

## *Written evidence submitted by the Trades Union Congress*

### *Introduction*

1. The Trades Union Congress (TUC) is the voice of Britain at work. We represent more than 5.5 million working people in 48 unions across the economy. We campaign for more and better jobs and a better working life for everyone, and we support trade unions to grow and thrive.
2. Trade unions represent workers and make sure that their basic workplace rights are respected and enforced. Trade unions negotiate with employers to improve working conditions for workers. We are the first and foremost safeguard for workers, preventing breaches of employment rights.
3. We welcome the opportunity to contribute to the Environmental Audit Committee's follow up inquiry. Worker exploitation in this sector is longstanding and widespread. Our submission focuses on the human rights and employment rights abuses in textile industry in Leicester. We outline our proposals for reforms that would effectively tackle these abuses.
4. We believe that fundamental reforms are needed:
  - We need to address the inadequate funding of the state-led enforcement system. The system needs further resources, more inspectors, more proactive investigations, and more enforcement actions. We fall well short of the labour market inspectorate benchmark established by the International Labour Organisation.
  - The ties between immigration enforcement and employment rights enforcement should be severed. Currently, there are close working relationships between employment rights enforcement agencies and immigration enforcement. Intelligence sharing and joint investigations are commonplace. In 2011, Operation Serbal was launched by the UK Border Agency, and in a series of raids on Leicester clothing factories between May and July 2011 "illegal workers" were arrested. This is counterproductive as there is clear evidence that workers are deterred from making complaints as they fear being referred to immigration enforcement. Joint working should cease and a firewall between immigration enforcement and employment rights enforcement agencies should be established. There should be a switch in focus from immigration status to tackling worker exploitation.
  - The GLAA licensing scheme should be extended to sectors where exploitation is rife.
  - We need new, innovative strategies to tackle non-compliance in the labour market. Traditional employment relationships have become increasingly fragmented, with business strategies, such as franchising, outsourcing, lengthy supply chains and the use of labour market intermediaries, enabling organisations to shirk their employment rights obligations. Because of this we think that large contractors should be liable for breaches of core employment rights in their supply chains. We also propose that trade unions are granted new rights to

access workplaces so they can inform workers about their rights and enforce rights where they are being breached.

### *Exploitation in the Leicester textile sector is widespread, systemic and longstanding*

5. Leicester has the second highest concentration of textile manufacturers in the country with 700 factories employing 10,000 textile workers.<sup>1</sup> Worker exploitation in the Leicester textile industry fell under the media spotlight once again, during the summer of 2020. Government ministers reacted with surprise and stated that they were “*appalled*” and “*worried*” about exploitation which was happening “*below the radar*.”
6. Worker exploitation is rife. This is not a new, emerging trend. Nor is it secret. And ministers should be aware of this considering there have been two parliamentary inquiries that acknowledged the scale of abuse in this sector.
7. A 2010, Channel 4 Dispatches undercover investigation exposed poor conditions in clothes factories located in Leicester. In 2017, Dispatches returned to the city and discovered workers being paid less than half the National Living Wage and working conditions that pose a serious fire risk.<sup>2</sup>
8. Research<sup>3</sup> carried out by the University of Leicester in 2015 revealed that that the majority of garment workers were paid way below the National Minimum Wage, did not have employment contracts, and were subject to intense and arbitrary work practices. The research calculated that the average wage was approximately £3 per hour. The researchers made a conservative estimate that the underpaid wage sum in apparel manufacturing within the East Midlands was around £1 million per week.
9. In October 2017, Leicester’s City Mayor Sir Peter Soulsby convened a meeting of retailers (including ASOS, New Look, Dunelm and Next), manufacturers, and regulatory organisations to discuss how the problems of non-compliance within the industry could be combatted. Following this event, attendee Sir David Metcalf, Director of Labour Market Enforcement, put forward a specific recommendation to establish a Leicester textiles compliance pilot. A letter from the Mayor of Leicester showed that the four national enforcement bodies had been working on modern slavery in the garment factories since Autumn 2019.<sup>4</sup>
10. A 2017 report by the Joint Select Committee on Human Rights described how the Committee “*heard compelling evidence*<sup>5</sup> during its visit to Leicester that labour rights abuses are endemic in the Leicester garment industry”.
11. A 2018 expose into the Leicester textile sector, by the FT, revealed that Leicester’s garment industry has become detached from UK employment law, “a country within a

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<sup>1</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1952/1952.pdf>

<sup>2</sup> <https://www.channel4.com/press/news/undercover-britains-cheap-clothes-channel-4-dispatches>

<sup>3</sup> <https://www2.le.ac.uk/offices/press/for-journalists/media-resources/Leicester%20Report%20-%20Final%20to%20publish.pdf/>

<sup>4</sup> <https://docs.google.com/document/d/1ddPxsGwoP8edbWDKzNVxiZu35oHOFRUhfOjNKnQn6g/edit>

<sup>5</sup> <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44302.htm>, paragraph 38

country”, as one factory owner puts it, where “£5 an hour is considered the top wage”, even though that is illegal.<sup>6</sup>

12. A 2019 report by the Environmental Audit Committee specifically raised concerns regarding Boohoo, Missguided and ASOS, and found that labour exploitation is taking place in the UK, and that it is, “an open secret that some garment factories in places like Leicester are not paying the minimum wage”.
13. An Independent Review<sup>7</sup> into the Boohoo Group PLC’s Leicester supply chain found that “allegations about poor working conditions and low rates of pay in many Leicester factories are not merely well-founded but substantially true”.
14. A comprehensive, detailed chronology<sup>8</sup> of the published evidence relating to exploitation in the Leicester textile industry has been published by Doughty Street Chambers.

### *Labour market enforcement system is not fit for purpose*

15. The labour market enforcement system is not fit for purpose. Evidence of widespread, longstanding labour rights abuse is a clear indication that the current enforcement system does not work effectively.
16. Perhaps the most serious problem is that, understandably, workers are reluctant to engage with state led enforcement. Going back to 2011, Operation Serbal was launched by the UK Border Agency, and in a series of raids on Leicester clothing factories between May and July 2011 “illegal workers” were arrested. The TUC strongly believes that this reckless operation dissuaded exploited workers from raising complaints about unlawful employer behaviour.

### GLAA

17. On the 7<sup>th</sup> July 2020<sup>9</sup> and 11<sup>th</sup> August 2020<sup>10</sup> GLAA published press releases outlining its recent enforcement activity in the sector. Two things stand out. Firstly, no enforcement action was taken against any employers.<sup>11</sup> Secondly, the investigations carried out by GLAA involved joint work with immigration enforcement. The TUC believes this raises important questions, to which the committee should seek answers:
  - Given the scale of non-compliance and evidence of employment rights abuses, how is it possible that non-compliance has not been detected?
  - Why has no enforcement action been taken?
  - Why is immigration enforcement involved in employment rights abuses investigations? It is counterproductive. There is clear evidence to show that

<sup>6</sup> <https://www.ft.com/content/e427327e-5892-11e8-b8b2-d6ceb45fa9d0>

<sup>7</sup> <https://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf>

<sup>8</sup> <https://docs.google.com/document/d/1ddPxsGwoP8edbWDKzNVxiZu35oHOfRUhkfOjNKnQn6g/edit>

<sup>9</sup> <https://www.gla.gov.uk/whats-new/latest-press-releases/07072020-multi-agency-visits-to-leicester-factories/>

<sup>10</sup> <https://www.gla.gov.uk/whats-new/latest-press-releases/11082020-further-joint-visits-to-leicester-garment-factories/>

<sup>11</sup> Since the TUC submitted their evidence, they have been made aware of activity being carried out by the GLAA in the Leicester textile sector. The TUC asked for this statement to be attached to their evidence: “we are now aware that the GLAA has undertaken enforcement activity and that the relevant sections of our submission should be disregarded”.

workers will not raise complaints if they fear being interviewed by immigration enforcement officials.<sup>12</sup>

### HMRC

18. Between 2012 and 2018 HMRC was involved in six NMW investigations that led to worker arrears being identified in Leicester.<sup>13</sup> We recognise that a larger number of investigations were carried out. However, this does seem to be a very low level of enforcement activity in a sector where exploitation is prevalent. We'd encourage the committee to seek information relating to enforcement activity between 2018 and 2020 and to scrutinise why levels of wage recovery are low.

### HSE

19. Funding at the Health and Safety Executive has been cut by more than £100m since 2010 to some £130m. Its workforce shrank by one-third to about 2,400<sup>14</sup>. As well as cutting resources, the government told the HSE and local authorities in 2011 to reduce proactive inspections by one-third. A final progress report on the reforms shows the HSE complied and cut its spot checks to some 22,000 a year, while local authorities, crushed by austerity cuts, reduced theirs by 95 per cent to about 6,300. "Textile manufacturing" become "low-risk" i.e. no longer subject to proactive inspections<sup>15</sup>.

20. The low levels of enforcement activity show that wider reforms are needed to address the ineffectiveness of the labour market enforcement system.

21. Trade unions need new access and bargaining rights, so we can offer support to the workers that are most hard to reach.

### *Trade unions have first-hand experience of commonplace workplace issues and the reforms that are needed to effectively enforce employment rights*

22. Trade unions are the first and foremost safeguard for workers, preventing breaches of employment rights. Unions play a vital role making sure that employment rights are respected and upheld, by:

- a) negotiating improved terms and conditions for working people and putting in place mechanisms to remedy breaches of these terms and conditions where necessary
- b) raising employers' awareness of their employment responsibilities, including when new employment rights are introduced
- c) resolving employment disputes using grievance and disciplinary procedures and the right to be accompanied
- d) where merited, supporting members to take cases to employment tribunals

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<sup>12</sup>Beyond Employment Tribunals: Enforcement of Employment Rights by EU-8 Migrant Workers, Industrial Law Journal, Vol. 47, No. 2, July 2018

<sup>13</sup> <https://old.parliament.uk/documents/commons-committees/environmental-audit/correspondence/190114-Letter-from-HMRC-to-Chair-re-fashion1.pdf>

<sup>14</sup> <https://www.ft.com/content/0e9d502e-9e6e-11ea-b65d-489c67b0d85d>

<sup>15</sup> [https://twitter.com/sarahoconnor\\_/status/1280164594552578048](https://twitter.com/sarahoconnor_/status/1280164594552578048)

- e) supporting strategic cases which clarify legal duties and set the norms to be followed by employers in similar workplaces and sectors.

### **Evidence of union impact and reach into workplaces**

The extent of trade union reach into the workplace and impact on industrial relations is demonstrated by some key indicators.

- The TUC estimates that unions organise around 130,000 union representatives. Union reps have a unique workplace insight and experience of common workplace issues, including non-compliance with basic workplace rights. Union reps represent members on an individual and collective basis, negotiating with employers to resolve workplace issues. Union reps also play an invaluable role in the workplace by making sure that people are informed about their employment rights.
- Some 26 per cent of the workforce is covered by a collective agreement that has been negotiated by a trade union. These agreements put in place mechanisms so that workplace issues can be raised and resolved.
- There are 6,350,000 trade union members in the labour market. Union members feedback workplace issues to their union reps, giving unions a first-hand, contemporary experience of workplace issues.
- Collective bargaining remains the best way to protect and enforce workers' rights. There is a strong correlation between collective bargaining and greater compliance with employment rights. In 2015, only 2.7 per cent of workers covered by a collective agreement reported no paid holiday entitlement, compared with 6.1 per cent of those who were not covered. The government should introduce mechanisms to boost collective bargaining, including at sector level, giving trade unions the role of raising standards and enforcing rights in a particular sector.

23. These important functions carried out by unions to protect basic workplace rights, demonstrate why it is important that the state does more to actively promote collective bargaining.

### *Innovative regional TUC projects – bringing together key stakeholders to tackle exploitation*

Unions are already undertaking practical work in the Midlands region, to protect exploited workers.

There are two strands to this work.

#### Retailer charter that facilitates union access

The elected mayor of Leicester, Sir Peter Soulsby, and the Regional Secretary of TUC Midlands, Lee Barron, wrote to a number of major UK fashion retailers, including Boohoo, ASOS, TK Maxx, Missguided, River Island, Next and New Look regarding poor health and safety and employment practices amongst garment manufacturers, many of whom are based in Leicester.

The Mayor and the TUC warned companies that they cannot demonstrate that their products were not produced by exploited workers operating in dangerous conditions or worse by victims of modern slavery.

The TUC convened a roundtable that was attended by several large retailers and unions that represent workers in the textile sector.

All retailers are being encouraged to sign an agreement backed by the TUC committing their organisations to procure from manufacturers who allow trade unions to access their workplaces. When we talk about “access” we mean an access to enforce rather than an access to recruit workers. In practice this would involve auditing working conditions and talking with workers.

The Midlands region has been keen to highlight the key role that unions carry out. With a vast network of union reps, unions can carry out cost effective compliance checks throughout supply chains. Union reps are trained and accredited and are trusted by workers to resolve their workplace issues.

Work is ongoing with a number of leading retail brands, charities and NGOs, to develop a binding agreement that would incorporate and recognise the importance of union access throughout exploitative supply chains.

## **TUC Action Plan for Reform**

### *New trade union rights*

24. In recognition of the vital role that unions perform in the workplace, the TUC believes that unions should be given new powers and responsibilities that would help them to drive up and enforce workplace terms and conditions. We set out our proposals for reform in our recent report, “A Stronger Voice for Workers”.<sup>16</sup> These include:
- Unions to have access to workplaces to tell workers about the benefits of union membership and collective bargaining (following the system in place in New Zealand).

<sup>16</sup> <https://www.tuc.org.uk/sites/default/files/2019-09/Astrongervoiceforworkers.pdf>

- New rights to make it easier for working people to negotiate collectively with their employer, including simplifying the process that workers must follow to have their union recognised by their employer for collective bargaining and enabling unions to scale up bargaining rights in large, multi-site organisations.
- Broadening the scope of collective bargaining rights to include all pay and conditions, including pay and pensions, working time and holidays, equality issues (including maternity and paternity rights), health and safety, grievance and disciplinary processes, training and development, work organisation, including the introduction of new technologies, and the nature and level of staffing.
- The establishment of new bodies for unions and employers to negotiate across sectors, starting with hospitality and social care.
- Trade unions to be actively involved in labour market inspections. In line with recent ILO recommendations<sup>17</sup>, there should be tripartite labour inspection audits to help governments identify and remedy weaknesses in labour inspection. Trade unions should be consulted about the nature and scope of these tripartite investigations.

### *Extension of the licensing scheme*

25. The TUC would like to see the licensing model currently used by the Gangmasters Labour Abuse Authority (GLAA), in the shellfish-gathering, food processing, agriculture and horticulture sectors, extended further across the labour market. There is a strong case for extending the GLAA's remit so that the textile sector falls within the licensing scheme. A high proportion of workers in the sector are vulnerable to exploitation due to their employment or migrant worker status and, as set out above, there is evidence of exploitative working practices being routinely used.
26. The inspections and routine monitoring of standards that licensing entails would help prevent exploitation, improve intelligence gathering and ensure that criminal prosecutions are targeted at the worst cases. Licensing requires organisations operating in a particular sector to prove that they can comply with minimum employment standards. This involves providing evidence of compliance with core labour standards through initial and ongoing inspections. However, extending licensing should not just be a tick box exercise, it needs to include robust physical checks with the necessary training and staff numbers employed to do this.
27. This view was supported by the 2009 Rita Donaghy review. The review recommended that the licensing scheme should be extended to cover the construction sector. Donaghy flagged up the issues that arise with the fissuring of the employment relationship:

*"I recommend that the remit of the Gangmasters Licensing Regulations should be extended to include construction. Alternatively, a Regulation should be made which has the same effect. The further down the subcontracting chain one goes the less secure the worker and the less satisfied with the management of health and safety on site. Society should accept that there needs to be a standard below which no construction worker should have to work. The Gangmasters Licensing Authority would need resources to take on this work and some consideration may have to be given to its existing constitution to ensure it is fit for purpose."*

<sup>17</sup> INSE

28. Furthermore, mandatory licensing has been recognised by the Managing Director of the Responsible Car Wash Scheme<sup>18</sup> as the most effective way to regulate a sector. The Responsible Car Wash Scheme is a voluntary, registration scheme. The TUC has spoken with Teresa Sayers, the MD, and she reported that the voluntary registration scheme has brought limited benefits for employers and workers, including pulling together all the relevant regulations and legislation that car washes must comply with and providing a clear compliance template. However, the MD stated that any voluntary scheme is not effective as mandatory licensing. Rogue employers avoid voluntary schemes. And compliant employers who do choose to register voluntarily find themselves at a competitive disadvantage as they face further bureaucracy and costs to partake in the scheme.
29. The business group BRC and a number of large employers also support the extension of licensing.<sup>19</sup> They recognise that licensing would “protect workers and provide an incentive for retailers and brands to invest in the UK [and]...raise tax revenues for the Treasury and create a barrier that prevents rogue businesses from accessing the market and undercutting legitimate fashion manufacturing companies, creating a level playing field for businesses to compete fairly.”
30. The extension of licensing has also been supported by the Interim Director of Labour Market Enforcement, Matthew Taylor.

*“I have concluded now that the only answer to the endemic nature of non-compliance and abuse is to establish a mandatory national licensing scheme for hand car washes.”*

*Matthew Taylor, speech to Resolution Foundation<sup>20</sup>*

### *Establishing a system of joint and several liability throughout supply chains for basic employment standards*

31. Parts of UK employment law already provide for joint and several liability arrangements. We provide an overview in our report “Shifting the Risk”.<sup>21</sup> The TUC is calling for this approach to be extended, so that organisations who use strategies to transfer their obligations to other parties, can still be found liable for any breaches of the core employment rights of the people who do work for them. This would bring the following benefits:
- Joint and several liability ensures that in phoenixing cases, where company directors put companies into insolvency to avoid their employment and tax obligations, workers would still have a course of action to enforce their rights.
  - Widening liability would ensure contractors are more diligent and careful in choosing their subcontractors.
  - Widening liability would strongly incentivise the lead contractor to risk assess, monitor and tackle potential breaches of employment standards in their supply chains.

<sup>18</sup> <https://rcws.org.uk/responsible-car-wash-scheme-welcomes-call-for-licencing-by-dlme-february-2020/>

<sup>19</sup> <https://brc.org.uk/news/corporate-affairs/retailers-and-mps-unite-to-end-labour-exploitation/>

<sup>20</sup> <https://www.resolutionfoundation.org/app/uploads/2020/01/Matthew-Taylor-ODLME-speech-13-February-2020.pdf>

<sup>21</sup> <https://www.tuc.org.uk/research-analysis/reports/shifting-risk>

- Joint and several liability may also have the benefit of incentivising the creation of more secure, permanent employment, as fewer contractors are likely to be willing to take the risk of working with subcontractors who might create liabilities for them.
32. The TUC believes that fundamental reforms are needed to the labour market enforcement system to make sure that exploited workers in the textile sector can effectively enforce their rights. We'd welcome the opportunity to discuss this further with the committee.

*November 2020*