

CQC-Written evidence (MSA0096)

30 August 2024

Dear Baroness O'Grady,

Thank you for inviting me to provide evidence to the Modern Slavery Act 2015 Committee on 13 May 2024. I appreciated the opportunity to set out CQC's role and remit with regards to the Act. I am writing to you now, as the Committee has been re-appointed.

I agreed to write to the committee on a number of points and I would also like to provide some points of clarity.

Our role and remit:

As the Committee will be aware, we do not have authority to investigate concerns relating to modern slavery and unethical international recruitment practices directly and have no authority to take enforcement action under the Modern Slavery Act 2015. However, we use what we know about modern slavery concerns to help partners ensure compliance with the Human Rights Act 1998. These include the right for people to be free from slavery and forced labour under Article 4 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998. As discussed, our purpose is to ensure health and care services provide people with safe, high-quality care and to encourage those services to improve. Further information on our regulatory policy position on modern slavery and unethical international recruitment is available on our website.¹²

I would like to take the opportunity to re-emphasise that not all providers are required to register with CQC. The 3,000 non-CQC regulated locations, as referenced in the National Audit Office report 'Reforming Adult Social Care in England'³, offer a diverse range of residential services including shelters for homeless people, women's refuges, and drug and alcohol support centres. The non-CQC regulated locations which offer non-residential services include day care, recruitment and employment agencies (who are regulated by the Employment Agency Standards Inspectorate), carers' support services and a wide range of community support and outreach services for people who may be in vulnerable circumstances.

It is also worth clarifying the roles of UK Visa and Immigration (UKVI), Gangmaster and Labour Abuse Authority (GLAA) and CQC as each organisation takes a different role regarding the sponsor license and any exploitation of workers.

¹ <https://www.cqc.org.uk/about-us/transparency/our-regulatory-policy-position-modern-slavery-and-unethical-international-recruitment>

² <https://www.cqc.org.uk/about-us/transparency/our-statement-modern-slavery-and-human-trafficking>

³ <https://www.nao.org.uk/wp-content/uploads/2023/11/Report-reforming-adult-social-care-in-England.pdf>

Chair: Ian Dilks Interim Chief Executive: Kate Terroni

UKVI are responsible for the UK's visa service, managing applications and issuing sponsor licenses for business who want to recruit internal workers. UKVI will monitor compliance with the sponsor license and the issuing of the certificates of sponsorship and visa. UKVI have the powers to suspended, revoke and reinstate a sponsor license. When UKVI revoke a sponsor license they write directly to impacted staff, notifying them their visa has been shorted to 60 calendar days.

GLAA are responsible for the licensing scheme which regulates businesses who provide workers to specific supply chains: agriculture etc, to make sure they meet the employment standards required by law. Their role is to protect vulnerable and exploited workers. They investigate worker exploitation and illegal activity such as human trafficking, forced labour and illegal labour provision, as well as offences under the National Minimum Wage and Employment Agencies Acts. GLAA have enforcement powers to take action when required.

CQC registers and regulates providers of regulated activities in the health and care sector. Not all types of care and treatment are within scope for registration with us. Our purpose is to ensure health and care services provide people with safe, high-quality care and to encourage those services to improve. We do not have authority to investigate concerns relating to modern slavery and unethical international recruitment practices directly and only have authority to take enforcement action under the Health and Social Care Act 2008 (HSCA) and associated Regulations, which does not include modern slavery and labour exploitation.

There are however fundamental standards which cover staffing and recruitment process. We assess information to determine if there is a risk to the quality of care/treatment being provided and to those people who use the service. We may take regulatory action including enforcement action.

Under Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 18⁴, sufficient numbers of suitably qualified, competent, skilled and experienced persons must be deployed in order to meet the requirements of this Part. We cannot prosecute for a breach of this regulation or any of its parts, but we can take regulatory action. We must refuse registration if providers cannot satisfy us that they can and will continue to comply with this regulation.

Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 19⁵, to make sure that providers only employ 'fit and proper' staff who are able to provide care and treatment appropriate to their role and to enable them to provide the regulated activity.

Our single assessment framework has a number of Quality Statements that enable us to consider if there are enough skilled and experienced people to meet people's individual needs and to consider the employment conditions of the workforce, including:

That there are enough qualified, skilled and experienced people, who receive effective support, supervision and development.⁶

Workforce wellbeing and enablement.⁷ We expect providers, commissioners and system leaders care about and promote the wellbeing of their staff, and support and enable them to always deliver person centred care.

⁴ <https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/18>

⁵ <https://www.cqc.org.uk/guidance-providers/regulations/regulation-19-fit->

proper-persons-employed

⁶ <https://www.cqc.org.uk/guidance-regulation/providers/assessment/single-assessment-framework/safe/safe-effective-staffing>

⁷ <https://www.cqc.org.uk/guidance-regulation/providers/assessment/single-assessment-framework/caring/workforce-wellbeing-enablement>

Well-led⁸, which includes looking at staff ability to speak up and the culture within the service, and workforce equality, diversity and inclusion.

To assist our inspection workforce, we have provided them with information and guidance on how we respond to concerns regarding modern slavery and abuse of international workers. This includes updated policies, how to make referrals and an inspection handbook around modern slavery and unethical recruitment.

Currently, we are in the process of producing a bespoke learning product, working with subject matter experts, which will support our inspection teams with further knowledge, case studies, what to look for and will signpost to further learning and support that may be required.

During the session I also made reference to our own referral numbers and quoted 113 in 2023-24. This number should have been 106. As of 28 August 2024 there have been 65 referrals made from April 2024.

I agreed to write to the committee on a number of points:

Baroness Barker asked about the number of people from the unregulated personal care sector our referral cases had come across and asked how they are recruited. Baroness Barker also asked if it was possible for us to track the recruitment paths and who the ultimate purchasers of the care are:

Personal assistance is not a Regulated Activity, is not in scope for registration with CQC and so is not regulated by us. This means CQC is not required to assess the recruitment processes in this sector or the numbers of these cases where referrals have been made regarding modern slavery or exploitation. Some personal assistants may be employed by an employment/recruitment agency, therefore they may come into scope of Employment Agency Standards Inspectorate (EASI).

Our data for CQC referrals for modern slavery and exploitation shows that no referrals have been made in relation to an unregistered provider or a provider of care outside of scope with registration with CQC.

With regards to the purchasers of care, I would like to clarify that this is not information CQC directly holds and would be for GLAA to investigate and discover.

Lord Smith of Hindhead asked, how many cases we have seen or referred to where people have been trafficked, and are working where they do not have the liberty to take their passport or to leave if they choose to leave the employment in the care home in question?

Of the 108 referrals made by CQC in 2023/24 to partner agencies who hold the responsibility to investigate concerns relating to modern slavery and exploitation, none of those cases included the issue of Human Trafficking. The reasons for the referrals we made to partner agencies related to:

Modern slavery

Labour exploitation

Debt bondage

Controlling, coercive behaviours

Visa exploitation

Sexual exploitation

We are not always notified of the outcomes referrals made to partner agencies, and their subsequent investigation. So, we are unable to advise you of how many of these cases resulted in action being taken. For complex cases, key stakeholders will

⁸ [https://www.cqc.org.uk/guidance-regulation/providers/assessment/single-assessment- framework/well-led](https://www.cqc.org.uk/guidance-regulation/providers/assessment/single-assessment-framework/well-led)

work together. CQC will assess any risk under the HSCA and its associated regulations and decide on our regulatory response.

We make referrals when there are indicators within the information we hold (either through observation/engagement or received) of modern slavery, human trafficking and exploitation. We do not have the jurisdiction to investigate to ensure the legal thresholds have been met before we make a referral. We would prefer to make the referral as a precaution rather than missing the opportunity to get a person to a place of safety.

We assess the risk and impact on people who use the service and the quality of the care provided. The behaviour of the registered persons (provider and manager) in these circumstances is not listed as grounds for cancellation under the HSCA⁹. One ground listed under HSCA for cancellation is if they are convicted of a relevant criminal offence. However criminal cases/prosecutions lead by partner agencies, can take several years to come to court and our priority is the safety of those people using the service. Therefore, our assessment will look at the associated risks and determine if there is a need for a regulatory/enforcement action to be taken. CQC has the ability to take a range of enforcement actions which can alter the providers registration, but any action taken must be lawful, proportionate and necessary.

I also agreed to write on points made with regards to changes that could be made to the Modern Slavery Act.

I stated to the Committee that the Act needs updating to take financial exploitation into account. The scope of the offences and definition needs updating to capture and reflect exploitation of workers as it presents today. The three offences listed under the Modern Slavery Act do not really reflect the types of exploitation and slavery being identified now.

The emerging picture shows exploitation of workers who are coming to work in the UK through legal immigration systems, with the exploitation starting in the country of origin via the recruitment companies. Workers are required to pay tens of thousands of pounds and often sell everything they own or borrow money to achieve this. This is an enabling factor to the exploitation, as people feel unable to return to their country of origin.

The use of controlling, threatening behaviours to make people give in to the will of the visa holder, means our own immigration system is a factor in this, as the ability for a worker to transfer to a new sponsor is complicated and lengthy. The exploitation is in plain sight. The types of exploitation also includes elements that would not meet the legal thresholds, such as not granting them work benefits they are entitled to such as statutory sick pay, holiday pay/leave.

There needs to be a single body who has oversight and coordinates the countries monitoring and actions, with key stakeholders having a legal duty to work with them.

I also set out to the Committee that we believe there could be a need to formalise the partnership arrangements that have been put together over the past six months to a year, and that the Act itself could facilitate that partnership working.

⁹ behaviour is not listed expressly as a ground for cancellation, however if that behaviour does not comply with the relevant requirements, this would be grounds for cancellation subject to risk assessment and enforcement policy.

As an example, I would highlight section 69¹⁰ of the Health and Social Care Act 2008 which requires us and Welsh Ministers to co-operate with each other for the efficient and effect discharge of respective statutory functions.

Section 70¹¹ of the Act imposes a duty on us to co-operate with NHS England but also gives specific examples of what this includes.

We currently share the information with GLAA, UKVI and the police that is compliant with GDPR. We are in the process of developing a formal Memorandum of Understanding (MoU) with UKVI for sharing information. We would be happy to share this with the committee once it has been finalised and signed.

I hope this further information and clarifications are helpful in assisting the Committee with your inquiry.

James Bullion
Chief Inspector of Adult Social Care and Integrated Care

30 August 2024

¹⁰ <https://www.legislation.gov.uk/ukpga/2008/14/section/69>

