff and introduce a new operating model. The result of that has been that, certainly with me as a new chair at the helm, we focus on the things that only the commission, uniquely, can do. We focus on our regulatory and legal powers and work more in collaboration with other bodies, including government and NGOs. It is important for me to say in this forum that if we were to endure any further cuts we would be cutting into bone. We are at the limits of what we can do to discharge our statutory duties, but we are trying to be as smart, effective and creative as we can with the budget that we have secured.

Chair: Doreen, can we move on to your question?

Q79 **Baroness Lawrence of Clarendon:** Good afternoon. You have touched on the national action plan. Could you say a little more about what parts are good and what is lacking?

David Isaac: I think that the very existence of the national action plan is good, because it sets out a whole series of expectations for business in



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particular, both large and small businesses. Certainly from the commission's point of view, it has given us a good opportunity to engage in a dialogue, which was not previously always possible because we did not necessarily have the attention of business in the way we would like. We think that it is deficient, as I said at the outset, because it does not have clear and definable objectives; they are not smart, to use the jargon. That means that it is very difficult to measure when progress has been made and to review them more generally. They are a soft tool rather than a hard tool, and we would prefer them to be a hard tool if we are really going to drive change.

Baroness Lawrence of Clarendon: Do you think that the work of the UN working group on businesses and human rights is being followed through and implemented in what the Government have set out?

David Isaac: We have engaged with that working group and we think that it has set out some very important objectives, which are those that, in our submission, we have encouraged you to recommend. For example, carrying out a gap analysis and an impact analysis is sensible. At the commission, we believe that if we are to take this area of human rights seriously we need more coherent and effective resources. Clearly, making sure that the national action plan is taken into account in procurement would really help.

Q80 **Baroness Lawrence of Clarendon:** How do you see the reporting requirement introduced under the Modern Slavery Act 2015? Is it effective in holding businesses to account?

David Isaac: We welcome that annual reporting requirement. It is certainly a good first step, but we know that it is not very clear in being prescriptive about what the statement should cover. The modern slavery commissioner has said that he is concerned that it is a tick-box exercise. The flexibility and degree of subjectivity in relation to those annual statements mean that, again, there is no real specificity and the requirement is not the kind of tool that will really drive change. The good thing is that it has the attention of business. To that extent, we have found that businesses, in the modern slavery context but also more widely in relation to the national action plan, are now keen at least to consider the issues and to participate in a dialogue, as I said.

Baroness Lawrence of Clarendon: Do you see them as being held more accountable than they were before?

David Isaac: I do, because if they do not produce their annual statement there are consequences. Also, NGOs, organisations such as us and consumers are increasingly going on to websites to see what the annual statement says. To that extent, it is a soft tool.

Baroness Hamwee: Has grabbing the attention of business trickled down to businesses whose turnover is below the reporting threshold?

David Isaac: Probably not as much as it could do, but I think it is trickling down through the supply chain—I mentioned the importance of



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supply chains. It is certainly something that I would be keen to talk about in more detail if there is time. I think that supply chain protocols and the introduction of human rights considerations in procurement within the supply chains are incredibly important in driving change.

Baroness Hamwee: I am going to ask you about that in a minute or two.

- Q81 **Baroness Lawrence of Clarendon:** This is a question for Margaret. Should there be some link between the Modern Slavery Act requirements and the responsibilities of gangmasters, such as to provide reports on modern slavery in their supply chains?

Margaret Beels: It is important that everybody in the employment chain looks down the whole chain. One thing that had a lot a publicity was the horsemeat scandal, when people suddenly realised that there were chains. We tried to get a lot of publicity for that, because employment chains are just as vulnerable to exploitation. If a company is supplying workers into the UK, they have to be licensed by us, so we have a little reach, but it is much more difficult for us to police employment agencies that are overseas. Therefore, to the extent that employers in this country are using agencies from outside, we would welcome them being accountable for that.

Baroness Lawrence of Clarendon: I have another question. When you are doing reviews for the Government, when you go out to do your work and so on, do you see yourself as truly independent?

Margaret Beels: Absolutely, yes.

- Q82 **Fiona Bruce:** I have a question for Mr Isaac again, going back to the statutory report on inquiries. You said that you thought it was something of a tick-box exercise and that further specification could be helpful. Could you go into more detail about the type of further information you would like to see required?

David Isaac: I think some guidance about what should be included on the actual practice in a company, and what it does to enforce the rules in supply chains, which is obviously a big theme that we are touching on. Also, it needs to be made clear that, to be meaningful, the statement that is currently possible, that there is no compliance, meets the statutory requirement.

Fiona Bruce: Do you have different specifications for different industries or different areas?

David Isaac: If we were to drill down into that sort of specificity, yes, that could be helpful. I am always concerned to ensure that if there is going to be a regulatory burden it will be as focused and light as possible, or there will be resistance. I detect from talking to businesses that there is a real desire to make progress in this area; lots of big businesses in particular are now embracing CSR, and this is seen very much as an extension of that. Therefore I think they would be prepared, particularly if



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they have no issues, to be quite open about that. But to make it too prescriptive and onerous can be counterproductive sometimes. The biggest challenge is how to make this proportionate in relation to the supply chain, even supply chain members with a turnover of in excess of £36 million.

Fiona Bruce: Finally, would you recommend a change in that turnover level?

David Isaac: My view would be to do it more incrementally, to drive more change at that level and to improve things. Then, depending on progress, as in the point I made in the national action plan, let us review and, if appropriate, reduce the threshold level.

Chair: Before we go on to Baroness Hamwee's question, I will go back to something that you mentioned, Margaret. You talked about the supply of labour, which obviously crosses borders. Therefore, I presume that there is a sense of a need to work together across national boundaries. Is there any implication for Brexit in relation to that? How much do you work with your counterparts in other European countries, and how much of those relations will be affected, in that very important work, by Brexit?

Margaret Beels: We work to some extent through Europol, and there is a question of how that will carry on post Brexit. We also do a lot bilaterally with individual countries, and we would expect that sort of bilateral relationship to continue. So, yes, it is an area in which we have some concerns, but we want to build on our bilateral relationships in order in part to compensate.

Q83 **Baroness Hamwee:** This question is for David. You said earlier that one should drive change starting at the top, and I think one could argue that that needs to start with government and public authorities. This feels like a slightly odd question. You said in your written evidence, talking about procurement and the public sector and ensuring that human rights matters are reflected appropriately, that you would welcome further information on how government is implementing and monitoring that. I wanted to ask you for comments on that.

David Isaac: I can tell you what I see in relation to current public procurement regulations. The changes which the Government introduced in 2015 are welcome in the sense that there is now an increased focus in public procurement on human rights issues. However, they are not necessarily mandatory, and they do not exclude particular bidders unless there are convictions for child labour or trafficking. I would describe them as non-mandatory and quite discretionary, and while they have produced more information in how government procurement is run, a stick does not necessarily exist. If government is serious about this, that could be done to make it consistent with the directive.

Baroness Hamwee: Are the companies that are procured becoming adept at avoiding sanctions and the stick?



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David Isaac: I am not suggesting that they actively mislead in the way they represent their position and supply chains and how they bid for public sector contracts. My main point is that these things drive change and encourage bidders to interrogate their supply chains and insist that the sorts of protocols that they might be in control of in their own companies then float down as a condition of doing business in the rest of that procurement supply chain.

In our experience—and I have seen this professionally as well as in my EHRC capacity—those are the sorts of things that mean that small and medium-sized businesses and smaller plcs take these things much more seriously and will interrogate how they proceed and how they insist that human rights issues are taken into account.

Baroness Hamwee: I mentioned government, but your comments apply to public authorities too.

David Isaac: They do.

Chair: Would you like to see standard clauses introduced in contracts so that there is a standard for supply chains, and standards introduced as a matter of course throughout government and public agencies?

David Isaac: I think that would be helpful. Certainly, guidance currently exists.

Chair: But that guidance is about what to put in the contracts, rather than standard clauses.

David Isaac: Yes. I think that standard template provisions would be very helpful. I am slightly hesitant to insist that they are compulsory in all cases, because one needs to determine which sector is in question, or which particular services or products are being commissioned. One might need to amend it slightly. I would welcome any sort of clarity, with draft clauses and useful guidance that would encourage people in a public sector context.

One interesting thing that we have identified at the commission is that sometimes the need to focus on increasing commercialisation and improved commercial outcomes in public sector contracts has resulted in undermining human rights issues. A particular example is the work that we have done in relation to the care industry. There are certain key performance indicators for how service providers are paid that mean that sometimes human rights are denied. To give you an example—and this is well known—certain people who need to be put to bed early have been put to bed at lunchtime, because the service provider has a whole number of people whom it needs to put into bed and they rush around to meet their key performance indicator. But they do not respect the right of the person who needs to stay up for as long as possible during the day—to do it on a human rights level. There are perverse outcomes because of the need by some public sector authorities to drive improved



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performance, but those improved performance indicators undermine human rights.

Baroness Hamwee: They are the wrong performance indicators.

David Isaac: They are. Correct.

Q84 **Baroness Hamwee:** You said in your written evidence that the Government might think about acknowledging that they had awarded a contract on the basis of good human rights and equality practices. How can that be encouraged, as against the financial criteria and requirements?

David Isaac: Obviously, it is important to take human rights into account as part of that contract-awarding process. Increasingly, we are seeing human rights being considered. In the past, I do not think they were considered at all and the key performance indicators, as you rightly identify, have rewarded different behaviours and overlooked human rights. In devising the success criteria for the award of the contract, human rights and the treatment of the very people who are being cared for should be important factors really high up in the award of the contract, accepting of course that the standards of skill and the resources and the way in which those services are being charged would be equally important and that human rights of themselves would not be the only factor taken into account in awarding the contract.

Q85 **Baroness Prosser:** A question for you, Margaret. You mentioned earlier when you were giving us a bit of the organisation's back story that you felt that getting the extra money was the best Christmas present ever. Would you say that prior to that the GLA as was in its more compact form had sufficient government and financial support?

Margaret Beels: We have to be grateful for small mercies in this world. Our budget this year is £4.96 million and our budget next year is £7.78 million. We are talking about what is a big increase for us but is still quite a modest amount of resources. We accept that our job is to make the best use of those resources. Do we have enough? We could make good use of more resources.

Q86 **Baroness Prosser:** We have been given some Home Office figures for the activities of the GLA. For example, in 2010 there were 19 prosecutions, but by 2014 that had gone down to three. In 2011 there were 134 inspections; in 2014 there were just about half that—68. Was that because people were not aware of the legislation and the regime that had been introduced, or was it because you had insufficient people? As well as money, of course, government can give support in a variety of ways; first, by being a bit joined-up. Do you feel that the support that came from government interdepartmentally has been sufficient or helpful?

Margaret Beels: Because we issue licences and carry out application inspections before we issue a licence, and because somebody operating in our sector cannot operate without a licence, we give priority to doing



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what we call application inspections. The volume of application inspections is outwith our control. It goes up and down and our number of inspections go up and down. So we do that first. We have a system of prioritisation within our organisation that looks at what needs to be done with the resources that are left after we have done the application inspections. It is all intelligence-based, so we are looking at what evidence we have that something is going wrong that we need to do something about. That can result either in what we call compliance inspection—to go and see for ourselves—or in enforcement action. We have about 71 people on the staff at the moment, of whom about 40 are front-line people, and we are looking at what these 40 people need to do. The extra money will let us bring in about another 40, so that is good.

The board is there because part of our role is to safeguard the use of public money. We are looking at the trends that you are talking about. We get reports such as these and see what is going on. You can rest assured that we have asked the Executive why the numbers are less. We get a variety of reasons. Some are to do with the fact that we are doing more joint working and how that gets counted in the statistics. It can create anomalies. Cases are more complicated so take more effort.

Another factor that has been a feature this year is that because we are getting new powers we have had to take some people offline to train them so that they know how to use the new powers. We now have six new labour abuse prevention officers, who are some of our really good guys. If you have 40 people and six of your best guys are busy training for the new things, it has an impact on us, but it is really important that we do as much as we can with the money that we have. As I say, the fact that the investigations are more complicated and reach into more areas affects us.

Baroness Prosser: Would you agree with David's comments just now about procurement and the need for a stiffer regime, given the demands made on the public sector in particular when procuring contracts?

Margaret Beels: I agree with what David said. We are very conscious that when we talk to business we are typically talking to the good guys. We need to find out what is happening elsewhere. Our business model is that about 80% of businesses get it right, and they can write really good statements of compliance. Of the 20%, probably about 80% of them would do the right thing if they knew what it was, but they might be a bit busy. The 20% are the ones we really have to go after with enforcement activity.

Baroness Prosser: Are you able to work with the Recruitment & Employment Confederation?

Margaret Beels: Yes, we do.

Baroness Prosser: It is as anxious about these dastardly things going on as the rest of us, because they reflect back on it.



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Margaret Beels: As is the Association of Labour Providers, which works particularly in our sector. We are quite pleased that it did a survey of its members, and 94% of those who responded were in favour of licensing.

Baroness Prosser: Because it protects them?

Margaret Beels: Absolutely.

Q87 **Lord Trimble:** In your introduction, you said in regard to the Gangmasters Licensing Authority that you were limited primarily to food and agriculture. Are you satisfied with that? Do you not think there might be other sectors of the economy where these problems might exist?

Margaret Beels: Yes. You will remember that the origin of the Gangmasters Licensing Authority was the Chinese cockle-picker disaster in Morecambe Bay. In some senses, that defined the original scope. We have this new regime under the Immigration Act to have labour market orders and labour market undertakings. That is where an inspector, who might be one of ours or from the national minimum wage team or the Employment Agency Standards Inspectorate, will go and find non-compliance in a particular company. They will speak to the management of the company and agree what needs to improve. If it improves, fine. If it does not improve, an order can be placed, which has criminal sanctions behind it.

My guess is that in the short term the Government will want to see how this is working and will want to talk to the director of labour market enforcement about his perception. So I expect no change to the scope of licensing, but there are areas where there needs to be additional vigilance.

Lord Trimble: This is coming through the labour abuse authority, and presumably the orders that you are talking about can be made with regard to any sector.

Margaret Beels: Yes, that is right.

Lord Trimble: Of course, the minimum wage will apply to any sector.

Margaret Beels: Yes.

Lord Trimble: So would it not make sense to integrate these three bodies, as it were; these three elements?

Margaret Beels: In the first announcement in May 2015, the Prime Minister said that the Government were going to set up a new agency. The problem they then discovered was that the three agencies are all on different terms and conditions and in different places. The concern was that in trying to create a single agency two years would go by before anything different had happened. That is why we now have the director of labour market enforcement, who has an overview of all three. It is not the way you would design it if you started with a blank sheet of paper, but these are important issues, so we will try to make it work.



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Chair: Following on from that, is there any intellectual justification for not having a licensing regime for the other sectors that you mentioned: cleaning, care homes, construction and catering? I remember when it was set up; it delineated the sector, but things have moved on and we are aware that these issues are much more widespread than that one sector. I understand the history of why we are where we are, but is there any reason why licensing, as well as these other orders that are available to you, is not appropriate in those sectors to provide that protection for human rights?

Margaret Beels: The Government try to reach a balance in relation to burdens on business, and there is a school of thought that having to have a licence in order to be in a business creates a burden on business; it creates a threshold that is unacceptable. We know that licensing works in the agriculture and food industry. We know that it has made a huge difference, but whether regulation should be extended is a much bigger question. We think that you need to be reasonably targeted in deciding which businesses will have to have a licence in order to be in business.

Chair: If you were to pick one to add—I know this is hypothetical, because of what you have just said—which would be top of your list? Would it be construction or cleaning? Which would best benefit were the Government to get over their worry about putting burdens on business and were worried about protecting human rights instead?

Margaret Beels: I think that construction is a real issue, but construction means so many different things. On the whole, I am less concerned about large, well-run construction sites than small-scale renovations of terraced houses or driveways—the smaller scale. It is quite difficult to say “this sector”. It can vary even within one sector.

Q88 **Chair:** You have talked about the government action plan. What is your assessment of the national contact point? With all the agencies and all the potential abuses that need to be deterred and called to account, and all the tools that are there, where does the national contact point sit on the Richter scale of impactfulness?

Margaret Beels: We have no dealings with the national contact point.

David Isaac: Nor do we at the commission. We know about its work. Obviously, we understand its role. Various NGOs have made comments about its independence and whether its role as a conciliator is effective. But other than acknowledging that it exists and is part of the jigsaw of referral systems, we have no direct dealings with the NCP.

Q89 **Lord Woolf:** Moving on from that, it is all very well having remedies but they have to be accessible. What has been the effect of tribunal fees?

David Isaac: You know that the commission feels very strongly that there should be access to justice for all. I am aware that last night the Government’s review on access to justice was published. I confess that I have not had a chance to look at it, other than the headlines. It makes some concessions on fees for people who are living below the minimum



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wage, but we are hugely concerned that all people, particularly in the area that we are discussing today, should have access to justice to enforce their rights. In relation to some of the areas that we are concerned about and which we have touched on this afternoon, the UN general principles and the national action plan simply do not focus on remedies. That is a major gap.

Q90 **Lord Woolf:** I will ask you a related question, Margaret. Do you think that victims of gangmasters have an effective remedy? What would you recommend here?

Margaret Beels: I would add that it is not just about access to justice but about timely access to justice. Very often the workers who we deal with are living a reasonably hand-to-mouth existence and cannot wait a year or two years to get justice. One thing that the Gangmasters Licensing Authority tries to do is to mediate between an employer and a worker. If a worker contacts us and says, "I haven't had my holiday pay. I haven't been paid", the first thing we do is to contact the employer and find out what the employer has to say about it and explore whether or not the worker has received their rights. Access to justice in that way is by picking up the phone and trying to make sure that any injustice has been remedied without having recourse to any formal process. One of our performance indicators is trying to improve our score on those sorts of interventions so that the matter can be dealt with quickly.

Lord Woolf: In situations where you are not able to achieve any satisfactory redress that way, what are your concerns?

Margaret Beels: We would carry out a compliance inspection. If we remain concerned about the matter, we can either suspend or take away the licence. It is not quite the same as a remedy, which you were talking about, but we can at least prevent future abuse.

Q91 **Lord Woolf:** Focusing more closely on remedies as normally understood, would it be helpful if there were some form of strict liability?

David Isaac: We had a debate at the commission about whether there should be strict liabilities. There are sometimes some pretty compelling reasons for adopting a strict-liability point of view. But one needs to be very careful, as you will be the first to acknowledge, about a widespread imposition of a strict-liability approach. I would step back and try to work out what the Government—and we, who hold the Government to account—are trying to achieve.

I endorse what Margaret said about people who co-operate—the good guys. I have seen elsewhere that identifying exemplars can drive huge change. I am thinking in particular about the corporate benchmark for human rights, which I understand is going to be introduced in March. I know from the work I did with Stonewall on the Workplace Equality Index that recognition against a benchmark and rewards can sometime drive behaviour and outcomes. I advocate a mixed-economy approach in relation to rewards but also penalties. I would not necessarily jump to a strict-liability point of view. I would try a number of things to incentivise



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and reward, and for the 20% of very extreme performers who continue to ignore the direction of travel one needs to think carefully about whether strict liability would be the only alternative in order to drive real change.

Lord Woolf: As an alternative and perhaps as a choice, what about a duty without strict liability?

David Isaac: That would be better than a wholesale strict liability approach.

Lord Woolf: You would find that better.

David Isaac: I think we would need to look at the detail. As I said, we suggest that the way in which the Modern Slavery Act is drafted and some of the omissions should be reviewed. The liability approach in relation to particular duties would be a sensible part of that review.

Lord Woolf: Is there anything that you want to add, Margaret?

Margaret Beels: I cannot claim expertise.

Chair: Can I just follow up on the issue of recourse? Obviously, if individuals are not being paid or are not getting the holidays to which they are entitled, that needs to be remedied. If people carry on having a licence, they can just go, "Oops, I had better put that right", so where is the deterrent so that people are anxious that they have got their house in order and so that once this is discovered, as well as the remedy for the individual victim, their licence is vulnerable?

Margaret Beels: There are different sorts of interventions that we can make. We can sort out a particular case, but it is not completely done and dusted because it is in our records; we know that about that licensee. That sort of need to intervene might trigger our doing a compliance inspection in order to discover whether we think there is something more systemic and not just a one-off omission. We can also impose additional licence conditions if we are concerned about a particular aspect of the way in which a company is performing and then get into the more stringent suspension or revocation of the licence.

Chair: Can you give us an example of the conditions that might be a step away from revoking the licence?

Margaret Beels: It might be additional reporting to us about what they have been doing. If they say, "We're going to put in a new system so that this sort of thing can't happen again", we would require them to report to us on what they have done to put that system in place and say how that has improved their performance on the regularity of pay and that sort of thing.

Chair: What about access to the civil courts? If individuals had access to remedies in the civil courts, that would go alongside what you are doing in making it not worthwhile for companies and businesses to get it wrong. Where do you see that?



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Margaret Beels: The workers who we are dealing with are people who will move from job to job. They basically want money. Justice is not necessarily something that they can wait for. My question would be how long it would take them to get a remedy through a civil court, because they may want to go back home long before that can be done. I am not saying that that is satisfactory; I am talking about instant remedy or something rapid. I am not sure that access to civil justice would make a difference to the worker.

Chair: I am not suggesting it as an “instead of”. I am just exploring whether you think that in order to protect future workers the ability for lawyers to take action in the civil courts on behalf of vulnerable workers should be part of the enforcement of higher standards and the range of things that can be done to make employers look over their shoulders and be anxious about doing things right, so that they take responsibility rather than leave the risk with the individual. It is not instead of.

Margaret Beels: I absolutely support that being in the toolkit. Typically, the workers who we are dealing with are not organised in any way. Those who have union representation or some other collective activity may be in a stronger place to work through the civil remedy procedure.

David Isaac: Could I add to that? You are absolutely right in relation to the extreme examples that the GLA is looking at, but across the whole human rights piece we are particularly concerned about zero-hours contracts, the gig economy and all the other areas where there are similar vulnerabilities although perhaps not as extreme. I think that civil remedies, where they are appropriate, might be useful.

Chair: Do you think that a good bit of potential suing makes employers a bit more careful? Obviously losing a licence, naming and shaming, and not being one of those people getting the awards and best practice recognition are all part of it, but what about the jeopardy for those who have these sorts of business responsibilities, so that they feel that they might end up in court being sued?

Margaret Beels: We have had a lively debate about civil penalties in relation to gangmasters. We have regularly been disappointed in cases that we have brought to court in which gangmasters have been successfully prosecuted for not having a licence—these are unlicensed gangmasters—but the fine has been less than they would have to pay to have a licence. One thing that we have been anxious to improve are the sentencing guidelines, so that people who are guilty of these offences feel it in their pockets, because that is where it will hurt them.

Chair: And feel it in their pockets in relation to your enforcement but also in relation to their exposure to individuals who will be helped by lawyers to take civil actions, which will give a remedy and a disincentive. Do you have anything to add, David?

David Isaac: I think it should be part of the toolkit, as Margaret says. On the issue of meaningful penalties, to the extent that we are talking



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about penalties I see this across the whole of the equalities and human rights space, particularly in relation to disability and accessibility. I have been shocked by how cynical some employers are in not being prepared to invest in accessible ramps, for example, because it is easier to pay the penalty than to build the ramp.

Chair: And it is easier to put it right when you are caught rather than to do it up front.

Lord Woolf: Have you had any discussion about whether this falls within the purview of the Sentencing Council?

David Isaac: I do not know the answer to that, I confess, but it is a good point and we will explore it.

Lord Woolf: I do not know the answer, either. I was wondering whether you are making representations to whoever is responsible for these things on the need for the guidance to be given to tribunals to make sure that the penalties are meaningful.

David Isaac: Certainly, I am mindful of that and it is a good suggestion, which we will explore. I have been shocked by how cynical some employers are.

Chair: Perhaps, Margaret, both you and David could come back to us on that. Who and what should be doing something to make sure that, when you have put in a lot of work and got to a particular outcome, the result is not the sort of slap on the wrist that undermines the important work that you have done and gives the green light to others to carry on in the same old way? Thank you for that, Harry. It is a handy pointer.

Ms Karen Buck: Just to finish on that, it requires both sides of the equation: the deterrent effect of being caught and the size of the penalty but also making sure that those affected know how to access rights. Where do you see the responsibility for monitoring the impact of employment tribunal fees in the post-LASPO world and the world of advice deserts, and how that is impacting on discrimination and human rights access, particularly for vulnerable workers? Are you tracking that yourself or working in partnership with others?

Margaret Beels: We do not track that.

David Isaac: But we do. We fed into the government review, as I said earlier, and we will make further representations once we have had the opportunity.

Ms Karen Buck: Is that anecdotal, or are you collecting data?

David Isaac: Yes, we are collecting data.

Q92 **Ms Karen Buck:** Also slightly connected to this, I am going to ask questions about Europe and Brexit. One representation that has been made to the Committee flags up the possibility that European workers—



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again, particularly in the types of trade that you have flagged up—will be even more vulnerable in a post-Brexit environment, and that there is scope for exploitation over the uncertainty of their position. Do you have a view on that? Do you feel that people need to be especially alert to that, and, if so, how can it be manifested?

Margaret Beels: We have already detected that among the workers in the GLA sector there is huge uncertainty and an additional sense of vulnerability. We do not just get that from talking to workers' representatives, which means the trade unions and NGOs that work with people, but also the labour providers who are experiencing difficulty in getting enough labour to do the work. There was a significant concern in the run-up to Christmas, because obviously there is a lot of extra work in food production then. So yes, we are concerned, because these are workers who have the right to be here, and they are worried.

Ms Karen Buck: What is the nature of the worry? Is it that they may have to leave quickly or that their position is uncertain?

Margaret Beels: Because their future position is uncertain, they wonder whether they would be better to leave now and work elsewhere in Europe, where their position might be more certain, and they are not so sure what their rights are. A lot of workers who come to this country do not realise that they have the rights of workers in this country; they come with the mindset of the rights that they had in the country from which they have come, and unscrupulous gangmasters will prey on those uncertainties. There are concerns about legitimate workers. There are question marks over who will be entitled to work. Nobody knows what the rules are going to be, but one could speculate that they might be intricate, and, correspondingly, where you have complexity, you have scope for abuse.

Ms Karen Buck: I do not put words into your mouth, but would you basically regard that as increased risk?

Margaret Beels: Yes. You are not putting any words into my mouth.

Ms Karen Buck: Or I was, but you agreed with them. David, do you have a view on that?

David Isaac: We are very concerned that, post Brexit, there is no diminution in human rights protection; we have been very clear about that. We believe that the mechanism of the great reform Bill can work in the main, but we worry about what future derogation there might be from that and that there will be gaps in relation to EU law that might not be plugged, and we will be look in detail at that.

Ms Karen Buck: Do you have any particular examples that you are most worried about?

David Isaac: None that I would particularly want to flag. In the main, the great reform Bill will pick up the major pieces of legislation. It relates to areas that have not been directly implemented in relation to particular



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directives, such as that sort of detail. We need to be sure that secondary legislation covers those points and that there is a coherent continuation of all the rights that exist. We are going to be vigilant in ensuring that continuity.

Ms Karen Buck: I do not want to put words into your mouth either, but on what we were discussing earlier—I think it is absolutely right that 80% of businesses are responsible and that it is the minority who are not—will there be a sense in which businesses and employers who are less scrupulous will look at ways in which they can take advantage of any lacunae in the legislation?

Margaret Beels: One thing I mentioned before is that our organisation is based on intelligence, and one thing that we are starting to see is a decline in intelligence coming to us.

Chair: From who?

Margaret Beels: From all sources, but certainly the channel of intelligence from workers will be put at risk if the workers are more concerned about whether they have the right to be here.

Ms Karen Buck: What can the Government do about that?

Margaret Beels: This may be slightly controversial, but there is a question about whether someone who is a victim is a victim first and an illegal worker second, or whether they are an illegal worker who happens to have been made a victim. I would like that balance addressed, so that the worker who comes forward does not think that the next thing that happens to them is that they are deported. The question is not whether that is true or not, but whether they believe that.

Chair: Can I just follow up the point that Karen has raised? Are you saying that because of what is being discussed and a sense that we are going to leave the EU, workers feel uncertain of their rights; they feel that they are in a more fragile situation and feel more vulnerable, so they are less likely to report anything because they have less of a sense of entitlement? Presumably you are dealing with people whose sense of entitlement is pretty fragile anyway, so it is making people who are very unlikely to assert their rights even less likely to do that, which is an important part of your ability to do your work to uphold higher standards.

If that is the case—and you are saying that it is—do the Government not need to do something quickly rather than leave a long transitional period of two years before we are finally out and subsequent to that have years of negotiation? Is there an argument for the Government making decisions and declarations right away about what is within their control, because it is about the situation for people in this country? Should they not be up front now and say, “We know that this is going on and we want to assure everybody that this is what your rights are going to continue to be”, to try to reinforce people’s sense of what their rights are and to press back the opportunities for unscrupulous businesses to exploit



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people's sense of vulnerability? Is that what the Government should be doing now: deciding it and declaring it?

Margaret Beels: I do not think I should necessarily join the queue of people advising the Government on what they should do in the Brexit negotiations. What I am saying is that the uncertainty will be exploited.

Chair: I am not talking about negotiations.

Margaret Beels: I am talking about the time period.

Chair: I am not talking about the negotiations, because this is about what the Government do within the remit that they have now. Obviously negotiations are about what other European countries decide in relation to us, on trade and so on, but they have an ability now, without any negotiations, to say, "This is what people's rights are as far as we are concerned, and this is what they are going to continue to be in future". So, leaving aside negotiations, do you think they could and should be doing that now in order to push back against the sense of vulnerability, which presumably will only grow as the transitional period continues?

Margaret Beels: I do not think I could go that far. I am saying that the uncertainty is being exploited, but I understand that there are issues that are way beyond my pay grade that are to do with what has been considered in relation to the negotiation between European nationals who are based here versus British people who are based abroad. I understand that there is complexity about that, but it is not my area.

Chair: So you think that the Government have to be able to trade those issues with other European countries. If there is uncertainty, should they not bring certainty?

Margaret Beels: I am sure everybody would prefer certainty.

David Isaac: That was why I suggested a forensic approach to the current protections to establish whether they are going to be covered in relation to the reform mechanism that is being proposed to incorporate European law and the European mechanisms into domestic law, and whether there are gaps and whether people will be even more vulnerable. Our view is that there should not be a hierarchy of rights, and that we need to look at very carefully and forensically at Brexit to ensure that there are no issues and increased vulnerability.

Another area of concern as we move forward in a post-Brexit world is that Britain does not fall behind the sorts of advances that are made in the human rights sphere by other countries. There is a risk of that. I, too, do not want to be controversial—when I appeared in front of the Women and Equalities Committee a few weeks ago, I mentioned that there was anxiety about hate crimes—and I do not want to spark off another debate about whether I am for or against Brexit. There are areas that we are all concerned about that we need to be alive to and to attend to in terms of current protections and future protections.



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Q93 **Ms Karen Buck:** What is your assessment of where Britain should be going in the establishment of human rights in future trade deals outside Brexit and whether those should be on the same basis as the EU rights framework that we currently have with the EU in the current agreement? Should we be aiming for a higher or different standard?

David Isaac: Our view is that there should be human rights protections in all the trade agreements that are negotiated on behalf of this country. We believe that is essential, for all the reasons that we have been discussing today, so we would be keen for it to be on the agenda. It is how Britain has done business as part of the EU. This country has always been a leader in human rights, and we would be extremely disappointed if human rights protections were not included in all trade agreements.

Chair: Have the Government asked you to help on the issue of human rights and trade agreements in post-Brexit bilateral negotiations? Have they asked for your expertise, bearing in mind that you are the human rights NGO in this country?

David Isaac: I do not believe so. Just to be clear, though, we would be very happy to play that role.

Q94 **Baroness Lawrence of Clarendon:** This is a question for David. I have just come from a group for the families of victims and their equal human rights and so on. Some families seem to have no protection in relation to what has happened to them and the way they have been dealt with. Years ago, there used to be local RECs and that sort of thing which a lot of people could go to to get some support. When the CRE was about, it used to do case studies, but my understanding, from listening to what you are saying today, is that there are now no case studies. What redress do these people have when they have nowhere to turn? The little pockets that used to be around the country which they could go to for legal advice or whatever are no longer there. What is your view on that?

David Isaac: Some protections exist. There is a helpline. Sadly, we no longer run it, but people have access to that as a first port of call.

Baroness Lawrence of Clarendon: How well publicised is that?

David Isaac: It is on our website and we publicise it. People write to me and I am very clear that they should turn to that helpline to get preliminary advice. We work with a whole range of other organisations that provide advice, but our role is to be a strategic litigator and bring strategic cases that are going to either clarify the law or move it forward.

There are exceptions. This is a slightly different point to the one that you were making, but we have just announced that a sum of money is going to be available to disabled people to accelerate some of the cases. We are doing that on a pilot basis, because I feel very strongly that if we are to use the powers that we uniquely have, we need to have a pipeline of cases that we can bring. So I am always keen to ensure that people understand that we play that role, and if the case is right and meets our criteria we will back it.



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Baroness Lawrence of Clarendon: I presume they have to be able to justify why they should be singled out to get that support, and for some of them that can be very difficult. It was clear today when I was listening to the families that it is very difficult for them. They have no support mechanisms apart from their families and friends.

David Isaac: We have a wide range of lawyers who will act on a pro bono basis. We try to use our networks to support people. You are right, though, and I agree. This goes back to the access to justice point that we were talking about earlier. There are a number of people who feel very unheard.

Chair: Thank you very much indeed, Margaret, and thank you David, and Karen for standing by. A lot of fruitful issues have come out of your evidence, and thank you for your very good work as well.