

Labour Exploitation Advisory Group (LEAG)- Written evidence (MSA0088)

The Labour Exploitation Advisory Group (LEAG)¹ is a coalition of frontline, research and policy organisations which promotes discussion, information-sharing and collaboration among organisations working directly with people who have experienced or are at risk of labour exploitation in the UK.

Introduction

In the UK, recent understanding of labour exploitation has been heavily influenced by the legal frameworks and conversations surrounding the term 'modern slavery'. This has acted as an umbrella term, encompassing human trafficking, slavery and slavery-like practices such as forced marriage and debt bondage.² Spearheaded by then Home Secretary Theresa May, the 'modern slavery' approach to trafficking was driven by Government, parliamentarians, and a number of academics and civil society organisations. Its defining legislation, the Modern Slavery Act 2015 ran parallel to the entrenchment of 'hostile environment' policies which sought to make life as difficult as possible for people without leave to remain, in order to coerce them into 'voluntarily' leaving the UK.³ Such policies, first introduced in 2012, included preventing undocumented migrants from using fundamental services including the NHS, making it illegal to work, for a landlord to rent them a property or even to open a bank account.⁴ It is well recognised that the 'hostile environment' actively drives people into exploitation, and impedes their ability to exit this mistreatment.⁵

¹ LEAG members include Focus on Labour Exploitation (secretariat), Latin American Women's Rights Service (chair), Unite the Union, East European Resource Centre, British Red Cross, Kalayaan, Kanlungan Filipino Consortium, Work Rights Centre, and Glass Door Homeless Charity.

² Home Office. (2024) Statutory guidance - Modern Slavery: statutory guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and non-statutory guidance for Scotland and Northern Ireland.

³ Griffiths, M., and Yeo, C. (2021) The UK's hostile environment: Deputising immigration control. *Critical Social Policy*. 41(4), 521-544, p.522.

⁴ Taylor, R. (2018) Impact of 'Hostile Environment' Policy. House of Lords.

⁵ GRETA (2021) Evaluation Report: United Kingdom - Third Evaluation Round, p.19.

The Modern Slavery Act places a disproportionate focus on consolidating criminal justice measures with much less emphasis on victim support.⁶ This in turn allowed for such services to be chipped away through underfunding, policy and guidance changes and subsequent legislation.⁷ As such, the UK is currently seen to be in breach of its international obligations for victim support regarding trafficking.⁸ Developed in the context of a strong anti-immigration agenda, the Modern Slavery Act failed to adopt a meaningful preventative approach capable of addressing the structural drivers of trafficking, or provide for early intervention against abuse. In contrast, as can be seen in the case of the Overseas Domestic Worker visa, protections which enabled workers to exercise rights (in this case to change employer) were kept out of the Act, despite amendments to insert them, with arguments being made that workers who were trafficked could go to the authorities for assistance.⁹

The Modern Slavery Act was previously highlighted by the Government as a symbol of the UK's 'world leading' efforts to combat modern slavery.¹⁰ Instead, it failed to deliver even on its own terms as demonstrated by the low prosecution and conviction rates in the UK.¹¹ Rather than being planned for and addressed, the predictable increase in the numbers of people identified as victims has been used to justify the rapid scaling back of already limited provision through the introduction of legislation and policies that drive people into exploitation.¹² In July 2023, the Government released a fact sheet suggesting that the success of the Modern Slavery Act (namely the increase in the number of people receiving support and protection) was a key reason for limiting access to the NRM and that 'the system was not designed for this volume of referrals'.¹³ In a move that civil society voices have seen as a deliberate attempt to avoid accountability, the Government

⁶ Work and Pensions Committee (2017). Victims of modern slavery: Twelfth Report of Session 2016–17. House of Commons, p.3.

⁷ Home Affairs Committee. (2023) Human trafficking First Report of Session 2023–24. House of Commons, pp.41 and 46.

⁸ Joint Committee on Human Rights (2023), Legislative Scrutiny: Illegal Migration Bill, 'Written Evidence by the GRETA (IMB0024) to the JCHR enquiry, para.2.

⁹ See for example Hansard, Modern Slavery Bill debate, 17 March 2015. Available at: <https://hansard.parliament.uk/commons/2015-03-17/debates/15031750000002/ModernSlaveryBill>

¹⁰ The Guardian. (2016) Theresa May pledges £33m boost for fight against slavery in Britain. 31 July 2016.

¹¹ Centre for Social Justice (CSJ) and Justice and Care. (2022) A Path to Freedom and Justice: a new vision for supporting victims of modern slavery, p.8; US Department of State. (2023), 2023 Trafficking in Persons Report.

¹² Home Office. (2023) Policy paper - Tackling myths factsheet: Illegal Migration Bill.

¹³ *Id.*

failed to appoint an Independent Anti Slavery Commissioner (established through the Modern Slavery Act) for over a year during the passage of the Illegal Migration Bill, and enactment of the Nationality and Borders Act.¹⁴ Further, the Home Office has come under increasing criticism for its lack of engagement with civil society, with opportunities for dialogue being curtailed,¹⁵ and if they do take place, being tokenistic or after the event. The increasingly hostile and inflammatory Government rhetoric against victims and survivors of trafficking, as well as the misuse of data, that has been deployed in the reduction of access to protection and support has come under considerable national and international condemnation, including from a number of UN Special Rapporteurs.¹⁶ Similarly, the Transparency in Supply Chain provisions in the Act have not led to tangible, positive changes to exploitation in supply chains and for the workers businesses employ.¹⁷

Question 1

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)

Recent legislation such as the Illegal Migration Act 2023 and Nationality and Borders Act 2022 have seriously undermined the UK's anti-trafficking framework. This has been exacerbated by a series of harmful policies such as the establishment of the Immigration Enforcement Competent Authority and the increase of immigration fees.¹⁸ It is evident that anti-trafficking and protections have been further subordinated to anti-migrant legislation and policies. As recognised by the Independent Anti-Slavery Commissioner and the Home Affairs Select Committee, modern slavery is no longer a Home Office priority.

Nationality & Borders Act 2022

¹⁴ Organization for Security and Co-operation in Europe (OSCE). (2023) Report by the former OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey, following the country visit to the United Kingdom, 7-11 November 2022, p.2; Boffey, D., (2022) UK anti-slavery post left unfilled by Home Office since April 2022. The Guardian. 8 March 2023.

¹⁵ US Department of State. (2023), 2023 Trafficking in Persons Report.

¹⁶ Office of the High Commissioner of Human Rights (OHCHR). (2022) UK: UN experts condemn attacks on credibility of slavery and trafficking victims. 19 December 2022.; Office for Statistics Regulation (OSR). (2022) Letter: Ed Humpherson to Maya Esslemont and Anna Powell-Smith: Modern slavery data'. 8 December 2022; Dugan, E. (2022) Watchdog disputes Braverman's claim modern slavery laws being 'gamed'. The Guardian. 9 October 2022; Thompson, F. (2022) Government 'totally misguided in attacks on rights of slavery victims'. The Standard. 4 October 2022.

¹⁷ Business and Human Rights Resource Centre. (2021) Modern Slavery Act: Five years of reporting - conclusions from monitoring corporate disclosure, p.11.

¹⁸ Taskforce on Survivors of Trafficking in Immigration Detention (Detention Taskforce) (2021). *Bad Decisions: the creation of an Immigration Enforcement Competent Authority will undermine identifying and protecting victims of crime*; Praxis et al. (2023) *Visa Fee Rise: Evidence to the Secondary Legislation Scrutiny Committee*.

a) Identification and support

The NABA received royal assent in 2022. The Act contains a section on slavery with a focus on identification and support. The clauses narrow options for people who have been trafficked. Key areas of concern within the Act are set out below. The earlier parts of the Act, which restrict options for and criminalise people seeking safety, will additionally drive people underground and increase risks of exploitation including trafficking and modern slavery.

The provision of support to victims of trafficking is dependent on the ability to recognise victim status through formal referral and identification through the National Referral Mechanism for identifying victims of trafficking (NRM). The NRM is the system for identifying and providing support to victims of modern slavery and trafficking in the UK. A victim is not able to enter the NRM independently and therefore, is reliant on identification and referral to the NRM by a designated 'First Responder' such as the police, Home Office or a specified charity to identify them as a victim.¹⁹ Nevertheless, groups such as After Exploitation^[20] and the Anti-Trafficking Monitoring Group²¹ have identified that potential victims of human trafficking face a 'referral lottery', with many of those identified by First Responders not being referred to the NRM. The ongoing issues with the First Responder role are mentioned in more detail elsewhere in this submission. These include that the role is unfunded, that there is no qualification or continual professional development (CPD) requirement and that without pre-NRM support victims may be expected to disclose under unsuitable circumstances. Leaving aside the issue that without the access to translation and information it is not realistic for people to give informed consent to an NRM referral, as is the requirement for adults, referrals made in rushed circumstances, without translation or by First Responders who are not engaged or who do not understand the role are unlikely to be informed by significant disclosure. This means they may receive a negative first stage, or 'Reasonable Grounds' decision leaving the potential victim without any statutory support or referral pathway and at risk of further exploitation.

¹⁹ Home Office (2021), Guidance - National referral mechanism guidance: adult (England and Wales).

²⁰ After Exploitation (2020). *The Referral 'Lottery'*.

²¹ The Anti-Trafficking Monitoring Group (2021). *A Review of the National Referral Mechanism Multi-Agency Assurance Panels*.

The Act sets unrealistic standards for disclosure of trafficking or exploitation. This poses a significant threat to the UK's ability to identify victims of human trafficking. By demanding that victims present all evidence that they have suffered human trafficking at the earliest stage and holding that the late disclosure of evidence will damage credibility, the government is acting against best evidence, and its own understanding of the difficulties that many face in disclosing evidence.²²

The unrealistic expectations around disclosure and victims' ability to process and speak about serious trauma risks the UK failing to meet its obligations to combat slavery and human trafficking. The clauses reveal clear gaps in understanding and ignore existing evidence around identification of people as victims of trafficking and on the reality of the process of disclosure, particularly, in relation to trauma.²³ It is vital that no potential victim risks having their credibility undermined as a result of not disclosing trauma in line with an arbitrary and unrealistic time frame.

Already the introduction of a higher threshold for identifying victims of trafficking resulting from the Nationality and Borders Act (NABA) has been overturned following legal challenge of the requirement for potential victims to provide objective 'evidence' of trafficking prior to receiving any government funded specialist support, or having any security or space to process their exploitation. It appears that in the time that this guidance was in place, it led to a reduction in the number of positive reasonable grounds decisions.²⁴ In 2022, 88 per cent of reasonable grounds decisions were positive. However, in the first quarter of 2023, this figure fell to 58 per cent, demonstrating a pernicious and dampening effect on identification and the ability to provide protection and support to potential victims of trafficking.

b) Public Order & 'Bad Faith' Exclusion

²² "Victims' early accounts may be affected by the impact of trauma. This can result in delayed disclosure, difficulty recalling facts, or symptoms of post-traumatic stress disorder." - 8 Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non Statutory Guidance for Scotland and Northern Ireland.

²³ Witkin, R. & Robjant, K, (2022) 'The Trauma-Informed Code of Conduct: for all professionals working with survivors of human trafficking and slavery,' Helen Bamber Foundation, p. 44.

²⁴ Duncan Lewis Solicitors (2023). *SSHD withdraws new evidential test for 'Reasonable Grounds' decisions in Modern Slavery Statutory Guidance.*

The Act risks encouraging the targeting of people with criminal records for exploitation, in contravention of the non-punishment principle.²⁵ The 'public order' threshold is low, applying to broad non-violent offences which carry a 12-month (or higher) sentence, including possession with intent to supply. It also acts to exclude those perceived by the authorities to have made a claim 'in bad faith', and resultantly that there will be no prohibition on forcibly removing that person from the UK and no requirement to grant them leave to remain in the UK, even if they are recognised as a victim of trafficking.

Between the commencement of NABA on the 30th of January 2023 and the end of December 2023, both Competent Authorities made 331 disqualifications following 443 requests for disqualification on public order grounds. The IOM's analysis of the first 6 months of 2023 notes that 71 per cent of people disqualified from protection under the National Referral Mechanism because they were a 'threat to public order' were referred into the NRM as a potential victim of criminal exploitation.

As a result of legal challenge, in January 2024 the Government introduced a risk of re-trafficking assessment which is carried out prior to disqualifying someone from entering the NRM.

LEAG hold that victims of trafficking should never be refused the support necessary to exit their exploitation, and that victims and survivors of criminal exploitation will be severely impacted by this clause as their supposed criminal activity is often not recognised as coerced. Moreover, the systems necessary to implement this provision and verify criminal histories (including in third countries) may result in considerable delays to a system which is already severely backlogged.²⁶ Additionally, the provisions within the Act that, through their misunderstanding of the nature of asylum claims and trafficking, criminalise arrival in the UK risk denying individuals the support and protection that they are entitled to under international law.

c) Unrealistic Standards for Victims

Initial identification as a victim is key to accessing even the most basic government funded support, such as safe accommodation. The UK currently

²⁵ Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT), Article 26.

²⁶ ITV (2020), *Suspected modern slavery victims wait around 450 days on average for decision – report*.

provides no statutory funding for pre-NRM accommodation or legal advice to inform consent to a referral and support disclosure. In December 2023, the UK government confirmed that they would not be taking forward their 2017 commitment to provide 'places of safety' or government funded support to support informed consent to a referral together with disclosure. It is vital that the initial threshold (Reasonable Grounds) for identification as trafficked is not set too high. It is essential that victim protection and support is not the preserve of a select few but is designed to identify as many victims as possible to help them exit their exploitative conditions and provide them with support. The *'It Still Happens Here'* report by the Centre for Social Justice estimates that there are 'at least 100,000' victims of modern slavery offences in the UK, compared to the 2017 Government estimate of 10-13,000. This strongly suggests that we are massively under-identifying victims and therefore need to increase, rather than narrow, access to identification and support.²⁷

International law places an obligation on states to identify victims of trafficking.²⁸ This obligation does not permit exceptions, and therefore, the creation of unrealistic thresholds risks prejudicing the UK's compliance with its legal obligations. The Independent Chief Inspectors of Borders and Immigration (ICIBI) has previously highlighted that the Home Office often fails to identify potential victims of trafficking as a result of "*focusing on the fact that someone was working illegally rather than that they may be a victim of abuse, exploitation and slavery*".²⁹ The NABA, with its heightened risk of detention, prioritisation of immigration enforcement and its failure to recognise the hierarchy of needs presents a considerable threat to victims and survivors' ability to come forward and receive support and protection. In 2023, the ICIBI reported major issues regarding the identification of victims of trafficking in immigration detention. Despite a requirement to ask questions about modern slavery and human trafficking when they first enter detention, the ICIBI noted that some detainees were not asked about this at all, and that for a number, although they were asked, no explanation of these technical concepts was provided, meaning that they did not understand the questions and could not reasonably be expected to disclose.³⁰

²⁷ The Centre for Social Justice & Justice and Care, (2020), *'It Still Happens Here: fighting UK slavery in the 2020s,'* p. 6.

²⁸ Article 10, Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197.

²⁹ Independent Chief Inspector of Borders and Immigration, *An inspection of the Home Office's approach to Illegal Working (August – December 2018), May 2019, p.47.*

LEAG holds that it is important to ensure that no victims of trafficking are penalised for so called 'late' disclosures or for their immigration status or method of entry to the UK and reiterates that any such possibilities of penalties will be used by exploiters to increase their control.

Illegal Migration Act 2023

The 'Illegal Migration Act' 2023 compounds the UK's reframing of trafficking as an immigration matter and in doing so increases its hostility to people who may have been trafficked. The UK's Joint Committee on Human Rights found the Illegal Migration bill to have "widespread human rights failings" including to be in breach of the UK's obligations under the Council of Europe Convention Against Trafficking and the European Convention on Human Rights.

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

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

There is a narrow exception for some individuals who are cooperating with investigations or criminal proceedings relating to their exploitation, if the Home Secretary considers it 'necessary for the person to be present in the United Kingdom to provide that cooperation'. This is likely to apply to only a very small number of individuals, especially as the Home Office's own statutory guidance recognises that many victims do not feel safe enough to

³⁰ *Independent Chief Inspector of Borders and Immigration, Third annual inspection of 'Adults at risk in immigration detention' (June – September 2022), January 2023, p.17.*

support an investigation until they have had the time to recover from their exploitation. The Government added a presumption that it is not necessary for a person to be in the UK in order to cooperate with an investigation and/or prosecution unless there are 'compelling circumstances', to be determined with regard to new statutory guidance. Further, this clause does not account for those who indicate that they want to cooperate but have not yet engaged, or where a decision has been taken not to investigate. It is likely also to lead to accusations of inducement, with exploiters asserting that victims are claiming exploitation in order to avoid removal.

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

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

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

In contrast to the Government's claims of the UK's slavery systems being 'abused', the UK's slavery identification and support system has never centred on victim's recovery needs. For the majority of confirmed victims, being officially identified as trafficked does not necessarily lead to even a short grant of leave to remain. Between 2020 and 2022, 5,578 adults were confirmed as victims of trafficking but only 364 adults subject to immigration control were granted leave via the NRM. During the same time 5,266 children were confirmed as victims of trafficking, but fewer than 21 were

granted leave via the NRM. In fact, many adult victims of trafficking do not consent to enter the NRM as they cannot see how it works in their interest. 2023 saw the highest ever number of Duty to Notify referrals (4,929),³¹ indicating that many victims and survivors of trafficking do not believe that entering the NRM is in their interests.

The median time taken from referral to reach a Reasonable Grounds decision was 23 days compared to 6 days in 2022 (a 283 per cent increase). If someone does receive a positive Reasonable Grounds identification decision the average (median) time taken from referral to conclusive grounds decisions made in 2023 across the competent authorities was 526 days (it was 543 days in 2022). This limbo, during which time many survivors are not granted the right to work to support them to begin to rebuild lives and address factors such as poverty and debt which drive trafficking, compounds the trauma of trafficking and risks creating additional risks of exploitation.

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

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

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

³¹ Home Office (2024). *Official Statistics - Modern Slavery: NRM and DtN statistics, end of year summary 2023*.

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

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

Safety of Rwanda (Asylum and Immigration) Bill

LEAG remains seriously concerned about the Safety of Rwanda Bill, which builds on the Illegal Migration Act 2023.

Victims and survivors of trafficking and modern slavery are among those who face forced removal to Rwanda, it is also contrary to the UK's obligations under the European Convention on Action against Trafficking (ECAT). Moreover, the Bill undermines judicial scrutiny, and the constitutional separation of powers. As such, it compromises victims' and survivors (as well as wider communities') access to justice and ability to push back against unlawful measures.

Other Policy Changes

a) Immigration Enforcement Competent Authority

On the 8th of November 2021 the Home Office created a new NRM decision-making body (Competent Authority) for the stated purpose of identifying victims of modern slavery. However, the priorities of this decision-making body are clear from its title: the Immigration Enforcement Competent Authority (IECA).

We remain deeply concerned regarding the IECA, in terms of its impacts on victims and survivors of trafficking and the manner in which it was established, since it was announced.³² The creation of the IECA marked a

³² Taskforce on Survivors of Trafficking in Immigration Detention (Detention Taskforce) (2021). *Bad Decisions: the creation of an Immigration Enforcement Competent Authority will undermine identifying and protecting victims of crime.*

regressive step back to a two-tier system, as we saw with the two-designated Competent Authorities when the NRM was first set up in 2009.

The IECA was set up in 2021 to make NRM identification decisions for adults who are subject to forms of immigration control, including any adults in respect of whom deportation is being pursued and those who are held in administrative immigration detention. The IECA has vastly increased its negative decisions at the reasonable grounds and conclusive grounds stage of the NRM process.

Following its introduction in late in 2021, 92 per cent (1,420) of all referrals to the IECA received a positive reasonable grounds (first stage) decision. In 2022, the Immigration Enforcement Competent Authority made positive reasonable grounds decisions for adults in 93 per cent of cases, and positive 'conclusive grounds' (final stage) decisions for adults in 79.4 per cent of these cases. In the first three quarters of 2023, the IECA made positive reasonable grounds decisions for adults in 79.4 per cent of cases, and positive conclusive grounds decisions in 31.7 per cent of cases, marking a significant drop in the number of positive decisions.³³

There seems to be a particular turning point around the introduction of the provisions under the NABA 2022. The IECA made a positive conclusive grounds decision in 35 per cent of cases of quarter 2 of 2023 and 29.2 per cent in quarter 3, compared to 60.5 per cent in quarter 4 of 2022 prior to the introduction of the part 5 NABA 2022 provisions.

In the period from April to June 2023, there was a decrease in the number of positive reasonable grounds NRM decisions made by the IECA. In contrast with the 88.9 per cent of positive reasonable grounds decisions made by the IECA in October to December 2022, before the updated Modern Slavery Statutory Guidance was updated after the NABA, this rate decreased massively to 6.7 per cent of positive reasonable grounds decisions made by the IECA in April to June 2023. While the Government's retreat on the unrealistic 'objective evidence' threshold and the adverse ruling against the Home Office regarding 'Public Order' disqualifications should have significantly mitigated against some of the concerning trends we have seen,

³³ Home Office, 2023. Official Statistics - Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 3 2023 – July to September.

the IECA made positive reasonable grounds decisions in 35.2 per cent of cases in the third quarter of 2023. This is above the low of quarter 2, but remains well below the figures for the October to December 2022.

b) Increase in Immigration Fees

In July 2023, the Government announced that the immigration health surcharge would rise by 66 per cent (from £624 a year to £1,035); work and visit visa fees by 15 per cent and other visas, extensions, settlement and citizenship by 20 per cent. The high cost of immigration fees (set significantly higher than their processing costs),³⁴ such as those required for visa renewal, are also known to push regular migrants out of status and increase their vulnerability to exploitation.³⁵ High immigration fees cause real economic hardship and paying such high fees will push people into debt, creating a vulnerable and readily exploitable population. As they stand, immigration fees in the UK are considerably higher than comparable European countries and the United States even before the recent increase,³⁶ with many already struggling to meet the cost of their visa fees. Where people are unable to meet these growing costs, they will simply be unable to renew their visas and be forced to become undocumented, where they will be at a much greater risk of exploitation as a result of Government policy.

Question 2

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

Restrictive Visas and Labour Migration Routes

The UK labour market continues to be in transition with complaints of labour shortages in so called 'low skilled' sectors such as care work and agriculture, combined with an increasing reliance on migrant workers who enter the UK on restrictive visas to fill these gaps. LEAG is concerned that, following the loss of freedom of movement within the EU, and the resulting labour shortages, we continue to see a use of short-term and restrictive work visas including in sectors where there is a high risk of exploitation.

³⁴ UKVI (2024) *Transparency data: Visa fees transparency data*.

³⁵ JCWI, (2021), *We Are Here: Routes to regularisation for the UK's undocumented population*, p.20.

³⁶ JCWI, (2021), *ibid*, p.41.

The UK has two existing short term visa routes for low paid work. These are the Overseas Domestic Worker (ODW) visa and the Seasonal Workers Scheme (SWS) for work in agriculture. Reports of exploitation on the Overseas Domestic Worker visa increased dramatically in 2012 when the route was further restricted, preventing workers from changing employer or renewing their visas. This meant that exploitative employers knew that workers could not leave and look for a better job and even complaining carried the risk of being sacked and left destitute and unable to work.

While not a short-term visa, there is concerning evidence of high levels of exploitation of workers entering the UK on the Health and Social Care visa, another restrictive visa. The Health and Care Worker visa creates a dependency on individual sponsors, as workers on this visa must have a job offer from an approved UK employer who is also their visa sponsor. As such, workers' right to stay in the UK depends on maintaining their relationship with their employer or finding a new employer who can sponsor their visa within 60 days. The resulting reliance on the sponsor for employment and the right to remain in the UK creates a barrier to reporting concerns about labour exploitation or other bad practice. In order to prevent and mitigate the risk of exploitation in the care sector, the Government must implement a number of policy and legislative changes. The following four recommendations should be prioritised in any attempts to address labour exploitation in the care sector.

National Care Service - Establish a NHS-style system for social care.

Labour Market Enforcement - Establish a Single Enforcement Body that is accessible to workers in practice, adequately funded, provided with robust enforcement powers and has secure reporting pathways in place. The Government must separate all labour market and immigration enforcement activity.

Dependency/Options for Workers - Introduce bridging visas or the ability to apply to renew a visa in-country once expired. Ensure that all work visas have pathways to permanent settlement, the ability to change jobs easily and access to public funds. Recognising the vital role of care workers in the UK, and the need for migrant workers to support the sector, related visa fees for both the worker and the sponsoring employer must be removed.

Recruitment - Recruitment should only take place via agencies on the 'ethical recruiters list'. Ensure that the UK Code of Practice on ethical

international recruitment is made enforceable so that unscrupulous employers and recruitment agencies cannot operate freely outside of it. As recommended by UNISON, Integrated Care Systems in England, with involvement from local authorities, should operate a central point in the region tracking vacancies with sponsoring employers. This would enable care workers to find new employers more easily.

Labour Migration

Case study: Exploitation of Health & Care Worker visa holders

Increasingly, there have been reports of severe forms of labour exploitation in the UK care sector, with issues including illegal fees, exorbitant repayment clauses, non-payment of wages, debt bondage and excessive overtime highlighted in media coverage. Using data collected through the Modern Slavery & Exploitation Helpline, the charity Unseen has reported a 606 per cent increase in the number of modern slavery cases in the care sector from 2021 and 2022.³⁷ The Director of Labour Market Enforcement has identified adult social care as a high-risk sector for labour exploitation, with live-in and agency care workers believed to be at particular risk.³⁸ The Migration Advisory Committee (MAC) has stated that the Government has tacitly accepted exploitation in the care sector.³⁹ The UK's care sector is suffering ongoing and rising labour shortages.⁴⁰ This is not translating into improved conditions. Low-pay, poor conditions and abusive treatment remain endemic in the sector.⁴¹ In this sense, the Health & Care Worker visa has 'landed' on top of an already high-risk sector, with workers being caught between the prevalent systemic poor conditions of the adult care sector and the harsh effects of UK immigration policy. Rather than increasing wages and improving conditions, the Government and employers in the adult social care sector are placing the true costs of providing care on workers.

³⁷ Unseen (2023), Who Cares?: a review of reports of exploitation in the care sector, p.4.

³⁸ Director of Labour Market Enforcement (2022), United Kingdom Labour Market Enforcement Strategy 2022/23.

³⁹ The Guardian (2023), Exploitation of care workers in England is 'appalling', says government adviser.

⁴⁰ Skills for Care (2022), Vacancies in social care increase by 52 per cent to their highest rates and the workforce shrinks for the first time; Unseen (2023), note 37, p.3.

⁴¹ UNISON (2023), Migrant care staff in UK 'exploited and harassed' by employers, says UNISON.

Thresholds in practice

Case study: the Seasonal Worker Scheme

The issues faced by workers on the Seasonal Worker Scheme provide an illustration of how the modern slavery approach to workplace abuses can act to exclude workers from protection and support and hinder a preventative approach. Research points to the presence of International Labour Organisation indicators such as deception in recruitment, degrading living conditions and dependency on employers (among other such risks) (FLEX and Fife Migrants Forum, 2021, p.32) and serious concerns as to how the scheme is operating in practice. The GLAA have confirmed that they do not proactively inspect farms, and instead will only conduct a visit where there are allegations of modern slavery having occurred. Nor does the GLAA conduct in-country licence or compliance inspections of overseas labour providers. This limited oversight of overseas labour providers and their activities in workers' country of origin, combined with a lack of clarity around recruitment processes and costs or adherence to the Employer Pays Principle⁴² poses a range of recruitment-related risks for workers including deception and debts which they may not earn enough to repay.

The failure to adopt preventative measures or properly fund labour market enforcement, together with the impacts of the hostile environment has created significant risks of exploitation as a result of labour migration routes. Additionally, with workers coming from further afield, the levels of debt that workers' have accrued before arriving in the UK has also increased the risks of debt bondage.

The enforcement of existing labour standards should be strengthened, focusing on sectors with low pay and high rates of insecure work. This will require evidence-based resourcing of labour inspectorates, so they have the staff and capacity to proactively enforce workplace standards, as well as a

⁴² FLEX and Fife Migrants Forum. (2021). Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot. London, p.9.

review of their powers and remit. At a minimum, the Government should repeal the No Recourse to Public Funds (NRPF) policy, which has been shown to create and exacerbate extreme poverty and inequality, to ensure a baseline access to social protection. People whose employment rights are being breached must be able to challenge this early on and access support to enable them to ultimately leave exploitative work. Support should not require people to be at the point of destitution, homelessness, or experiencing exploitation so severe that it meets the threshold for modern slavery.

Routes should be planned, recognising and responding to the continued demand for labour migration into jobs and sectors like food manufacturing, construction and hospitality with safeguards built into all work visas to ensure workers can exercise employment rights in practice, with the ability to change employer and renew their visa. Such a response would demonstrate a commitment to the prevention of modern slavery.

The Government should revise regulation and administrative practices in order to protect the human rights of migrant domestic workers, in particular reinstate the pre-2012 Overseas Domestic Worker visa which allows domestic workers to change employer and the linked and required right to renew the visa and when eligible apply for settlement. LEAG call on the Government to ratify ILO Convention 189 (the Convention on Domestic Workers, formally the Convention concerning Decent Work for Domestic Workers).

First Responder Capacity Crisis

The ability to access such support measures has been significantly limited by the capacity constraints faced by First Responder Organisations (FROs).⁴³ As highlighted in their February 2023 report, and its 2024 follow-up, Kalayaan noted that the NRM is currently at breaking point.⁴⁴ In February 2023, the largest FRO, the Salvation Army, confirmed that they would temporarily stop accepting new referrals, due to an inability to keep up with the current need.⁴⁵ Given the frequent lack of trust in public authorities such as law

⁴³ A 'first responder organisation' is an authority that is authorised to refer a potential victim of modern slavery into the National Referral Mechanism.

⁴⁴ Kalayaan (2023) The National Referral Mechanism: Near Breaking Point; Kalayaan (2024) The National Referral Mechanism: Near Breaking Point - Progress report 2024 - One year on.

⁴⁵ Taylor, D. (2023), Modern slavery survivors could be re-trafficked in UK, charities warn. *The Guardian*. 13 February 2023.

enforcement, non-statutory FROs are an essential part of the referral system, as victims and survivors often feel that charities are the only body they can come forward to without fear of repercussion. As a result of this capacity strain, victims and survivors risk continued exploitation or re-trafficking as they struggle to avail of support and protection.

Issues with accessing the NRM have been compounded by the *de facto* increase in the evidence threshold for preliminary reasonable grounds decisions within the Modern Slavery Statutory Guidance. While the requirement in the guidance to demonstrate 'objective evidence' of trafficking at the initial Reasonable Grounds stage of an NRM referral was amended following legal challenge, in practice the proportion of negative Reasonable Grounds decisions remains high. In 2023 only 55% of Reasonable Grounds decisions were positive.⁴⁶ Given that people can only be referred into the NRM once they have been identified as potentially trafficked by a designated First Responder and the Reasonable Grounds threshold should be 'suspect but cannot prove' having 45% of referrals receive a negative Reasonable Grounds decision during 2023 raises serious questions. FROs report that the evidence now expected at RG stages means that feel that to make a referral into the NRM they are required to undertake additional casework to try to obtain such evidence.⁴⁷ As capacity is already strained, this will mean that issues outlined above will be exacerbated. The raised evidence threshold also increases the need for access to legal advice and representation at this early stage, but this is out of scope for legal aid for the vast majority of victims and survivors.

First Responder Capacity Crisis

Case study shared by Latin American Women's Rights Service (LAWRS):

Teresa* arrived in the UK on a tourist visa with her child. They were fleeing persecution in their home country and arrived in the UK with very limited funds. Teresa did not know she could apply for asylum upon arrival. In trying to seek help, Teresa was introduced to a

⁴⁶ Home Office (2024). *Official Statistics - Modern Slavery: NRM and DtN statistics, end of year summary 2023*.

⁴⁷ Kalayaan (2024) *The National Referral Mechanism: Near Breaking Point - Progress report 2024 - One year on*, p.7.

family that offered them a room in exchange for taking care of the family's children, cooking and cleaning the house. With no other options available to her, Teresa accepted the offer.

Teresa worked 18 hours a day, from 7 am to 1 am. She was not able to take breaks and had to cook and clean, including on weekends. Teresa was not allowed to leave the house, apart from when taking the kids to school. She was threatened with being arrested whenever she tried to leave. Teresa and her child became overstayers during her exploitation and Teresa was repeatedly told that she would not be able to find a job or receive any help because of her immigration status. She was told that if she did not follow orders, she would be deported and have her child taken away from her. Teresa was also told she was not allowed to register with GP because she was undocumented despite needing medication for a thyroid issue.

Only when Teresa met another woman who invited her to come and live with her were they able to finally leave. They moved in with this woman, and both slept on sofas in her living room. Teresa was given LAWRS' number by someone at a food bank who explained to her that she had been a victim of modern slavery. LAWRS helped Teresa get a referral into the National Referral Mechanism (NRM), but faced a huge backlog from First Responders.

Whilst LAWRS was trying to secure support for Teresa, a tenant at the host's house tried to rape Teresa in front of her child. Teresa disclosed the assault to her host and said she wanted to report the tenant to the police. The host told Teresa not to do this as she was undocumented and they would deport her. For this reason, Teresa was afraid of any engagement with the police, including for a referral to the NRM. The host then asked Teresa and her child to leave as she did not want any trouble.

With Teresa and her daughter at risk of destitution, LAWRS referred them to Children Social Services (CSS) under section 17 of the Children's Act, but CSS did not respond to the referral. CSS were notified that Teresa was a victim of modern slavery, but they did not

make a referral to the NRM. NRM referral requests sent to the local authority also went unanswered. During this time, the person that had introduced Teresa to the family that exploited her got in touch to say he knew someone else that could help her. Teresa knew she could not trust this person, but was also facing limited options. An NRM referral was finally submitted two months after LAWRS began searching for a first responder to support Teresa. Teresa received a positive reasonable grounds decision and was finally able to access safety. Three weeks later, Teresa was rushed to hospital with symptoms of cardiac arrest, having still not been supported to register with a GP.

The difficulties and delays Teresa faced in accessing the support she is entitled to as a victim of modern slavery put her at severe risk of destitution and re-exploitation and exposed her and her young daughter to gender-based violence. It also delayed the support she required to register with a GP which led to health complications which put her life at risk.

*name has been changed to protect the woman's identity

Modern Slavery Strategy

The Government published its' most recent modern slavery strategy in 2014, with the Home Office committing to produce a new strategy by spring 2022.⁴⁸ To date, this strategy has not been published, marking a failure to keeping its strategy up-to-date with developments since 2014.

Lack of Meaningful Engagement with Civil Society

The Home Office has continually failed to meaningfully engage with civil society. Such concerns were highlighted in the US State Department's Trafficking in Person review of the UK. For instance, the Modern Slavery Strategy and Implementation Groups (MSSIG) were restructured (removing chairing roles from civil society and placing them with the Home Office), and replaced by the Modern Slavery Engagement Forum (MSEF) in 2023 without the new Modern Slavery Strategy having been produced. In this context, there was a huge gap in consultation on urgent thematic areas since 2022.

⁴⁸ HM Government (2021) 2021 UK Annual Report on Modern Slavery, p.11.

The MSEF operates in a much more limited and controlled manner, it does not meet regularly, or have regular Ministerial attendance, providing fewer opportunities for civil society organisations to input and shape conversation. Further, the role of Independent Anti-Slavery Commissioner, a position tasked with working with civil society, had been left vacant for 18 months, and has recently had a significant cut in funding. The Home Office has failed to demonstrate any real willingness to engage with civil society or subject itself to meaningful scrutiny in good faith, and as such, has compromised its ability to keep up-to-date with developments in modern slavery and human trafficking, both within the UK and internationally.

As a further illustration of this, the ICIBI's inspection of the immigration system as it relates to the agricultural sector highlights shortcomings of the Home Office's advisory groups. For instance, speaking on the Vulnerability Advisory Group, the report points to attendee's perceptions that the group was "a cynical attempt to demonstrate stakeholder engagement" and that organisations found it "incredibly challenging to open a dialogue with the Home Office". In this sense, stakeholders spoke of engagement being 'one-way' and the group existing to "humour" stakeholders, rather than for genuine, fruitful engagement and consultation.⁴⁹ Similar concerns were also outlined in the ICIBI's inspection report on the adult social care sector.⁵⁰ This reflects LEAG's experience of the Home Office's engagement with civil society more generally.

Question 3

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

Section 54 (Transparency in Supply Chains - TISC) of UK Modern Slavery Act provides a route for increasing transparency among companies. Since its introduction, TISC has arguably improved awareness of modern slavery among UK businesses, particularly in sectors such as fashion, food retail and construction.

Among investors, TISC has seemingly contributed to an increase in the attention paid to modern slavery risks in national and global supply chains, showing senior management that this is a serious issue.

⁴⁹ Independent Chief Inspector for Bords and Immigraiton (2022) An inspection of the immigration system as it relates to the agricultural sector May – August 2022, p.35.

⁵⁰ Independent Chief Inspector for Bords and Immigraiton (2024) An inspection of the immigration system as it relates to the social care sector, August 2023 – November 2023, p.17.

However, despite these benefits, TISC is simply not enough. Five years since its introduction, TISC has not led to tangible, positive changes to modern slavery in supply chains and for the workers they employ. The Business & Human Rights Resource Centre has found significant failings in compliance since its implementation, with only a 40 per cent compliance rate amongst relevant businesses. Many of the companies producing modern slavery statements have approached TISC as a compliance exercise, meeting only the basic legal requirements of the law in terms of disclosure.

Following calls to improve the legal framework on corporate accountability, in 2020 the UK Government committed to strengthening the TISC provision, including its extension to the public sector, introducing mandatory reporting requirements for Modern Slavery Statements, and financial penalties for failure to publish a statement. As of March 2024 none of these commitments have been implemented apart from the introduction of a Government-run registry for statements.

Further, a more ambitious approach is needed to drive effective action. Even with the announced measures to strengthen TISC, these will simply create sanctions for failing to produce a Modern Slavery Statement, but still will not require businesses to take concrete measures to prevent, mitigate and remediate forced labour and modern slavery in their supply chains, nor provide penalties for a failure to do so.

To ensure meaningful accountability, the UK must move beyond a voluntarism model towards binding obligations. The UK Government should put in place a law to prevent, mitigate and remediate modern slavery in supply chains, which is backed up by meaningful sanctions and penalties for non-compliance.

There has been considerable supply chain and due diligence legislation enacted in a number of other countries, such as France's Corporate Duty of Vigilance Law (Devoir de Vigilance) and Germany's Act on Corporate Due Diligence Obligations in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten). Similarly, the Netherlands passed the Dutch Child Labour Due Diligence Law (Wet Zorgplicht Kinderarbeid) targeting child labour specifically and came into effect in 2022 . Further, in

September 2023, the South Korean Government introduced Human Rights and Environmental Protection for Sustainable Business Management.

At the international level, the EU adopted the Corporate Sustainability Due Diligence Directive in 2024. While the growing international momentum in developing mandatory due diligence measures, more must be done to lower the financial threshold before due diligence obligations are activated. Restricting the scope of these laws to a limited number of businesses with exceptionally large turnovers will significantly hamper the ability to identify and address modern slavery and human trafficking in supply chains. Nevertheless, the increased powers regarding penalties, fines and remediation points would be a marked improvement upon the TISC provisions in the MSA.

Question 4

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

Definitions

The NABA 2022 narrowed the definition of 'victim of trafficking' by stipulating that there must be 'travel' for an individual to be recognised as a 'victim of human trafficking'. The international standard sets out that 'travel' or movement is only one aspect of the 'action' element of the definition of trafficking, the others being recruitment, harbouring, receipt, and transfer of persons.⁵¹

Section 45 Defence

LEAG endorses the Anti-Trafficking Monitoring Group's (ATMG) evidence in relation to the section 45 defence.

Secure Reporting

The lack of separation between law enforcement (as well as other public bodies such as the Gangmasters and Labour Abuse Authority) and immigration enforcement dissuades people (including the wider public) from reporting potential cases of modern slavery out of concern that it will result in negative immigration consequences for victims⁵² Recommendations made

⁵¹ ECPAT et al, (29 June 2022), *Joint briefing for the Sixth Delegate Legislative Committee debate: the draft Slavery and Human Trafficking (Definition of victim) Regulations 2022*.

⁵² Birks, J. and Gardner, A. (2019) Introducing the Slave Next Door. *Anti-trafficking Review*. (13). 66-81, p.70.

by the former Director of Labour Market Enforcement, Matthew Taylor, sought to address a number of the drivers that leave migrant workers vulnerable to labour abuse and exploitation, and ultimately recognised that it is *'vitaly important to maintain a clear dividing line between labour market enforcement and immigration enforcement'*.⁵³ In this context, the sharing of information on a potential victim of trafficking's migration status with immigration enforcement and the use of joint or simultaneous inspections with both immigration enforcement accompanying law enforcement or labour market enforcement authorities risks undermining trust in the community and putting people at risk.

LEAG notes that secure reporting pathways and procedures that prohibit this sharing of immigration status when victims of trafficking come forward have not been embedded within labour market enforcement or law enforcement activity.⁵⁴ Such pathways would separate immigration enforcement activities, such as sharing workers' undocumented status with the Home Office, from labour market enforcement. As a result, undocumented victims of labour abuse and exploitation would be more able to come forward without fear of immigration-related repercussions, such as arrest, detention and removal from the UK. Given the precarity of undocumented workers, compounded by isolation and lack of social protections, secure reporting is an important tool to ensure workers have meaningful access to protection and support. LEAG research has highlighted that simultaneous or joint operations, where labour market enforcement and law enforcement conduct investigations with immigration enforcement, undermine trust in enforcement mechanisms among migrant workers thereby impeding operational effectiveness at identifying and addressing exploitation.⁵⁵ For instance, in 2022 the Low Pay Commission found that joint inspections stopped workers from reporting the non-payment of wages.⁵⁶ This dynamic will be exacerbated by anti-migrant legislation such as the Illegal Migration Act and the Safety of Rwanda (Asylum and Immigration) Bill. It will drive large numbers of people underground, creating fear of authorities and public

⁵³ Director of Labour Market Enforcement (DLME). (2021), United Kingdom Labour Market Enforcement Strategy 2020/21. HM Government. p.104.

⁵⁴ Labour Exploitation Advisory Group (LEAG). (2020) Opportunity Knocks: improving responses to labour exploitation with secure reporting. FLEX: London. pp.6-7.

⁵⁵ LEAG (2020), *ibid*, pp.20-23.

⁵⁶ Low Pay Commission. (2022) Compliance and enforcement of the National Minimum Wage: the case of the Leicester textiles sector, p.32.

services, and stopping people reporting their exploitation out of the fear of detention and removal from the UK.

"I didn't want to leave at first because my employer threatened me with imprisonment for a long time if I did escape and she would have me deported." Colette, Female, Southeast Asian live-in care worker

Secure reporting procedures and pathways have been adopted in a number of different countries, yielding positive results.

United States of America

Since the mid-1980s, major cities in the United States, including Chicago, New York City, Seattle, Philadelphia and the whole state of California, have adopted policies aimed at protecting the safety of all its residents. By passing resolutions that limit local civil servants and law enforcement officials' involvement with immigration enforcement actions, these cities aim to promote migrants' engagement as witnesses and allow them to come forward when they are victims of a crime, irrespective of their immigration status. In New York City, for example, the police have developed guidance that prohibits officers from inquiring about immigration status of victims of crime, witnesses or others who approach the police seeking assistance. This has helped to make secure reporting part of their culture, and ensures that officers are held accountable and disciplined if they violate the guidance.

As a result, studies found that large metropolitan areas in the United States that established this separation between policing and immigration enforcement have 65.4 per cent less violent and property crime per 10,000 people than those that work closely with immigration authorities.⁵⁷ Another benefit from introducing secure reporting was the development of a better and more timely awareness of risk and crime within the communities by local police

"For police departments in general [in the United States], the way we measure our success as a police agency is based on crime complaints we received - how many people have filed a complaint in a police station, or have called 911, or have made their complaint in some way. [...] If you have a large segment of your population who is not willing or is hesitant to report crimes to your police department, you may not be grasping what is going on in the communities that you police." - New York City Police Department senior police officer⁵⁸

⁵⁷ Delvino, N. (2019). Safe reporting of crime for victims and witnesses with irregular migration status in the United States. Oxford: Center for Migration Policy and Society at Oxford University; Wong, Tom. 2017. "The Effects of Sanctuary Policies on Crime and the Economy." Center for American Progress.

Research also confirmed an increase in victims' engagement with the police in areas where secure reporting was guaranteed, as non-governmental organisations encouraged their clients to report crimes.⁵⁹ Secure reporting is also seen to increase integration and engagement amongst residents.

In the United States, all workers are protected by employment rights, even if they work without a permit. Workers are encouraged to report cases of underpayment to labour inspectors, who use public service announcements, partner with councils and ethnic minority media outlets to make workers with undocumented status aware that they can securely report to them. Workers can report at the federal or state level without fear of being removed from the country, and labour inspectors support them to recover unpaid wages. This is seen as a strategy to tackle unfair labour practices by employers that benefit from underpaying and exploiting workers, and to prevent severe forms of exploitation, such as forced labour and human trafficking.

In 2011, the US Department of Labor and the Department of Homeland Security established a Memorandum of Understanding to "*reiterate the national policy goal that immigration enforcement will not interfere with employment and labour rights enforcement in the workplace.*" To achieve this goal, immigration enforcement agreed to withhold action on cases where a labour dispute was pending to allow all workers to access justice. The Memorandum of Understanding also clarified that immigration should not undertake enforcement visits in workplaces with an active labour dispute to allow inspectors to conduct their investigation and any related proceedings. Finally, this agreement established that immigration enforcement and the Department of Labor shall not "*conduct joint or coordinated civil enforcement activities at a worksite*". Inspectors only contact immigration authorities with the consent of the worker, usually to help regularise their status by applying for a 'T visa', which allows certain victims of human trafficking and their immediate family members to remain and work in the United States while their case is being investigated or the trafficker is being prosecuted. "*If you hold the victims accountable [by*

⁵⁸ LAWRS. 2020. Migrants reporting crime: building trust with the police [Video]. YouTube.

⁵⁹ Collingwood, Loren and Benjamin Gonzalez O'Brien. 2019. Sanctuary Cities: The politics of refuge. Oxford: Oxford University Press.

reporting them to immigration authorities], you empower the traffickers, the criminals.”⁶⁰

Belgium

In Belgium, over 300 workers with insecure status have reported cases of unpaid wages to labour inspectors without suffering immigration consequences since 2010. Under the Belgian system, if a worker approaches a labour inspector to report cases of labour abuse, the concept of “professional secrecy” removes the labour inspector’s duty to report undocumented migrants to immigration authorities.⁶¹

Brazil

After identifying that Federal Police officers responsible for enforcing immigration were treating labour exploitation of migrant workers with insecure status solely as a violation of immigration policies, Brazilian labour inspectors stopped conducting simultaneous inspections with the Federal Police at a regional level, while advocating nationally for more protective rights for victims of human trafficking.

“We, the labour inspectors who were dealing with undocumented immigrants in the city of São Paulo, understood that by issuing deportation orders, the Federal Police not only violated human rights treaties ratified by Brazil but also supported the main manipulation tool used by unscrupulous employers to keep migrant workers from seeking assistance: the threat of deportation.”

- Brazilian senior labour inspector⁶²

Over time, other regions of the country started to identify cases of exploitation of undocumented migrant workers which were followed by immigration action. In light of these cases, labour inspectors and other specialist organisations supported the development of guidelines for interinstitutional use which clearly indicated best practices in supporting undocumented migrant workers.⁶³

Question 5

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

⁶⁰ FLEX and LAWRS (2022). Preventing and addressing abuse and exploitation: a guide for police and labour inspectors working with migrants.

⁶¹ *Id.*

⁶² Labour Exploitation Advisory Group and Focus on Labour Exploitation. (2020). Opportunity Knocks: Improving responses to labour exploitation with secure reporting. London: Labour Exploitation Advisory Group and Focus on Labour Exploitation.

⁶³ FLEX and LAWRS (2022). Preventing and addressing abuse and exploitation: a guide for police and labour inspectors working with migrants.

LEAG remains concerned that the IASC is not provided with sufficient operational independence and is not sufficiently resourced. The operational dependence on the Home Office, for instance to recruit staff and to publish reports, means that the extent to which the role is truly able to act independently remains unclear.

As is well acknowledged, the Home Office's responsibility to appoint the IASC has allowed for the position to be left vacant for almost 19 months. This created a serious gap in oversight during the passage of the Illegal Migration Act 2023, which excluded people who entered the UK irregularly from support and protection under the NRM.

Further, in February 2024 the IASC reported that her funding had been cut by £100,000, with the budget for the IASC's office being cut by five per cent every year.⁶⁴ Moreover, the IASC noted that the 'speed at which she could build her team was being curtailed by the fact that senior civil servants within the Home Office had to sign off every new appointment.'⁶⁵

The first IASC, Kevin Hyland, highlighted that in his view the role had been constrained by structural considerations including Home Office policy and priorities. This observation was supported in the statements of several stakeholders as referenced in the independent MSA review's interim report. Concerns were raised over the lack of independence. Relevant stakeholders reported that the IASC was not '*free to scrutinise and criticise Government policy and performance in addressing modern slavery.*'⁶⁶ Kevin Hyland also reported concerns regarding the lack of independence from the Home Office within the position, stating in his resignation letter that the independence of his role '*felt somewhat discretionary from the Home Office, rather than legally bestowed.*'

In late 2021, the previous IASC, Sara Thornton, highlighted her concerns around the update to the Modern Slavery Statutory Guidance which set out the creation of the Immigration Enforcement Competent Authority (IECA) which she was not consulted on. Within her letter to the Home Secretary,

⁶⁴ Bancroft, H. (2024) Modern slavery 'less of a priority for Sunak's government' as watchdog budget cut by £100,000. *The Independent*. 7 February 2024.

⁶⁵ *Id.*

⁶⁶ Independent Anti-Slavery Commissioner (2019). *Independent Review of the Modern Slavery Act 2015, First interim report.*

she warned that the IECA marks '*a step backwards in our response to modern slavery with considerable implications for victims.*'

LEAG encourages the Government to fully exploit the transformative potential of the IASC role, ensuring future Commissioners are able to independently critique and make recommendations for the UK's anti-trafficking work, and are actively consulted on the direction of anti-trafficking policy and developments. Their critique should be actively informed by the lived experience of victims and survivors of slavery and independent of Home Office policy.

It is also of note that the office of the Director of Labour Market Enforcement was vacant between from January 2021 to November 2021. In January 2023, the Home Secretary discontinued the standing commission for the Independent Chief Inspector for Borders and Immigration (ICIBI) to carry out annual reviews on the effectiveness of the Home Office's practices and policies towards adults at risk in immigration detention, prior to dismissing the ICIBI in February 2024. Both of these roles have a crucial role in combating exploitation.

Question 6

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

Single Enforcement Body

Labour market enforcement in the UK is incredibly fragmented, with six different labour market enforcement authorities, each with different remits. The 2019 Conservative Party manifesto committed the government to establishing a Single Enforcement Body (SEB). These plans were confirmed to have been scrapped in December 2022. The current, disjointed system is difficult for workers to navigate, and difficult for authorities to manage efficiently. This means that workers often fall through the gaps. A well designed Single Enforcement Body would establish end-to-end protection for workers, meaning that no one is left behind and workers see the difference in practice.

The UK's labour market enforcement system must be accessible to workers in practice, and provided with robust enforcement powers. These reforms, which may take the form of a Single Enforcement Body, must be grounded

in the principles of protected reporting, evidence-based resourcing, compliance with international standards at a minimum, fair and efficient remediation, gender sensitivity, and meaningful worker participation. Resourcing of UK labour market inspection authorities should be greatly increased, at minimum exceeding the ILO target of one inspector for every 10,000 workers in the short term. They must have effective enforcement powers. In contrast, it is concerning to see that the GLAA's 2024-25 budget (£6.26 million) has been cut since 2023-24 (£7.77M), despite the evidence of need for increasing levels of proactive Labour Market Enforcement work, especially in light of the UK's increased reliance on restrictive work visa, leaving workers less able to leave exploitative employment and, without secure reporting pathways, fearful of coming forward to the authorities.

Secure reporting

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

Right to work in the NRM

Survivors of trafficking need to be provided with meaningful options. This means that they should be afforded the ability to build independence and sustainable freedom by providing them with the ability to earn their own income through work, as well as through education, counselling and access to justice.

The inability to work while in the NRM can compound the trauma of trafficking, creates a real risk of re-exploitation, and can trap those who are dependent on these earnings in exploitative work.⁶⁷ Enabling people in the NRM to access work is a simple process which can be achieved by changing the Immigration Rules and without any need to amend primary legislation.

Non-Statutory First Responders

⁶⁷ Kalayaan *et al.* (2021) Access to Work for Survivors of Slavery to Enable Independence and Sustainable Freedom.

LEAG calls on the Government to consider and decide on existing applications from specialist front line organisations to become a First Responder Organisation; to establish a recruitment process without further delay for prospective organisations to apply; to develop and maintain a nationwide training programme for both statutory and nonstatutory First Responder Organisations; and to provide funding for First Responder Organisations to carry out their roles.

Departmental Responsibility

It is apparent that the immigration enforcement priorities of the Home Office are prioritised over its modern slavery commitments. Moreover, as recognised by the former Independent Chief Inspector on Borders and Immigration, the Home Office is operating in a manner that is 'dysfunctional' and is in need of reform.⁶⁸

Responsibility for human trafficking should be removed from the Home Office, and placed under a more suitable department such as the Ministry of Justice or a cross-ministerial body.

Due Diligence

More should be done in terms of worker engagement and input as well as complaints mechanisms for those most at risk. To improve TISC, we believe that the Government should:

Create a corporate duty to prevent negative human rights and environmental impacts, mandating those operating in the UK to conduct proactive human rights and environmental due diligence across their operations, subsidiaries and value chains and prevent identified risks, including by addressing the impacts of their own business models. The new law must also hold UK companies accountable through strong accountability measures and strict liability provisions if they fail to prevent human rights abuses and environmental harm, and enable victims of abuses to access justice and remedy in line with the UN Guiding Principles on Business and Human Rights and international human rights law.

Adopt a prevention-based approach to labour exploitation through business and human rights policies and procedures, requiring organisations to take positive and proactive measures to prevent risks, including structural interventions such as addressing purchasing and outsourcing practices.

⁶⁸ Mathers, M. (2024) 'Dysfunctional' Home Office in need of reform, sacked borders watchdog says. *The Independent*. 11 March 2024.

Implement mandatory and meaningful stakeholder engagement (including workers, trade unions and communities who are affected by companies' activities) for the design, implementation and monitoring of business and human rights measures.

Implement robust mandatory public reporting requirements, and establish an enforcement mechanism to ensure compliance among organisations.

Financial Exploitation

In recent years, there have been numerous instances of workers being charged significant recruitment fees by deception, only to arrive in the UK and find that there is no work for them. The definition of victim in the Slavery and Human Trafficking (Definition of Victim) Regulations 2022 does not properly cover this situation and as a result this form of exploitation is being treated as an instance of fraud by First Responders. This approach means victims and survivors of exploitation are being excluded from protection and support under the NRM, and may be at a significant risk of re-trafficking as a result.

The definition of victims contained in the statutory guidance and Slavery and Human Trafficking (Definition of Victim) Regulations 2022 should cover situations where migrant workers are deceived into making exorbitant recruitment fee payments by an overseas agent to facilitate their visa application, and then find that there is no work available for them in the UK. This approach would be in-line with understandings of exploitation within international law.⁶⁹

Given the fact that the UK is continuing to recruit workers from a larger pool of countries following the end of free movement, it is imperative that the statutory guidance reflects the practices that we are seeing as a result, and that there are no protection gaps left that can result in victims and survivors of trafficking being left without protection and support.

This is best achieved through the provision of victim support. As highlighted by a coalition of international anti-trafficking groups, *"[t]here is currently no evidence that criminalising the knowing or unknowing use will have any impact on the prevention or prosecution of human trafficking or that it will strengthen the rights of victims. On the contrary, such a provision is likely to*

⁶⁹ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, (Palermo Protocol), Article 3.

harm the rights of sex workers, including persons trafficked and exploited in the sector.” This is because “[l]aw enforcement actors – who already struggle with limited capacity to investigate and prosecute human trafficking – would have to use their scarce resources to focus on users of services, instead of perpetrators of human trafficking.”⁷⁰ As such, LEAG’s position is that this change would be best placed in the Statutory Guidance and Slavery and Human Trafficking (Definition of Victim) Regulations 2022 as this would allow for victims and survivors to access support without the risk of inadvertent negative consequences.

International Law and Obligations

Compliance with international obligations is a fundamental requirement of any state seeking to uphold the rule of law. As recognised by the bodies such as the Group of Experts on Action against Trafficking in Human Beings (GRETA), who are responsible for monitoring the implementation of ECAT, stressed that recent legislation, ‘would run contrary to the United Kingdom’s obligations under the Anti-trafficking Convention, to prevent human trafficking, and to identify and protect victims of trafficking, without discrimination.’⁷¹ It is inarguably clear that recent modern slavery and trafficking policy developments breach the UK’s obligations to victims of trafficking under Article 4 ECHR, the Anti-trafficking Directive and ECAT.⁷²

The UK signed up to the aforementioned international conventions freely, in recognition of its role in the international rules-based system and its responsibility to protect human rights. The Modern Slavery Act should fully incorporate the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) and the Anti-Trafficking Directive into domestic law.

Legal aid

Access to legal advice and representation is critically important for survivors of trafficking. It is the key to being formally recognised as a victim, accessing safe housing and support, upholding rights, and accessing justice and remedy. Yet, an October 2022 report by the Anti Trafficking and Labour

⁷⁰ La Strada *et al.* (2023) Statement: Joint NGO call to EU leaders: Measures to improve victim’s rights are needed for the revision of the EU anti-trafficking directive to be meaningful, and not actually harmful for victims and those at risk, p.6.

⁷¹ Council of Europe (2023) “UK’s Illegal Migration Bill should be reviewed to ensure it complies with the anti-trafficking convention”, says GRETA.

⁷² Anti-Trafficking Monitoring Group (ATMG) (2023) ‘Illegal Migration’ Bill briefing – House of Lords Committee Stage.

Exploitation Unit (ATLEU), *'It has destroyed me': A legal advice system on the brink*, reveals a legal advice crisis in the UK. There is a huge gulf between demand and supply of legal advice with the result that survivors are not able to access timely and quality legally aided advice and representation when they need it, with devastating consequences.

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

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

Recourse to Public Funds

The 'No Recourse to Public Funds' condition bars most migrant workers from accessing the state safety net and means they are forced to continue working while unwell or remain in abusive or exploitative work environments because they simply cannot afford not to work or to become unemployed due to risk of destitution/homelessness. Avoiding destitution is also a reason for people being re-exploited having left exploitative employment. This is likely to worsen with the current cost of living crisis. Furthermore 'rough

sleeping in the UK' is its own ground for refusal of permission to stay in the UK. A migrant victim of domestic violence who has fled her abusive partner is more likely to remain in an exploitative employment environment because she is concerned about the impact of losing her job and falling into destitution and/or homelessness.

NRPF is well known for its negative impact on migrants, forcing many into destitution and debt. This, in turn, can prevent workers (especially in low-paid and insecure work) from leaving exploitative and abusive situations due to their dependency on their employer for income and subsistence.⁷³ Access to benefits and support can significantly improve workers' resilience against exploitation and abuse. The benefits of removing the NRPF condition for all visa holders, including those with families, outweigh the costs of granting access to benefits in the short and long term.⁷⁴ This is due to the savings generated by addressing destitution and poor housing, which local authorities and third-sector services must otherwise handle.

Leave to Remain and Bridging Visas

The absence of a bridging visa in the UK means that workers who are unable to comply with their immigration status for any reason, including exploitation, may become undocumented. This undocumented status increases the risk of exploitation, particularly as 'hostile environment' policies such as the Illegal Working Offence and associated right to work checks, mean that workers are often pushed into exploitative work.⁷⁵ While there is no evidence that the Illegal Working Offence and other 'hostile immigration' policies are effective at deterring irregular migration into the UK, there is significant evidence showing how these policies prevent people from reporting crimes and unsafe working conditions to the authorities,⁷⁶ which further drives risks of exploitation. Migrants at Work has reported that several migrant workers attempted suicide after their employers' sponsorship licence was revoked, with three care workers having died by suicide after becoming destitute following the loss of sponsorship.⁷⁷ Instead,

⁷³ FLEX *et al.* (2021), No viable alternatives: Social (in)security and risk of labour exploitation during Covid-19. London.

⁷⁴ Benton, E., et al. (2022), Social Cost Benefit Analysis of the No Recourse to Public Funds (NRPF) Policy in London. London School of Economics, p.12.

⁷⁵ Labour Exploitation Advisory Group (LEAG). (2020) Opportunity Knocks: improving responses to labour exploitation with secure reporting. FLEX: London. p.16.

⁷⁶ Labour Exploitation Advisory Group (LEAG). (2020) Opportunity Knocks: improving responses to labour exploitation with secure reporting. FLEX: London. The Home Office's own research concedes that the deterrent effect of the hostile, or 'compliant' environment is unclear, see: Home Office (2023) A review of external evidence of the compliant environment: Literature synthesis of external evidence and best use of international examples.

the UK's previous good practice should be replicated in relation to the migrant workers in the adult social care sector. The pre-2012 Overseas Domestic Worker visa's portability provision was noted as playing a crucial role in facilitating migrant domestic workers' ability to exit exploitative employment and pursue legal remedies against their employer.⁷⁸ The UK's Ukraine Extension Scheme provided an option for eligible Ukrainian nationals in the UK to regularise or switch immigration status and has been recognised as preventing exploitation.⁷⁹

Bridging visas have been adopted in other countries, for instance, in the Republic of Ireland, the Reactivation Employment Permit permits non-EU citizens who held a work permit but became undocumented through "no fault of their own" and have remained in the country. "No fault of their own" can refer to labour exploitation and abuse, closure of the workplace without previous notice, being made redundant, or failure of the previous employer to submit the redundancy notification on time. Workers can apply for this permit with the formal offer of employment for any post, except for domestic work. Successful applicants receive a temporary residence permit which gives workers a period of temporary stay.

In Finland, non-EEA workers who have experienced labour exploitation or significant negligence in the workplace can apply for special residence permits due to such exploitation.

Similarly, Canada operates an Open Work Permit for victims of abuse. This permit is time limited and cannot be renewed. However, it's designed to give workers enough time to find a new employer and apply for a new work permit.

These examples allow for workers, who would otherwise be at a high risk of exploitation, to regularise their status and access decent work. This ability to address workers on the shallower end of the continuum of exploitation can

⁷⁷ Migrants at Work & Migrants' Rights Network (2023), *Written evidence submitted by Migrants at Work and Migrants' Rights Network*.

⁷⁸ Kalayaan (2011). *Ending the Abuse: policies that work to protect migrant domestic workers*, p.3 ; The original ODW visa was cited internationally as good practice. See: International Labour Organization (2006), *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, p. 67.

⁷⁹ García-Vázquez, O., Cockbain, E., Roberts, K., and Fisher, O. (2024). *From exploitation risks to mitigations: looking back locally on the implementation of the UK's Ukraine Schemes*. March 2024. London: FLEX (Focus on Labour Exploitation).

prevent workers' situation from deteriorating to the level where it might amount to modern slavery.

For visas more specifically designed for survivors of trafficking, there is a need to provide workers with enough time to recover from their exploitation and rebuild their lives, in order to break the cycle of re-trafficking. While the majority of survivors of trafficking are not granted any leave to remain at all,⁸⁰ Home Office data shows that 63 per cent of adult victims who were granted leave in 2022 were granted leave of just 6-12 months, while 25 per cent were granted leave for less than 6 months.⁸¹ It is impossible for survivors to recover and rebuild their lives while living with the insecurity that comes with having no leave, or very short-term leave. Recognising the harmful impact that immigration insecurity has on survivors, research by organisations including the British Red Cross has called for people with positive conclusive grounds decisions to be automatically awarded leave to remain as a survivor of modern slavery for a minimum of 30 months.⁸² Granting leave to survivors to allow them to move on from exploitation and begin to rebuild lives also makes economic sense. As well as decreasing risks of re-exploitation, including re-trafficking. A Cost Benefit Analysis shows significant financial benefits from victims being enabled to move on and rebuild lives as well as a great number of unquantifiable benefits.⁸³

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⁸⁰ Helen Bamber Foundation (2023). *Leave in Limbo: Survivors of trafficking with uncertain immigration status*. August 2023

⁸¹ Freedom of Information Request reference: 71848, answered by the Home Office on 5th December 2022; and Freedom of Information Request reference: 73773, answered by the Home Office on 12th May 2023.

⁸² See for example: British Red Cross (2019). *Hope for the future: Support for survivors of trafficking after the National Referral Mechanism*.

⁸³ University of Nottingham Rights Lab (2019). *The Modern Slavery (Victim Support) Bill. A cost benefit Analysis*.