

Kalayaan and The Voice of Domestic Workers- Written evidence (MSA0089)

In this joint submission, we endeavour to highlight the myriad of challenges that survivors of trafficking and slavery face in relation to their identification and protection, as well as the absence of a UK-wide prevention strategy which puts vulnerable groups at unnecessary risk of harm. We would submit that a series of policy and legislative changes made over a number of years has culminated in a significant retrograde in the UK's ability to safeguard survivors and centre their needs adequately. The Government's strategy on tackling the crime of trafficking and the problems they have created have been cascading and permitted to multiply, leaving survivors and those supporting them with some impossible choices.

In response to the Committee's call for evidence, our submission is broadly broken down into three areas of concern:

Lack of a prevention strategy in the UK, including unenforceable rights at work and a legal aid system in crisis, resulting in unacceptable risks of harm.

Lack of a functioning NRM system, including bottlenecks at point of entry and exit to the National Referral Mechanism. There is also a distinct lack of rights that survivors can exercise whilst in the NRM which places them at risk of re-trafficking.

Lack of engagement with those with lived experience of abuse at work and as survivors of trafficking and slavery.

Introduction

Kalayaan was established in 1987 and is the UK's leading charity offering advice, advocacy and support services to migrant domestic workers. This workforce, predominantly female workers from the Philippines, Indonesia and India, are permitted to enter the UK on the Overseas Domestic Worker (ODW) visa to undertake domestic labour for either private individuals or serving diplomats. This work includes, but is not limited to, childcare responsibilities, elderly care, cooking, cleaning and chauffeuring.

Kalayaan is a designated First Responder Organisation (FRO) to the National Referral Mechanism (NRM), the UK's one and only system for formally identifying and providing support to suspected survivors of trafficking and modern slavery. We have held this status since the NRM was established in 2009. Previous to this we participated in the Home Office pilot for identifying survivors of trafficking for forced labour ('Operation Tolerance'). Kalayaan is currently one of 10 non-statutory organisations to hold the role of First Responder in the UK. We also provide long term, holistic support, tailored to individual need according to the survivor. We do this outside of any constraints of Government contracts or funding.

Kalayaan's expertise on issues affecting and experienced by migrant domestic workers, and on the issue of trafficking for the purpose of domestic servitude, is widely recognised. We have delivered training to the police and to the (formerly known as) UK Human Trafficking Centre on issues relating to migrant domestic workers. Kalayaan has provided expertise on migrant domestic workers at an international level; we were a Titular delegate of the UK Trades Union Congress in the 'decent work for domestic workers' committee of the United Nations International Labour Conference and recently spoke direct to the United Nations in Geneva and the Human Rights Committee which monitors the International Covenant on Civil and Political Rights. Kalayaan has also been invited to speak about migrant domestic workers by a number of British and international groups and has also produced and contributed to a number of publications and parliamentary submissions about issues facing migrant domestic workers in the UK, as well as barriers and difficulties experienced by those workers who enter the NRM and request to be formally identified as survivors of exploitation.

Kalayaan is a member of the Anti-Trafficking Monitoring Group (ATMG) who have made a submission to this inquiry. This submission is designed to be read in conjunction with the ATMG's submission.

Kalayaan is also a member of the Labour Exploitation Advisory Group (LEAG). Again, this submission is designed to be read in conjunction with the LEAG's submission.

The Voice of Domestic Workers (VODW) is an education and support group calling for justice and rights for Britain's twenty thousand migrant domestic workers. The VODW provides educational and community

activities for domestic workers – including English language lessons, drama and art classes, and employment advice, and provide support for domestic workers who exit abusive employers.

Where indicated, Kalayaan and the VODW refer to and rely on the submissions made by either or both ATMG and LEAG when addressing the Committee’s areas of inquiry.

Q1. 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)

Kalayaan and the VODW refer the Committee to the ATMG’s submission on this point, specifically paragraphs 7 – 85, and LEAG’s submission, paragraphs 4 to 39, with regards to the roll back and watering down of rights and entitlements the UK Government has presided over following the passage of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, together with other policy developments including changes to the Modern Slavery Act’s Statutory Guidance.

The UK has witnessed a general downgrade in the treatment of, prioritisation of and entitlements provided to survivors of trafficking and modern slavery since 2015. This has recently been acknowledged by the cross-party Home Affairs Select Committee and their inquiry into Human Trafficking, published in December 2023. This downgrading has been done simultaneously at the same time the UK Government introduced measures under the auspices of the hostile environment, preventing anyone without permission to be in the UK the right to rent, work or open a bank account. The Government claimed in 2012 that they wanted to create a hostile environment for ‘illegal migrants’ to make them go away, but in reality, they have created a class of people who are extremely vulnerable to becoming trapped in cycles of exploitation, including treatment that amounts to trafficking and modern slavery. These are people that the UK economy continues to rely on to carry out essential work across the country.

The impact of the Immigration Act 2016 and wider measures

The Immigration Act 2016 created the offence of illegal working, criminalising those caught working without permission in the UK and punishing employers with hefty fines. This offence must be viewed within

the broader context of the hostile environment towards migrants, making people undocumented through design. This includes people who once held status in the UK, but who lose it through eye-wateringly high visa renewal application fees, loss of sponsorship, abusive employers and non-renewable visa regimes. In January 2024, the Government tripled the maximum civil penalty employers are at risk of paying from £20,000 to £60,000 for each 'illegal worker.' The provision in the 2016 Act turned employers into officers of the state policing border control. The threat of hefty sanctions has led employers to withdraw offers of employment to migrants in the UK when they could not be satisfied of their permission to live and work in the UK. Those migrants with pending applications, including those covered by what is known as 3C leave who retain their work permissions, have been left without physical or digital proof of their pending applications and right to work, and thus face unemployment and destitution in cases where they do not have recourse to public funds. The impending switch from tangible biometric residence permits to migrants having digital only status looms large at the end of 2024¹, with existing and ongoing issues in this system relating to the EUSS (EU Settlement Scheme) unresolved.

Another cause for concern is the impact of the decimation of legal aid funding since the passing of the Legal Aid, Sentencing and Punishment of Offenders Act in 2012. This legislation and the ongoing failure to increase the rates of pay for legal aid funded work has created a system that is not fit for purpose, is not financially viable and has left survivors of trafficking and modern slavery without access to lawyers to represent them in claims before the Home Office for months, often years. This has resulted in survivors either going unrepresented, or feeling like they have no choice but to instruct a private lawyer. Unfortunately, Kalayaan has seen many examples of our clients paying unscrupulous and unregulated lawyers vast sums of money and become indebted to employers and community members who lend them money for their legal costs. These individuals have then become trapped in cycles of exploitative work and given the dangers of reporting their employers, are prevented from speaking out or holding them accountable. Charities who employ immigration advisors and who are subject to regulation by the Office of the Immigration Services Commissioner (OISC) are being faced with acting for these clients but now face the additional burden of paying significant sums following the recent announcement in March 2024 of the consultation to introduce fees per advisor. For Kalayaan, this looks to cost our organisation £500+ if these proposals are allowed to pass.

A clear example of how these interconnected issues play out in real terms can be illustrated with migrant domestic workers. The following paragraphs provide a brief overview as to the legislative and policy developments relating to migrant domestic workers since 2012 and have been provided in order that Kalayaan and the VODW can respond to and address some of the six topics the Committee has selected to review. We submit that the Modern Slavery Act 2015 and the policy changes that have taken place since have continued to fail to protect and uphold the rights of migrant domestic workers, including their right to work in a safe environment free from abuse and harassment.

Prior to April 2012, migrant domestic workers were admitted to the UK on the original Overseas Domestic Worker visa (in place starting from 1998). This gave workers certain basic but fundamental rights at work, including the right to change employer, the right to renew their visa subject to ongoing employment, the right to be joined by their spouses, partners and children under 18 years old, and after five years of continuous work as a domestic worker, the right to apply for settlement. This was all whilst on a visa that was issued with no recourse to public funds, and saw workers contribute economically via tax contributions, immigration application fees, the Immigration Health Surcharge and associated costs to immigration advisors to advise and prepare such applications.

In April 2012, the then UK Government ushered in changes to the terms of this visa, claiming they were restoring it to its original purpose, which was to facilitate access to the UK to work for employers, and then return and leave the UK with that same employer. These changes were brought in despite vehement opposition and stark warnings that the policy and legislative changes were akin to kafala systems operating elsewhere in the world. The changes in the UK meant that workers were tied to their employer and prohibited from leaving them even if they suffered abuse and exploitation. If workers escaped abuse, they were criminalised, lost their status in the UK and driven underground into the black economy where they were further abused by those seeking to exploit their insecure status.

With the introduction of the Modern Slavery Bill, the UK Government presented themselves with the opportunity to correct this injustice and reverse the changes brought in, in 2012. By this point, Kalayaan had collated irrefutable evidence that the changes had resulted in a significant

increase in reported abuse by workers. There had also been two parliamentary committees who had called for the terms of the visa to be restored to what was in place prior to April 2012, the draft Modern Slavery Bill Committee finding that the 2012 changes had '*unintentionally strengthened the hand of the slave master*', and the Joint Committee on Human Rights reporting that the '*removal of the right of an Overseas Domestic Worker to change employer as a backward step in the protection of the Migrant Domestic Workers, particularly as the pre-2012 regime had been cited internationally as good practice*'.ⁱⁱⁱ Despite this, the Government defeated amendments to the Modern Slavery Bill as it then was, instead providing for Section 53, which permits a migrant domestic worker who has entered into the National Referral Mechanism and been subsequently identified as a survivor of trafficking or modern slavery to then *apply* for a domestic worker visa for, at that point in time, a maximum of six months.^{iv} Such a response failed, and continues to fail to this day, to *prevent* abuse from escalating to the point of severe abuse, including trafficking and modern slavery.

As a result of parliamentary debates during the passage of the Modern Slavery Act 2015, the UK Government elected to commission an Independent Review into the terms of the Overseas Domestic Worker visa^v and if they facilitated the abuse of workers, which was and is at odds with the Government's objective to prevent and disrupt trafficking. This Review was evidence based and, crucially, looked at the full spectrum of abuse experienced by workers who arrive in the UK on the Overseas Domestic Worker visa. It was completed in December 2015 and made two key recommendations. Firstly, that workers should not be tied to the employer they accompany to the UK and should be permitted to change employer without condition or having to meet any evidential proof in having suffered abuse. The Review found that in order for workers to meaningfully exercise this right, they would need to be afforded the *time* to do so, so the Review's linked recommendation was to permit workers to renew their domestic worker visa for a further and maximum two years. The second key recommendation was in response to the UK's repeated failure to ensure that workers were provided with and had access to information on their rights in the UK prior to their arrival. As a result, the second key recommendation was to mandate compulsory attendance for workers at a group information session, attended by other workers, who were in the UK for more than 42 days. It was suggested that such a service be funded by an increase in the visa application fee.

The UK Government responded to the Review in March 2016^{vi} and decided to only part accept some of the Review's recommendations, despite committing to implement them all when they commissioned it.^{vii} As part of the Government's response, they consulted with the inaugural Independent Anti-Slavery Commissioner who disagreed that allowing workers to renew their visa was a necessary safeguard in the fight against abuse.^{viii} The Commissioner, who did not complete an evidence-based review, held the view that workers who were in the UK on the visa prior to 2012 were also at risk of being re-trafficked. Kalayaan was deeply disappointed with his evidence to the Review which was, in effect, to strip workers of their rights including the right to be able to negotiate from a relative position of power to their employer, and if necessary, take steps to leave an abusive employer. The UK Government agreed with the *view* taken by the Commissioner, and not the *findings* of the Review. In April 2016, they permitted workers to be able to change employer, without needing to report any such change of employment to the Home Office, but did not permit workers the right to renew their visa beyond six months as they did not want to '*facilitate a revolving door of abuse*'. Kalayaan and the VODW condemned the decision not to permit workers to renew their visa, which was one of the clear findings made in the Review, especially when it remains the case that workers who arrived in the UK prior to 2012 are required to report any change of employer whilst on the visa in order the authorities can consider initiating any action against abusive and unscrupulous employers.^{ix}

The UK Government has repeatedly stated over the years that if migrant domestic workers experience abuse, they can avail themselves of the National Referral Mechanism (NRM) to access support. This policy position is of concern two-fold. It negates the need to *prevent* abuse escalating to severe forms of abuse, which is what the Government should be aspiring to do, and it also fails to recognise that abuse occurs across a spectrum, as was identified in the Review, meaning that not all abuse experienced by migrant domestic workers amounts to trafficking or slavery. It means there is a protection gap for those workers who experience violations of their labour law rights as workers, but where their treatment does not fall within the legal definition of having been trafficked or enslaved. This is what the Review's recommendations were designed to guard against. This group of workers have no rights, and should they flee an abusive employer, will in all likelihood be further abused by those looking to exploit their insecure status.

Migrant domestic workers arrive in the UK on a visa valid for six months. Previous research from Kalayaan^x evidenced that on average workers take 29 days to leave an abusive employer, and then a further 88 days before they learn of Kalayaan, often the first place they receive trusted and regulated advice on what their options and entitlements are in the UK. It is important to note that *no changes* have been made to the visa application process when it comes to the issuance of information to workers either prior to or after their arrival in the UK. This issue is exacerbated following the UK Government having now abandoned their commitment to implement mandatory information sessions, the second key recommendation made in the Review. In response to a Parliamentary Question answered on 29 April 2021^{xi}, the Government confirmed a tender exercise was completed but only two bids were received to run the service to deliver information sessions. No reasons were provided by the Government as to why neither of these bids were awarded the tender. Despite acknowledging the failings with regard to providing information to workers during the visa application process, no interim measures were put in place from when the Government committed to implement information meetings in 2016, to when they later confirmed this commitment had been abandoned in 2021.

As a result of the above, workers have, since 2016, been able to change their employer in the UK but only during the validity of their visa, which remains capped at six months. It is, generally, outside of the control of the worker as to when they travel to the UK, as this is dictated by their employer, so this means that they have less, sometimes significantly less, than six months remaining on their visa when they arrive in the UK. By the time workers flee and seek advice on their position in the UK, many have only weeks remaining before their visas expire. Again, this problem is exacerbated by the fact that many arrive and later flee their employer without having possession of their passport, containing their visa, or knowing any of the conditions attached to their visa and permission in the UK, not least of which is when their visa expires. The only way to get this information, despite requests from Kalayaan to the Home Office to explore potential alternatives, is to request this information directly from the Home Office via a disclosure request under the Freedom of Information Act which can take up to 30 days, all time in which a worker remains at unacceptable risk.^{xii}

Numerous parliamentary committees, international NGOs, workers' groups, trade unions and workers themselves have been clear that they

need to have rights at work, notably the rights they had under the pre 2012 visa regime, in order to keep themselves safe at work, and able to challenge abuse when it arises. Crucially, such fundamental rights would prevent abuse from escalating to severe forms of exploitation that would come under the legal definition of trafficking or modern slavery offences. We refer the Committee to paragraph 80 - 82 of LEAG's submission for further observations and recommendations, with respect to removing the conditions that allow labour exploitation to thrive and adequately resourcing labour market enforcement inspectorates.

Ultimately, the Government's strategy is reactive and focuses resources and funding on measures *after* the event. In so doing, the Government fails in its positive obligations to prevent abuse from escalating to severe forms of treatment amounting to trafficking and modern slavery, in breach of its duties under Article 4 of the European Convention on Human Rights.

Kalayaan and the VODW would like to refer the Committee to the LEAG's written submission to this inquiry, specifically paragraphs 98 to 104 on the continuum of exploitation that parliamentarians and policy makers must be mindful of when designing and implementing policy decisions. This is essential if the UK is to prevent workers and other groups of people from becoming exploited, and at risk of their treatment escalating to trafficking and modern slavery.

CASE STUDY: JENNY

Jenny approached Kalayaan when her visa had two weeks before it expired, having only just heard of the organisation. Kalayaan explained to her that her visa was non-renewable and that while she had permission to work in the UK, it would only be while her visa remained valid—for the next two weeks—after which she would be subject to the UK's hostile/compliant environment for migrants. On the basis of Kalayaan's assessment, it did not consider Jenny to be a victim of trafficking or slavery, so could not refer her to the NRM.

It is worth noting here that even cases that Kalayaan has judged appropriate for NRM referral are frequently turned down on the grounds that, while the working conditions may have breached employment terms, they do not constitute trafficking or slavery. Yet calls for the reinstatement of the original ODW visa are repeatedly met with the response that workers who have suffered abuse can avail themselves of the NRM.

Despite experiencing labour law violations, Jenny's right to change employer was in practice of no use to her, given that she was not allowed to renew her visa. Had she entered the UK on the original kind of ODW visa, she would have remained visible to the authorities by renewing her visa annually, while contributing in taxes and visa renewal fees. Jenny's case underlines how unhelpful it is to require maltreated migrant domestic workers to fit themselves into the slavery or trafficking frame, and how their rights would be better protected through the restoration of the original ODW visa."

Jenny arrived in the UK last year on a visa. In contravention of UK published policy, she was issued no information on her rights as a worker in the UK, either during the visa application process or on arrival. She worked the same long hours as before and, although she was paid a little more than in Lebanon, her hourly rate was less than half the national minimum wage. Her employer told her that she would be arrested if she left. Nevertheless, she did leave because she was exhausted from her long working hours for pay less than she had been promised.

The impact of the Nationality and Borders Act 2022

The evidence provided to the House of Lords Select Committee by the ATMG and LEAG on the impact of the Nationality and Borders Act 2022 is comprehensive, so we do not seek to repeat the substantive points made, but wish to provide additional evidence relating to migrant domestic workers and Kalayaan's experiences as a First Responder to the NRM and support provider, alongside the VODW.

We would submit that the legislative and policy changes that have been introduced since 2012, particularly in recent years, in response to the unevidenced and hugely alarming claim that there has been abuse of the NRM process, has created a myriad of ways in which vulnerable people are put on a collision course to ending up highly vulnerable to harm, including abuse that amounts to re-trafficking and re-exploitation.

Survivors at risk of re-trafficking in the absence of a functioning First Responder system: In January 2023, Kalayaan issued an Urgent Public Announcement^{xiii} in which we put the Government and the Home Office on notice that the NRM was nearing breaking point, with the numbers of survivors coming forward wanting to enter the NRM far exceeding the capacity and available resources of the current number of First Responder Organisations. This situation has been deteriorating for a number of

years, but it now reaches breaking point. Last year recorded the highest ever number of survivors entering the NRM at 17,004 people.^{xiv} The Salvation Army, the UK's largest non-statutory organisation, had to take the 'unprecedented emergency measure' to temporarily suspend accepting referrals. Kathy Betteridge, director of anti-trafficking and modern slavery told The Guardian in February 2023, *'The Salvation Army volunteer first responder service has not closed, but we took the decision to temporarily suspend accepting new referrals for a short period so we could give proper attention to the large number of new cases recently referred to us. The fact that we had to take this unprecedented emergency measure shows how much strain the first responder system is under. We recognise that all [first responders] do their best but are working in an under-resourced system. It's essential the system is properly funded.'*^{xv}

In February 2023, Kalayaan published a report in which we laid bare the ongoing pressures facing the First Responder system and the impact it will have and already has had on survivors wanting to access the NRM.^{xvi} Kalayaan also delivered a speech at the Human Trafficking Foundation's in person forum which took place at Linklaters in February 2023 on this issue and provided a hard copy of our report to one of two Deputy Directors at the Modern Slavery Unit at the Home Office who was in attendance.^{xvii} Our report called for an increase in the numbers of specialist front-line organisations able to refer people they suspected to be survivors of trafficking and or slavery to the NRM.

In February 2024, Kalayaan published an updated progress report on the lack of progress made by the Government in the past 12 months.^{xviii} This report included reference to the Home Affairs Committee inquiry on human trafficking and the annual Trafficking in Persons Report 2023 published by the US State Department which both supported and backed Kalayaan's recommendation to increase the number of organisations able to refer people to the NRM.^{xixxx}

The UK Government responded to the Home Affairs Committee's report in February 2024.^{xxi} In response to the specific recommendation made by the Committee as to the immediate recommencement of considering applications from organisations to the role of First Responder, the Government said, *'the Home Office has produced e-learning modules for use by all First Responders on identifying indicators of modern slavery and referring into the National Referral Mechanism (NRM). The Home*

Office is also in the process of developing an online Hub for First Responder Organisations to share resources and best practice, as well as a First Responder Toolkit that will provide clear, user-friendly guidance to support First Responders in identifying victims of modern slavery and increase the quality of referrals into the NRM. We will continue to review the policy on First Responders, including on function and purpose of the cohort.’ Kalayaan and the VODW do not think the Government’s response is acceptable in light of the numbers of people needing to enter the NRM and the risks they face in the absence of being able to access safeguarding measures.

CASE STUDY – TERESA

PROVIDED BY THE LATIN AMERICAN WOMEN’S RIGHTS SERVICE AND INCLUDED IN KALAYAAN’S 2024 PROGRESS REPORT ON THE NRM AT BREAKING POINT.

Teresa and her child were trapped in extremely precarious living and working conditions with no options to flee. After some months, they became overstayers during her exploitation. She was repeatedly told that she would not be able to find a job or receive any help because of her immigration status. Eventually, Teresa met another woman who invited her to come and live with her.

Teresa and her daughter are now living with this woman. They are sleeping in her living room. Teresa is not working and has no money.

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 is helping Teresa get a referral into the NRM, but facing a huge backlog from First Responders. An NRM referral request was submitted to Non-Statutory First Responder 1 in early December 2023 and LAWRS has yet to receive a response to this referral. 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. As a consequence, Teresa is afraid of any engagement with the police including for a referral to the NRM. The host also asked Teresa and her child to leave as she didn’t want any trouble. With Teresa and her daughter at risk of

destitution, LAWRS referred them to Children Social Services under section 17 of the Children's Act, but CSS have not responded to the referral. CSS were notified that Teresa was a victim of modern slavery, but they have not made a referral to the NRM. NRM referral requests sent to the local authority have also gone unanswered. Non-Statutory First Responder 2 accepted an NRM referral request for Teresa two months after LAWRS began searching for a First Responder to support her. The NRM referral has been recently submitted.

The difficulties Teresa is facing in accessing the support she is entitled to as a victim of modern slavery is making her feel desperate, putting her at severe risk of destitution and re-exploitation.

Upping of the Reasonable Grounds Decision threshold and the resultant impact on capacity: Select provisions in the Nationality and Borders Act 2022 took effect on 30 January 2023. Since this date, there has been a significant increase in the number of negative Reasonable Grounds decisions. This has been a direct result of the decision to up the threshold at which a positive Reasonable Grounds decision is made. Analysis of NRM data by the International Organization for Migration demonstrates this trend in decision making, and also identifies the stark difference in decisions made on UK nationals versus foreign nationals. Again, this increase in negative decisions only adds to the pressures and lack of capacity of First Responder Organisations as they are then tasked with assisting people issued negative decisions with preparing reconsideration requests. Challenging negative decisions means delays in accessing support for survivors, including safe housing provision and mental health services.

In the meantime, First Responder Organisations are unable to assist other survivors who (along with those supporting them) cannot access support and are faced with some impossible choices as they try to gain access to the NRM.

The impact of the Illegal Migration Act 2023

Kalayaan and the VODW rely on and support the respective submissions made by the ATMG and LEAG on the impact of the Illegal Migration Act on survivors. We also share the concerns raised regarding the *Safety of Rwanda (Asylum and Immigration) Bill*.

Other relevant measures we wish to draw the Committee's attention to, given the impact on survivors and front-line services supporting them:

Lengthy waits in the NRM and lack of rights resulting in re-trafficking of survivors: The ongoing lengthy delays in migrant domestic workers receiving their Conclusive Grounds decisions from the Home Office continues to have long-lasting impacts for our client group. Kalayaan issued a public statement in December 2023 which confirmed the average wait time had increased from the already unsatisfactory 24 months in 2019 to 31 months.^{xxii} This remains a time of chronic instability, with many faced with no choice but to turn to food banks and exploitative work in order to survive and support themselves and dependent relatives back home. At a recent event that Kalayaan attended with survivors of exploitation, they described their time in the NRM waiting as '*the silent killer*.' Kalayaan and the VODW understands that the Home Office does not monitor instances of re-trafficking for individuals who are already in the NRM framework. Indeed, in some cases, migrant domestic workers in the NRM have reported to Kalayaan feeling too fearful to speak out against abusive and exploitative employers when they have been without the relevant work permission.

Tailored package of support for 12 months for survivors with a positive Conclusive Grounds decision now abandoned: This was a commitment made by the Government in December 2021, following debates in the Nationality and Borders Bill as it then was. In December 2023, the Home Office announced via their NRM Reform newsletter that they had '*carefully reviewed this commitment and concluded that the existing needs-based approach already ensures that necessary assistance to victims with a positive CG decision is available. We will not be moving forward with the previous commitment. Providing 12 months of support outright to all victims with a positive CG decision where it is not necessary would risk creating a longer-term dependency on the NRM, counter to its purpose to provide a short-term bridge to wider state services and specialist support, or where applicable, to help a victim return home, or to a safe third country*'. As noted by LEAG in their submission, this means that rather than focusing on recovering, survivors will need to continue to evidence their ongoing need for support from which they could be exited at any time.

“Before I was trafficked in the UK I had 15 years’ experience as a healthcare assistant. Working has always given me a sense of purpose and identity. Since entering the NRM and becoming an asylum seeker, I am unable to do what I love doing and I cannot become independent. This is detrimental to my recovery from trauma and feels like another freedom has been removed, reminding me of everything else I have lost. Life feels meaningless and counselling does not replace work. Every day I lose motivation and my skills get rusty – valuable skills that are needed during a pandemic. I could be working in a vaccination centre tomorrow if given the opportunity. Many survivors have skills that would benefit this country but because we have no right to work everyone in society loses out.” -JARRAI

Survivor quote taken from briefing ‘Access to work for survivors of slavery to enable independence and sustainable freedom’, published March 2021. http://www.kalayaan.org.uk/wp-content/uploads/2021/03/Coalition_AccessToWork_report_v3.pdf

Kalayaan and the VODW would also add that the Government claims to not want to introduce measures that could be seen to strengthen dependency on the NRM framework but at the same time, outright rejects calls made by survivors and those supporting them to have access to work whilst in the NRM waiting on Conclusive Grounds decisions (this being the second and final decision made by the Home Office). Access to work has numerous benefits, including assisting survivors with an independent means of supporting themselves, whilst they have access to an advocate who can assist and guide the individual they are working with as they navigate varied issues, including reviewing employment contracts, negotiating annual leave requests, applications for National Insurance Numbers to the DWP and so on. At present, the NRM system is designed to keep survivors languishing until they get a decision, forced to become destitute and reliant on the system, but as soon as a decision is made, whether positive or negative, they are quickly moved on without due regard for any needs they may have, and the impact that the wait has had on their recovery. The experiences of survivors in the NRM would be significantly improved should their recovery and reflection time in the NRM, often for years at a time, be better utilised, including through access to paid employment.

Changes to the Reconsideration Procedure to challenge negative trafficking decisions and lack of consultation with the sector and

survivors: On 12 February 2024, the Modern Slavery Unit at the Home Office notified stakeholders via email that changes had been introduced and made to the Modern Slavery Statutory Guidance. Their email read: *'The updated reconsiderations policy means that individuals will only be allowed one reconsideration request of either a Reasonable Grounds decision or Conclusive Grounds decision. An individual must also make the request within one month – 30 calendar days – of the decision, to enable the reconsideration request to be processed and reconsidered by the Competent Authority. If the Competent Authority upholds a previous negative Reasonable Grounds or Conclusive Grounds decision, an individual will likely have no recourse to submitting another reconsideration request. This will only be considered in exceptional circumstances and if good reasons are provided to the Competent Authorities in a request.'* Kalayaan and the VODW would be surprised if the reason behind this change isn't to limit the attempts to overturn a negative trafficking decision given the reported increase in negative decisions following the upping of the threshold at the Reasonable Grounds stage. This is an abuse of power and wholly inappropriate. There is also nowhere in law that requires a survivor to bring a reconsideration request within 30 days. This is a timeframe that has been arbitrarily invented by the Home Office to lock survivors out of the only means of challenging a negative decision and either failing to access or lose their support entitlements, including safe house provision and subsistence.

We would also add that the Home Office did not consult either the sector or with survivors before ushering in this significant change. The Home Office did revive their engagement with the sector in May 2023 after several years of inaction, contacting stakeholders via email in May 2023 to explain that they were looking to refresh and streamline the way in which engagement was carried out. The previous Modern Slavery Strategy and Implementation Groups (known as MSSIGs) were replaced with Modern Slavery Engagement Forums (known as MSEFs). Despite this refresh, the sector was not consulted about this change prior to it being rolled out in February 2024.

Q2. Whether the Act has kept up-to-date with developments in modern slavery and human trafficking, both within the UK and internationally.

Kalayaan and the VODW refer to and rely on the submissions made by the ATMG and LEAG.

Q4. The efficacy of the other key provisions of the Act, including definitions, sanctions, reporting, enforcement, and the statutory defence for victims.

In addition to the issues raised by the ATMG and LEAG in their submissions to the Committee, including the issues caused by the creation of the Immigration Enforcement Competent Authority (IECA) and the lack of secure reporting which leads to a reluctance by survivors to engage with criminal investigations, Kalayaan and the VODW wish to raise concerns about the implementation of the Modern Slavery Act 2015 which makes enforcement of the relevant crimes particularly rare in cases involving migrant domestic workers who have been exploited.

By virtue of their visa requirements, migrant domestic workers work, and often live, in their employers' households. Since a labour inspector cannot enter a private home in England and Wales without express permission from the owner or occupier, or without a warrant, it is extremely rare for labour inspectors to check on the working conditions of domestic workers. Moreover, there are no other monitoring processes in place to check these working conditions. Without these, there is no way to uncover abusive or exploitative working conditions, or even to prevent employment law breaches from escalating to situations of exploitation and domestic servitude.

In 2015, the Independent Review into the terms of the Overseas Domestic Worker visa (discussed in paragraph 16 above) recommended the introduction of information meetings which would provide migrant domestic workers with information and support about their rights in the UK and would *'enable those overseas domestic workers who are victims of abuse to be identified as such'* and *'empower them to take practical self-help steps to leave such abuse.'*^{xxiii} In 2018, the Government initiated a tender exercise for information sessions, but the meetings were never implemented and no reasons have been given as to why this was.^{xxiv}

Moreover, with domestic servitude, the lack of understanding of the power imbalance and the nuances at play leads the police to determine that the issues faced by survivors are merely those of an 'employment dispute'. As a result, the police investigation is dropped, leading to no accountability for the exploitative employer, and in many cases, for a negative NRM Conclusive Grounds decision based on that erroneous police conclusion.

Even in cases where the police understand domestic servitude cases, given the nature of the exploitation (for example, it having taken place in a private household) there is often a lack of physical evidence which makes it very rare for criminal convictions, or even charges, to be made against an exploitative employer for trafficking or modern slavery offences. These employers often don't face accountability for their actions and may continue to employ migrant domestic workers in the UK and exploit them.

Employment claims are also unlikely to succeed as they can be prohibitively costly for domestic workers, and – especially where the employer lives overseas – the enforcement of court orders is often unsuccessful. Moreover, given that resolving an employment claim often takes longer than six months, workers in the UK on the short-term ODW visa cannot stay long enough to see their claim through, and are left without remedy and access to justice. This enables further, more serious, abuse.

Effective monitoring of domestic work employment should be proactive as well as reactive. Currently the NRM offers a reactive solution only for offences of modern slavery and trafficking. There needs to be a range of preventative measures to enable the UK to fulfil its international *positive* obligation to 'prevent' under the European Convention on Action Against Trafficking (ECAT). It is currently very difficult for workers to access justice: overseas employers can leave the country easily, prosecution thresholds may not be met, civil claims cannot be enforced, and the justice system is complex, protracted and time consuming, especially for workers who are unfamiliar with it and who cannot afford legal representation. Front-loading prevention measures would help, as would having offending employers face accountability for their actions.

Q5. The role of the Independent Anti-Slavery Commissioner, including whether the post is sufficiently resourced, and the process of appointment.

Kalayaan and the VODW refer to and rely on the submissions made by the ATMG and LEAG.

Q6. Suggestions for improvements that could be made to the Act to help it to better achieve its aims.

Implement visa schemes for migrant workers that affords them rights and empowers them with the ability to enforce those rights. In the case of migrant domestic workers, reinstating the terms of the original Overseas Domestic Worker visa so that workers have the unconditional right to change employer, the right to renew their visa subject to ongoing employment and the right to settlement after 5 years of continuous employment (as discussed in paragraphs 12 to 23). This would correct the injustice of the Modern Slavery Act 2015 in failing to protect and prevent the abuse of migrant domestic workers.

Implement effective labour inspections for domestic workers in private households and reinforce accountability of exploitative employers (as discussed in paragraphs 40 to 45). Ratify ILO Convention 189 (the Convention on Domestic Workers, formally the Convention concerning Decent Work for Domestic Workers).

Urgently review the remuneration and structure of immigration and asylum cases funded through the legal aid scheme to ensure the provision of and access to quality legal services is a reality (as discussed in paragraph 11).

Increase the number of non-statutory First Responder Organisations able to refer survivors to the National Referral Mechanism to prevent risks of re-trafficking (as discussed in paragraphs 26 to 31).

Empower survivors of trafficking and slavery in the National Referral mechanism with the right to work to prevent their destitution and re-trafficking (as discussed in paragraphs 33 to 35).

Survivors recognised through the NRM should automatically be granted leave to remain for a period of 30 months, in line with recommendations made by a number of leading anti-trafficking organisations, including the British Red Cross^{xxv}, to enable them to sufficiently recover and rebuild their lives.

Ensure those with lived experience are properly and meaningfully consulted on their views as to the impact of recent legislative and policy measures on risks posed to vulnerable groups including at-risk workers as well as survivors of trafficking and slavery. Facilitate open dialogue with these groups as to the changes that need to be made in both the short

and long term to ensure that they are safeguarded and the systems and procedures that put them at unnecessary risk of harm are disbanded.

10 April 2024

ENDNOTES:

ⁱ GOV.UK, ‘Guidance: Online immigration status (eVisa)’:

https://www.gov.uk/guidance/online-immigration-status-evisa?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=ec3013a0-be17-475f-9ac6-9e2fe213cc20&utm_content=immediately

ⁱⁱ Joint Committee on Draft Modern Slavery Bill, April 2014:

<https://publications.parliament.uk/pa/jt201314/jtselect/jtslavery/166/16610.htm>

ⁱⁱⁱ Joint Committee on Human Rights, November 2014:

<https://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/62/6203.htm#a22>

^{iv} Section 53, Modern Slavery Act 2015:

<https://www.legislation.gov.uk/ukpga/2015/30/section/53>

^v James Ewins KC, ‘Independent Review of the Overseas Domestic Worker Visa’, December 2015:

<https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>

^{vi} Ministerial Statement UIN HCWS583, 7 March 2016:

<https://questions-statements.parliament.uk/written-statements/detail/2016-03-07/hcws583>

^{vii} Karen Bradley, (then) Parliamentary Under-Secretary of State for the Home Department, 17 March 2015:

<https://hansard.parliament.uk/Commons/2015-03-17/debates/15031750000002/ModernSlaveryBill#contribution-150317500000061>

^{viii} Independent Anti-Slavery Commissioner, ‘Review of the Overseas Domestic Workers Visa: Commissioner’s Recommendations’, April 2016:

http://www.kalayaan.org.uk/wp-content/uploads/2023/03/ODW_visa_review-IASC_recommendations_2016.pdf

^{ix} Kalayaan, Overseas Domestic Workers left in the dark by the Immigration Act 2016, June 2016:

<http://www.kalayaan.org.uk/news/overseas-domestic-workers-left-in-the-dark-by-the-immigration-act-2016-2/>

^x Kalayaan, ‘Dignity, not destitution: The impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism’, October 2019:

http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf

^{xi} Parliamentary Question UIN HL15280, 27 April 2021:

<https://questions-statements.parliament.uk/written-questions/detail/2021-04-27/hl15280>

^{xii} Kalayaan, ‘Briefing on Overseas Domestic Workers for the Modern Slavery Strategy and Implementation Group (MSSIG) Prevent meeting’, September 2019:

<http://www.kalayaan.org.uk/wp-content/uploads/2019/09/Briefing-MSSIG-meet-11-September.pdf>

^{xiii} Kalayaan, ‘BREAKING POINT: Why the UK Government needs to act NOW to protect slavery survivors’, 30 January 2023:

<http://www.kalayaan.org.uk/wp-content/uploads/2023/01/Public-Announcement-30-01-2023.pdf>

^{xiv} The Independent, ‘Modern Slavery referrals hit record high with UK the most common nationality’, 7 March 2024:

<https://www.independent.co.uk/news/uk/home-office-border-force-more-vietnamese-b2508605.html>

^{xv} The Guardian, ‘Modern slavery survivors could be re-trafficked in UK, charities warn’, 13 February 2023:

<https://www.theguardian.com/law/2023/feb/13/modern-slavery-survivors-could-be-retrafficked-in-uk-charities-warn>

^{xvi} Kalayaan, ‘The National Referral Mechanism: Near Breaking Point’, 22 February 2023:

http://www.kalayaan.org.uk/wp-content/uploads/2023/02/KALAYAAN_REPORT_UPDATED20FEB-2.0.pdf

^{xvii} Kalayaan, Speech delivered at Linklaters, 22 February 2023:

<http://www.kalayaan.org.uk/wp-content/uploads/2023/02/Kalayaan-speech-22-02-2023-v3.pdf>

^{xviii} Kalayaan, Progress Report 2024, One Year On: The National Referral Mechanism: Near Breaking Point, 22 February 2024:

http://www.kalayaan.org.uk/wp-content/uploads/2024/02/KALAYAAN_REPORT_NRM2024_19FEB2024.pdf

^{xix} Home Affairs Committee, Report on Human Trafficking, 8 December 2023, paragraphs 202 – 209:

<https://committees.parliament.uk/publications/42482/documents/211207/default/>

^{xx} US. Department of State, 2023 Trafficking in Persons Report, United Kingdom, June 2023: <https://www.state.gov/reports/2023-trafficking-in-persons-report/united-kingdom/>

^{xxi} UK Government, Response to the Home Affairs Committee’s First Report on Human Trafficking, 22 February 2024:

<https://committees.parliament.uk/publications/43435/documents/216051/default/>

^{xxii} Kalayaan, Statement on Delays in the National Referral Mechanism Decision-Making Process 4 December 2023:

<http://www.kalayaan.org.uk/wp-content/uploads/2023/12/Kalayaan-Statement-on-delays-in-the-NRM-Decision-Making-Process.pdf>

^{xxiii} James Ewins KC, ‘Independent Review of the Overseas Domestic Workers Visa’ (p.6), 2015. Available at:

https://assets.publishing.service.gov.uk/media/5a806ecee5274a2e87db9c85/ODWV_Review_-_Final_Report__6_11_15_.pdf

^{xxiv} See the Independent Anti-Slavery Commissioner’s annual report 2021 to 2022. Available at:

<https://www.gov.uk/government/publications/independent-anti-slavery-commissioners-annual-report-2021-to-2022/independent-anti-slavery-commissioners-annual-report-2021-to-2022-accessible>

^{xxv} British Red Cross, ‘Hope for the Future: Support for survivors of trafficking after the National Referral Mechanism, July 2019:

<https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/human-trafficking-and-slavery/after-the-national->

