

## **Work Rights Centre- Written evidence (MSA0094)**

### **Committee questions**

#### **1. Does the Modern Slavery Act definition of offences adequately cover this form of exploitation?**

A specific issue that the Work Rights Centre has encountered relates to financial exploitation in the care sector.

By 'financial exploitation', we are referring to cases where migrant care workers have been deceived into paying exorbitant recruitment fees by an overseas agent to facilitate their visa application, but they arrive in the UK only to find that there is no work actually available for them to do.

We are concerned that individuals affected by this sham are not being identified as potential victims of trafficking on the basis that there is no apparent connection or evidence linking the activities of the overseas agent back to the UK sponsor. Under Section 3(5) of the Modern Slavery Act 2015, which concerns exploitation by means of securing services by force, threats or deception, the provision makes it clear that deception must induce the victim to either provide services of any kind, provide another person with benefits of any kind or allow any person to acquire benefits of any kind. However, the provision does not make it clear whether the individual/entity receiving the 'service' or 'benefit' must be UK based, or whether in theory it could also be a rogue recruitment agency overseas which is acting alone (or, there is no evidence to link it back to a UK entity).

When we have spoken to statutory first responders about this phenomenon, they have been clear that they primarily treat this as an instance of fraud. However, we believe this standpoint is too reductive, and conflates on one hand the inability to pursue an overseas entity for a modern slavery offence with, on the other hand, the ability in theory to provide a victim in this situation with protection under the National Referral Mechanism (NRM).

We believe that examples of 'financial exploitation' of this kind should be eligible for protection under the NRM as the internationally recognised

scope of human trafficking is wide enough to encompass this. For example, the Crown Prosecution Service's guidance on the offence of trafficking includes reference to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons ('Palermo Protocol'). Article 3 of the Palermo Protocol provides the internationally recognised definition of human trafficking which is cited in domestic case law, as follows:<sup>1</sup>

*'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation.*

*Exploitation shall include, **at a minimum**, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.'*

Our interpretation of the phrase 'at a minimum' is such that we consider financial exploitation of this kind should be covered within the offence of human trafficking. Anecdotally, some colleagues at other organisations in the third sector have managed to obtain a positive reasonable grounds decision for victims of such financial exploitation, but we have been informed that doing so was heavily reliant on the victim being able to evidence some form of connection or 'paper trail' back to the UK sponsor, which we believe is not necessary for the offence of human trafficking to be complete, as per our interpretation of Article 3 of the Palermo Protocol above.

The current lack of clarity in this area is problematic because this type of financial exploitation is not limited to those arriving in the UK under the Health and Care visa. Situations of this kind have also been documented in relation to migrant seasonal agricultural workers arriving under the Seasonal Worker visa scheme. As the UK continues to source workers from territories that are further afield, we believe it is necessary for the legislation or the statutory guidance to explicitly cover this situation so that there is no protection gap for affected workers.

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<sup>1</sup> <https://www.cps.gov.uk/legal-guidance/modern-slavery-and-human-trafficking-offences-and-defences-including-section-45>

**2. We have heard that care visas give too much power to employers and that this often results in exploitation. What aspects of visa rules are most in need of changing to improve workers' rights and conditions? What other countries can the UK learn from in this space, such as Australia with its bridging visas and the US with its T visas?**

As identified in our recent report, 'the Systemic Drivers of Migrant Worker Exploitation in the UK', the system of work-sponsorship that the UK uses to allow employers to source and hire migrant workers places too much power in the hands of sponsors. Sponsors control not only migrants' right to work, but also their very right to be in the UK. Our current system does not contain adequate safeguards to prevent the system from being manipulated by sponsors in a way that leads to the exploitation of workers.<sup>2</sup>

In our view, the most effective way to end this weaponisation of the work-sponsorship system by sponsors is to address the root of the problem - which is to end the practice of tying workers to sponsors entirely. As outlined in our recent report, one way to do this would be to move away from a work-sponsorship model and towards a real Points Based System, where prospective migrants can obtain a work visa based on their levels of English, qualifications and history of work experience (rather than securing and relying mainly on sponsorship from an individual employer to meet the requirements of the current Skilled Worker visa route). Under this prospective system, points could be awarded for skills identified as key to the UK's industrial strategy which could in turn be reviewed regularly, as has been commonplace with the current Shortage Occupation List. We think this system could be mutually beneficial, reducing the costs and administration of sponsorship for UK employers, while also empowering migrant workers to report exploitation and labour market offences without the fear that they might lose their right to remain in the UK.

We acknowledge that the government may be reluctant to do this, not least because it would require redesigning a central part of the UK's immigration system. Therefore, we have previously suggested a number

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<sup>2</sup> <https://www.workrightscentre.org/media/1367/final-systemic-drivers-of-migrant-worker-exploitation.pdf>

of worker-specific reforms to the current regime that could have a positive impact on worker welfare. In no particular order, this includes:

- **Giving all sponsored migrant workers more time to change employers** - by extending the current 60 day timeframe to 180 days. In our experience 60 days is simply not enough time for workers to secure another job with a registered sponsor, as well as making the necessary updating visa applications for themselves and any dependants they may have with them in the UK.
- **Introducing a transitional visa or status for workers who are at risk of losing their right to stay in the UK, or who have been made undocumented through not fault of their own** - To recognise the vulnerability arising from being subjected to exploitation, workers should be granted the unrestricted right to work with this new status (with a pilot version of this being launched in the first instance, including consultation with groups and organisations informed by worker voice). A similar version of this proposal is in place or due to be commenced in countries like the Republic of Ireland<sup>3</sup>, New Zealand<sup>4</sup>, Canada<sup>5</sup> and Australia.<sup>6</sup>
- **Repealing the Illegal Working offence** - because it deters people from reporting exploitation. The latest information from the Ministry of Justice's Outcome by Offence data tool indicates that only 2 individuals have been convicted for the offence of illegal working since it was introduced in 2016<sup>7</sup>. In our view, the offence does little but to disincentivise workers from reporting exploitation where they are undocumented (and workers may become undocumented through no fault of their own/action as a result of their sponsors).
- **Instituting a central portal of registered sponsors who are advertising vacancies** - the only reasonable way that migrant

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<sup>3</sup> <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/permit-types/reactivation-employment-permit/>

<sup>4</sup> <https://www.immigration.govt.nz/new-zealand-visas/visas/visa/migrant-exploitation-protection-visa>

<sup>5</sup> <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html>

<sup>6</sup> <https://www.fragomen.com/insights/australia-forthcoming-law-to-protect-workers-from-exploitation-and-create-new-compliance-responsibilities-for-employers.html#:~:text=These%20also%20aim%20to%20test,while%20they%20seek%20workplace%20justice.>

<sup>7</sup> <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022>

workers can independently verify whether a prospective employer has a licence to sponsor them is by checking the Home Office's list of registered sponsors which is updated daily. This list does not contain crucial information about sponsors, such as their geographical location, sector and any advertised vacancies, meaning workers can have a difficult time finding another sponsor. A dedicated portal with these filters would assist workers greatly in their mobility between sponsors.

- **Removing the need for sponsored migrant workers to update their visas when moving within the adult social care sector** - if workers are lucky enough to find another sponsor willing to employ them in the UK, they currently have to take the arduous step of making an updating visa application for themselves and any dependants, which also involves paying another layer of application fees to the Home Office. This is an unnecessary administrative and financial burden for workers, particularly because sponsors are already required to report to the Home Office when a worker enters and exits employment with them.
  
- **Widening access to public funds for workers who have been exploited by their sponsors** - recent litigation has confirmed that the Home Office has the discretion to lift the No Recourse to Public Funds condition where there are 'particularly compelling circumstances' e.g. someone is facing destitution.<sup>8</sup> For workers who have been exploited by their sponsors, it should not take for them to fall into destitution to have state support available where they have been exploited by a sponsor that was initially assessed for eligibility by the Home Office, itself a department of the state.

Other changes which would improve conditions for workers, including in the care sector, include:

- **The Home Office must increase its sponsor compliance activities** - our previous report found that, at best, the Home Office was only able to carry out 1 sponsor compliance visit for every 22 registered Tier 2 sponsors. The outgoing Independent Chief Inspector of Borders and Immigration has also revealed that the Home Office only has one sponsor enforcement officer for every

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<sup>8</sup> <https://www.nrpfnetwork.org.uk/news/nrpf-policy-update-october-2023#:~:text=%22In%20considering%20whether%20to%20lift,to%20be%20taken%20into%20account.>

1,600 licenced sponsors.<sup>9</sup> This is unacceptable given that the number of registered sponsors has grown exponentially in recent years and now sits at a figure of approximately 85,000.

- **Consider a reduction in visa fees** - as mentioned during oral evidence, the visa application fees paid by migrant workers are commonly above the administrative processing cost to the Home Office, and in some cases three or four times higher than this.<sup>10</sup> Given the importance of migrant labour, particularly in sectors like care and agriculture, the Home Office should consider reducing fees, both reducing the financial burden on individual workers and preventing rogue actors from 'piggybacking' on visa fee increases by charging workers more by way of illegal recruitment fees.

Some of these initiatives have already been endorsed in other countries. Australia is a good example because it has recently embedded labour protections for migrant workers as part of its overall migration strategy which it released in December 2023.

In its introduction to the relevant section concerning protections for migrant workers, the Australian government acknowledges:<sup>11</sup>

*'The Government's vision for migration will be realised only by ensuring that the system is underpinned by integrity and strong protections for workers. Integrity measures help to protect the migration system from the unscrupulous, who seek to circumvent or misuse migration rules for their own gain. Without addressing this issue, our migration programs will be unable to achieve their core objective of serving the national interest, and migrants themselves may be exploited. Strong integrity is critical to ensuring the system works, migrant workers are protected and the public has confidence in the integrity and fairness of the migration system.'*

Some of the key measures the Australian government is taking pursuant to this new strategy include:

- **Aiming to treble the time that migrant workers have to change employers to 180 days.**

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<sup>9</sup> <https://www.thetimes.co.uk/article/one-in-four-foreign-care-workers-abuse-uk-visa-rules-lpqzmsk6g>

<sup>10</sup> <https://www.gov.uk/government/publications/visa-fees-transparency-data>

<sup>11</sup> <https://immi.homeaffairs.gov.au/programs-subsite/migration-strategy/Documents/migration-strategy.pdf>

- Launching a 'Workplace Justice Visa' - that provides for migrant workers to remain in Australia while they pursue justice for workplace violations.**
- Repealing the equivalent of our Illegal Working offence (Section 235 of the Migration Act) -** the Australian Immigration Minister Andrew Giles has previously mentioned that 'despite not being used since its introduction, the mere presence of such a provision understandably discourages people from reporting exploitation'.<sup>12</sup>
- A new Employer Compliance Bill that establishes criminal offences and penalties for employers who exploit workers by manipulating the visa system.**
- Considering information restrictions on information sharing between labour and migration regulators to give effect to the underlying principles of a firewall.**
- Helping migrants to understand their workplace rights by working proactively with migrant worker communities, unions, industry and civil society.**
- Strengthening the criteria to become an approved sponsor to prevent unscrupulous actors from being able to gain access to Australia's temporary skilled migration system.**
- Examining further measures to improve post arrival monitoring of issues like wages and conditions to detect and prevent exploitation e.g. monitoring payments through the tax system using relevant employee tax identification numbers.**

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**END OF SUBMISSION**

*27 March 2024*

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<sup>12</sup> <https://www.hcamag.com/au/specialisation/immigration/australia-to-introduce-new-measures-to-fix-crisis-of-exploitation/448736>