

Association of Labour Providers- Written evidence (MSA0044)

Call for Evidence

The Committee invites written evidence on the following questions by 27 March 2024.

The extent to which the Modern Slavery Act 2015 has been impacted by recent legislation (for example the Nationality and Borders Act 2022 and the Illegal Migration Act 2023)

Whether the Act has kept up-to-date with developments in modern slavery and human trafficking, both within the UK and internationally

The efficacy of the provisions of the Act relating to supply chains

The efficacy of the other key provisions of the Act, including definitions, sanctions, reporting, enforcement, and the statutory defence for victims

The role of the Independent Anti-Slavery Commissioner, including whether the post is sufficiently resourced, and the process of appointment

Suggestions for improvements that could be made to the Act to help it to better achieve its aims

The Association of Labour Providers (ALP)

ALP (www.labourproviders.org.uk) is a not-for-profit trade association promoting responsible recruitment and good practice for organisations that supply the workforce to the consumer goods supply chain across the food processing, horticultural and wider manufacturing, industrial, warehousing and distribution sectors.

ALP members supply all of the Seasonal Worker Visa workers and around 75% of the temporary contingent workforce into the food growing and manufacturing supply chain. Many of these workers progress to form the permanent workforce. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters and Labour Abuse Authority (GLAA).

ALP Response Summary

ALP's response relates to questions 2, 3 and 6 of the inquiry and focuses particularly on how the post Brexit immigration system has fuelled trafficking for labour exploitation.

The February 2020 Immigration System Policy Statement promised that it would "*reduce overall levels of migration*". Instead the UK is now experiencing the highest levels of net migration ever recorded.

The government promised a system that would "*assert full control over who comes to this country*" and "*which protects individuals from exploitation by criminal traffickers and unscrupulous employers.*"

It has instead delivered an immigration system which has opened up abuse of individuals on a massive scale globally, orchestrated by scammers, profiteers, exploiters and criminal gangs.

This was foreseen. The September 2020 Public Accounts Committee report on Immigration Enforcement concluded that "*The Home Office is unprepared for the challenges the UK's exit from the EU presents to its immigration enforcement operations. In evidence to the Committee in mid-July it could provide no evidence that it had even begun discussions with the EU partners it*

relies on to support its international operations, including the return of foreign national offenders and illegal migrants."

ALP and others presaged the increase in labour trafficking in an October 2020 paper The Impact on Human Trafficking of the new UK Immigration System issued to government and others.

The responsibility lies with the Home Office. Meg Hillier MP, Chair of the Public Accounts Committee, said "*The Home Office has frighteningly little grasp of the impact of its activities in managing immigration. It shows no inclination to learn from its numerous mistakes across a swathe of immigration activities – even when it fully accepts that it has made serious errors.*"

This continues to be the case. The Home Office continues to refuse to engage with industry and stakeholder experts. It has failed to address Objective 6 of the Global Compact for Safe, Orderly and Regular Migration to "*Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work*".

There is as yet no evidence or sign from the Home Office that this will change. The Migration Advisory Committee 2022 Annual Report, published in January 2023, recognising the risk, devotes a significant section to highlighting migrant exploitation in the labour market.

Question 2. Whether the Act has kept up-to-date with developments in modern slavery and human trafficking, both within the UK and internationally
No – the MSA has not kept up to date with developments in modern slavery and human trafficking. In fact, there have been no amendments to the Act reflecting the seismic changes in risk brought about by Brexit and an entirely new immigration system.

The Skilled Worker visa

The sheer volume of migration into the UK, together with regular reports of significant levels of exploitation across many visa routes, evidence that the MSA has little or no impact on supply chains.

The post Brexit Skilled Worker visa route enables unlimited immigration of semi-skilled and skilled workers from anywhere in the world into a variety of defined roles.

Government statistics show that there were 337,240 long-term sponsored work visas work granted to main applicants in 2023, 26% higher than in 2022, and almost two and half times more (+146%) than prior to the pandemic in 2019. The number of UK companies holding a Skilled Worker visa sponsor licence has tripled since Brexit to over 90,000.

The Home Office does not have sufficient resource to properly vet those businesses applying for a visa sponsor licence or monitor the practices of businesses holding a licence. The Independent Chief Inspector of Borders and Immigration has reported that there is one compliance officer per 1,600 employers licensed to sponsor migrant workers.

There are predominantly five recruitment models used to recruit workers through the Skilled Worker visa route. The prevalence of each is not known. Employer Pays Model – Employer covers all recruitment costs. This is the model which accords with the global standards of the International Labour Organisation (ILO) General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related cost. Principle 7. States that, "*No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.*" The terms 'recruitment fees' or 'related costs' refer to "*any fees or costs incurred in the recruitment process in*

order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection."

The "Shared Cost" Model – The worker pays the costs legally allowed within the visa route including the application fee, visa office processing costs, travel to the UK costs and Immigration Health Surcharge as well as holding the arrival self-support funds required. The employer pays the Sponsor application, visa, Certificate of Sponsorship, Immigration Skills Charge and recruitment costs. Such a model still puts the worker at the risk of indebtedness to cover the upfront costs

Structured Debt Bondage Model – A UK company uses its lawyers to define a recruitment process and contracts which accord with UK legislation whereby the employer pays the upfront recruitment and assorted visa costs, and the worker has this deducted from their wages over a number of years with a requirement to pay it all back if they leave the employment.

Naïve/negligent/collusive model - A UK company uses a UK and/or overseas recruitment agency to source workers; there is no or limited due diligence and the company pays a low recruitment fee to the agency. The recruitment agency obtains the bulk of its income through charging the worker a work finding fee. ALP members report having been approached by individuals offering up to £10,000 per head for sponsored jobs.

Sham Managed Service model – A UK recruitment agency recruits workers and places them at various employers on a labour only contracting model in contravention of the sponsor legislation. The worker pays significant up front recruitment fees and may be in debt bondage.

Nowhere is the exploitation more acute than in the Health and Social Care sector. Workers and their families are prepared to pay high fees, often tens of thousands of pounds, to obtain permanent UK residency through this route.

The media has reported multiple cases of exploitation, for example:

Exploitation of migrants is rising as care homes struggle to fill jobs

Migrant care workers in Britain charged thousands in illegal recruitment fees

Migrant care staff in UK 'exploited and harassed' by employers, says UNISON Report: U.K care workers' exploitation is modern slavery

Modern slavery in care sector has more than doubled

Modern slavery gangmasters exploit care worker shortage

Sent home: how Kenyan's dream of life as a UK care worker turned sour

In July 2023, Professor Brian Bell, Chair of the Migration Advisory, in an article entitled Exploitation of care workers in England is 'appalling', says government adviser is quoted, "There are clear problems, in terms of exploitation, both in the home country and when they get here, really bad employers doing quite dreadful things." As Professor Bell goes on to say "Is the exploitation that we're seeing in the social care sector through the immigration system a result of policy? Yes it is,".

The Independent Chief Inspector of Borders and Immigration in his March 2024 report An inspection of the immigration system as it relates to the social care sector confirms this:

"The inspection report details the consequences of the Home Office's limited understanding of the social care sector, its underestimation of demand for the Care Worker visa, the inappropriateness of its sponsor licensing regime for low-skilled roles, and the mismatch between its meagre complement of compliance officers and ever-expanding register of licensed sponsors." Fundamentally, the

Home Office selected a route that was designed for a largely compliant sector and applied it to a high-risk area – migration into an atomised and poorly paid sector is miles away from the recruitment of highly skilled workers being sponsored by multinational corporations. This should have been obvious to Home Office policymakers.

The net effect of these mistakes is that the Home Office created a system that invited large numbers of low-skilled workers to this country who are at risk from exploitation. Moreover, its control measures to mitigate the risk were totally inadequate. There is just one compliance officer for every 1,600 employers licensed to sponsor migrant workers.

This report details the shocking results of the policy's implementation, including the case of 275 certificates of sponsorship being granted to a care home that did not exist, and 1,234 certificates being granted to a company that stated it had only four employees when given a licence.

...What worries me most is that the Home Office does not appear to have any process to identify the lessons from this debacle and then bring those lessons into core thinking in order that they are not repeated. No formal review of the relevant policy changes has been conducted. Sadly, this is a pattern that inspectors identify in far too many inspections. Accountability for failure is all too often lacking. While ministers are ultimately responsible, they depend upon the advice of senior leaders within the Home Office; once more this advice has either been ignored or has proved to be poor.

When this report is published, its findings will doubtlessly be explained away. The remedial measures I have mentioned will be highlighted despite their remarkable slowness in coming. Such a response should not be allowed to distract from the damage that has already been done and a reflexive, defensive response should not prevent a critical examination of what has gone wrong here and what steps must be taken to prevent its recurrence."

The Seasonal Worker visa

There are 6 seasonal worker visa sponsors for horticulture and 2 for poultry. The scheme rules state that the visa sponsors "are responsible for all of the workers you sponsor on this scheme" and that "If you do not maintain a high standard of welfare and control – we will take action against you...up to and including the revocation of your sponsor licence." One seasonal worker visa sponsor had its licence revoked in February 2023.

In 2023, 32,500 of the available 45,000 seasonal worker 6 month visas available for edible and ornamental horticultural workers were used. There are 2,000 3 month visas available for poultry and only a proportion of these are used. In 2023, 71% of seasonal workers were recruited with from Kyrgyzstan, Tajikistan, Kazakhstan and Uzbekistan; 20% from Moldova, Macedonia, Ukraine, Romania and Bulgaria; 9% from other countries.

For all countries recruited from the sponsors must understand and adhere to the business, migration and recruitment laws and risk assess and adapt their processes to eradicate as best as possible the need and opportunity for workers to pay work finding and recruitment charges. For certain countries such as Nepal, this has not proven possible and the seasonal worker visa sponsors have had to withdraw from recruiting from these countries.

There are many challenges in assuring a positive experience for all seasonal workers including:

Scheme rules do not best afford worker protection

Government has not yet engaged with industry and stakeholders

Labour market enforcement is inadequate

Third party exploitation is hidden and difficult to remedy

The nature of work in agriculture – weather, crop unreliability

Growers vary in ability to provide positive experience

Workers can generally pay between £600 and £1,600 with £1,200 being average for a worker from Central Asia to cover legally allowed travel and visa costs.

Over 50 organisations including industry trade bodies, retailers, growers, recruiters and non-profits have come together as the Seasonal Workers Scheme Taskforce with the mission to 'work collaboratively to develop and implement tangible actions to help safeguard and ensure access to workers' rights in the UK Seasonal Worker Scheme (SWS) and wider UK horticulture.

The latest Defra survey of 2022 seasonal workers highlights that 97% would work on a farm in seasonal work again and that 87% had a positive experience as opposed to 6% who had a negative experience. A significant amount of industry collaborative activity is being undertaken to address the areas which have led to negative experiences.

An Independent Chief Inspector of Borders and Immigration (ICIBI) report on the Home Office operation of the Seasonal Worker visa route concluded that: *"In a supply chain in which workers are vulnerable to exploitation, the Home Office needs to do more to assure itself, the sector and the general public that it is not perpetuating unacceptable employment conditions for seasonal workers."* and *"...with regard to compliance, the Home Office should significantly raise its game to assure itself that scheme operators of the Seasonal Worker route are meeting compliance requirements."*

The Home Office accepted all the ICIBI's recommendations but later withdrew from implementing these, with Robert Jenrick, former Immigration Minister stating, "there were no plans to publish reviews of the scheme, as they were of "limited value".

ALP has proposed a significant number of policy improvements to the design of the Scheme but as yet the Home Office is not engaging with industry.

EU nationals

The post Brexit Immigration System heralded an end free movement of EU citizens with no general immigration route for lower skilled workers.

However, there is an ongoing high labour market demand in the highest risk sectors (waste, hospitality, manufacturing, warehousing, agriculture etc.) in the highest risk roles (low paying, irregular, unpleasant, physical, seasonal, hidden) for the highest risk individuals (non-English speaking, unskilled, lower educated etc.) which are least likely to be filled by resident workers.

EU citizens and non-visa nationals do not require a visa to enter the UK when visiting and the UK does not operate a fully biometric border entry and exit system. The Chief Inspector of Borders and Immigration has identified "No UK border exit records for 600,000 people".

ALP for some considerable period highlighted to the Home Office the loophole whereby EU nationals with no eligibility under the EU Settlement Scheme have been able to work and their employers obtain a statutory excuse. The Home Office closed this loophole with immediate effect from 9th August 2023. There was no public notification of this.

The consequence of this change is that many tens, possibly hundreds of thousands of EU nationals currently working will soon no longer be able to legally do so. This will significantly increase the number of EU nationals committing the offence of illegal working in breach of Section 34 of the Immigration Act 2016.

This high labour demand for low skilled workers combined with gaps in UK border control, loopholes in the EU Settlement Scheme and an absence of enforcement has created the perfect conditions for traffickers to increase control of EU victims. Human traffickers bring vulnerable EU nationals in as visitors, enable them to work apparently legally in legitimate businesses by gaming the EU Settlement Scheme and control them through threats of reporting their "illegal" status.

The 'irregular population'

Those individuals residing and working in UK without the legal right to do so are potentially those most at risk from modern slavery and broader labour, sexual and criminal exploitation. They have no employment protection rights, are committing a criminal offence under Section 34 of the Immigration Act 2016 and consequently are the group most vulnerable to labour market exploitation. The September 2020 Public Accounts Committee Report on Immigration Enforcement headlined, *"Despite years of public and political debate and concern, the Department still does not know the size of the illegal population in the UK. It does not know what harm the illegal population causes. It does not know how many people come to the UK legally and do not renew their visa, or how many deliberately come illegally. The Home Office has not estimated the illegal population in the UK since 2005."*

The Home Office currently states, *"It is not possible to know the exact size of the irregular population currently resident in the UK, nor the total number of people who enter the UK irregularly. This is correct but that does not preclude making an evidence based estimate. The Home Office 'Migration Statistics Quarterly Report: August 2019', page 27 under the heading 'Estimates of the size of the illegal migrant population' put the figure at approximately 1.2 million people living in the UK without the legal right to do. However ChatGPT advises, "It seems that the Home Office has removed the August 2019 edition of the 'Migration Statistics Quarterly Report' from their website, and I do not have access to archived copies."*

A June 2017 Civitas report, The Politics of Fantasy by a previous Deputy CEO of the UK Borders Agency and Director General of Immigration Enforcement estimates that 150,000 additional illegal migrants enter the UK each year. UK immigration detention and return statistics show that 4,088 detainees were returned from detention in 2022 (21%) compared to 2019 (37%, 9,081) and 2010 (64%, 16,577).

There appears to be no coherent public policy to address this.

Question 3. The efficacy of the provisions of the Act relating to supply chains Section 54 of the Act, the transparency clause, requires businesses with over £36 million turnover per year to produce an annual statement for each financial year on what steps (if any) they have taken to address modern slavery within their operation, including their supply chains.

It is still permissible for businesses to produce a report stating that they have taken no such steps.

Various reports, such as the Modern Slavery & Human Rights Policy and Evidence Centre Effectiveness of Section 54 of the Modern Slavery Act have found limited compliance with even this requirement, suggesting that it has not produced the desired effect of making businesses transparent about the processes and procedures they use to mitigate the risk of modern slavery both within their own business and their supply chain.

Question 6. Suggestions for improvements that could be made to the Act to help it to better achieve its aims

Exploitation of lower skilled workers during the recruitment process is rife globally. MAC devotes much of its 2022 Annual Report to highlighting migrant exploitation in the UK labour market.

The overarching improvements required to help the Act better achieve its aims, are better immigration rules with less opportunity for exploitation and effective enforcement.

ALP makes the following recommendations, accepting that these may go beyond the remit of the inquiry:

The Home Office should commission a joint inquiry by MAC, ICIBI, the Director of Labour Market Enforcement, the Independent Anti-Slavery Commissioner and others as relevant to examine the impact of the UK's legal migration routes on human trafficking and labour exploitation.

This inquiry should generate a report with statutory recommendations and should use ILO General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related cost as a basis to assess against.

The Home Office should be mandated to properly constitute and fund multi-stakeholder working groups with trade bodies and expert stakeholders by work visa type and be required to take account of such.

The ICIBI report on the Home Office operation of the Seasonal Worker visa route is instructive in this, concluding that: *"In a supply chain in which workers are vulnerable to exploitation, the Home Office needs to do more to assure itself, the sector and the general public that it is not perpetuating unacceptable employment conditions"*.

Detailed expert guidance and support is available to responsible employers through resources such as the Responsible Recruitment Toolkit and the IOM Labour Migration Process Mapping Guide: Understanding and Assessing Human and Labour Rights Risks to Migrant Workers During Recruitment, Employment and Return.

However, few employers as yet are either aware of the risks, have the resource, interest or competence to apply the due diligence. Others knowingly prefer to profit at the expense of their workforce by operating models in which their own costs are minimised by transferring the cost of recruitment onto the workers. . The Home Office should embed ethical recruitment by default within the Skilled Worker visa sponsor rules. The UK should have immigration to work routes which are models of good practice.

How embedding ethical recruitment by default into visa routes can be achieved in practice will require detailed consideration but may include:

Government detailing the legal requirements for recruiting from key overseas countries and requiring visa sponsor employers to abide by them

Visa sponsor employers being required to undertake legal and responsible recruitment training and assessment and make commitments to adhere to these standards. See the Responsible Recruitment Toolkit which codifies responsible

recruitment into organisational standards and provides self-assessment, template documents, reporting tools and training to support adoption of good practice.

Visa sponsor employers being required to name each overseas recruitment business they use to source workers. Prior to use, these sponsors should be required to demonstrate reasonable due diligence on overseas agents pre-onboarding and ongoing each of these overseas recruitment businesses should undertake legal and responsible recruitment training and assessment and make commitments to the standards that they will abide by

Licensing of recruiters within the Health and Care Worker visa worker recruitment supply chain. Licensing should be to standards such as have been developed and defined in the Clearview Responsible Recruitment Certification Scheme and the IOM IRIS scheme.

Progressing towards an employer pays model as defined by The Institute of Human Rights and Business Employer Pays Principle which requires that "*no worker should pay for a job - the costs of recruitment should be borne not by the worker but by the employer.*" In doing so the UK government will accord with its own commitment in the Principles for Tackling Modern Slavery in Supply Chains which states that "*Governments should advance responsible recruitment practices...including by implementing policies that incentivise and support responsible practices, and by supporting initiatives such as the "Employer Pays Principle".*

Effective enforcement of all the above

UK wide legislation should be implemented to:

Define and ban the charging of recruitment fees by employers and employment agencies/businesses

Define and limit the use of repayment clauses

Implement an independent recruitment fee grievance mechanism which enables effective statutory remediation of recruitment fees paid by workers with transference of debt incurred by workers to the visa sponsor employers in defined circumstances

Under UK employment law there is no general provision which prevents employers from charging recruitment fees and related costs to those they recruit. The Employment Agencies Act 1973 prohibits employment agencies from requesting or receiving a work finding fee, but this is out of date, not fit for purpose, ineffectual and not enforced.

In implementing such legislation the government will honour commitments already made under the Global Compact for Safe, Orderly and Regular Migration in which Objective 6 c) states "*Improve regulations on public and private recruitment agencies, in order to align them with international guidelines and best practices, prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers in order to prevent debt bondage, exploitation and forced labour, including by establishing mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry".*

A radical overhaul of monitoring and enforcement is required. The Home Office does not have sufficient resource to properly vet those businesses applying for a visa sponsor licence or monitor the practices of businesses holding a licence. The Assistant Director, Compliance Command at UK Visas and Immigration confirmed in a January 2023 presentation, that there were 70 visiting

compliance officers - around one officer per thousand licensed sponsor businesses. Additionally, in its Seasonal Worker report, the ICIBI identified that these compliance officers lack the required competence, concluding that *"with regard to compliance, the Home Office should significantly raise its game to assure itself that scheme operators of the Seasonal Worker route are meeting compliance requirements."*

Illegal working legislation and the civil penalty should be extended to businesses that engage workers on contracts for services. The Home Office Compliant Environment & Enforcement Unit has confirmed to the ALP that: *"The definition of employment for the purposes of the Right to Work Scheme in sections 15 to 24 of the Immigration, Asylum and Nationality Act 2006 comes from section 25(b) of that Act. Section 25(b) states: "a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written. If there is a genuine (emphasis added) contract for services then the criminal offence of employing an illegal worker and associated civil penalty provisions (the Right to Work Scheme) do not apply."* This legislation therefore excludes businesses in sectors with a high risk of illegal working from any risk or liability. It applies to around 1.6m agency workers, 0.5m gig workers and 1.9m freelancers.

Government has shelved its manifesto pledge to establish a Single Enforcement Body to transform the fragmented, not functioning labour enforcement system in the UK. A February 2023 report by the University of Nottingham's Rights Lab and the Office of the Independent Anti-Slavery Commissioner makes the case why this pledge should be revisited and considerations for policymakers for the SEB to succeed.

The government should explore the extent to which the Student visa route is being used as a route to recruit workers for the care sector. The GLAA identified nine Indian students as being potential victims of modern slavery and labour exploitation in care homes in December 2021.

Implement the Business, Energy and Industrial Strategy Committee (as was) April 2023 Report Post-pandemic economic growth: UK labour markets recommendations to "a) establish a Ministry of Labour b) appoint a new Minister of State for Labour in the Cabinet Office with the authority to convene and coordinate labour market policy across Whitehall c) establish a Cabinet Committee on Labour, chaired by a Business and Trade Minister, which convenes each relevant Minister from each relevant Department on labour market policy.

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