

Written evidence from Rights Lab, University of Nottingham (HCS0009)

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1. About me, the University of Nottingham's Rights Lab and my research evidence

- 1.1. I hold a Nottingham Research Fellowship and am part of Nottingham University Business School and the University of Nottingham's Rights Lab Research Beacon of Excellence.
- 1.2. The Rights Lab is the world's largest group of modern slavery researchers and home to many of the world's leading modern slavery experts. We deliver cutting-edge research that provides rigorous data, evidence and discoveries for the global antislavery effort, working closely with partners in Government, business and civil society.
- 1.3. I am submitting evidence because my research includes a national study of modern slavery risk within English adult social care services; a comparative international¹ study of the domestic servitude risks within home-based personalized care and a participatory, research project examining the risks and drivers of severe forms of labour exploitation, including modern slavery, among paid, migrant, live-in carers in London conducted with collaborators from the charity Focus on Labour Exploitation (FLEX), the London School of Hygiene and Tropical Medicine and Oxford Brookes University. I aim to better understand how the risks of domestic servitude might be reduced in the developed world looking particularly at the role of public sector actors, including Local Government, as a procurer of care.

¹ Case countries currently include France; Italy; Sweden and The Netherlands.

² Article 4 of the Human Rights Act (1998) on the prohibition of slavery and forced labour states that: 1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. For the purpose of this Article the term "forced or compulsory labour" shall not include: (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention; (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service; (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community; (d) any work or service which forms part of normal civic obligations. <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1> accessed 29 October 2021.

³ Part 1 of the Modern Slavery Act outlines offences relating to slavery, servitude and forced or compulsory labour as follows: (1) A person commits an offence if— (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour. (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention. <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted> (accessed 29 October 2021).

2. What human rights issues need to be addressed in care settings in England, beyond the immediate concerns arising from the Covid-19 pandemic?

2.1. Risk of contraventions to the Human Rights Act (1998) and Modern Slavery Act (2015)

- i) Article 4 prohibits slavery, servitude or forced labour².
- ii) Such human rights abuses are also criminalized in the UK under the Modern Slavery Act (2015)³.
- iii) Reports of suspected cases of modern slavery among care workers have been widely publicized in the UK media, including the arrest of 3 men in relation to allegations of modern slavery at two Welsh care homes in 2019 (Anon, 2019; Slawson, 2017).
- iv) Academic studies have also highlighted the vulnerability of care workers to modern slavery (Craig and Clay, 2017). In England, four distinct types of modern slavery risk have been identified in Adult Social Care (Emberson and Trautrim, 2020). These risks occur pre- and post-recruitment and may emerge in both financial and operational activities. They include the risk of debt bondage; risks related to remuneration; risks during recruitment and selection; and operational risks (op cit.).
- v) In 2020, research evidence gathered in England from organizations representing care workers, their employers and other interested parties suggested that these modern slavery risks may have been exacerbated by the Covid-19 pandemic (Brady and Emberson, 2020a).
- vi) These post-Covid-19 risks have been categorized as follows:
 - (1) Pre-recruitment financial risk – Increased recruitment activity and rise in use of migrant labour, with risk of work-visa debt.
 - (2) Post-recruitment financial risk – Wages being withheld, especially with regard to sick pay and travel time; delays in payment through retrospective reconciliation; increasing reliance on ‘pay-per-minute’.
 - (3) Pre-recruitment operational risk – Flexible employment practices in response to workforce availability, including waiving of full Disclosure and Barring Service checks; media perception of care homes discouraging potential staff, leading to labour shortages; reliance on unregulated temporary staffing agencies.
 - (4) Post-recruitment operational risk – Decreasing quality of working conditions, pressure for staff to live ‘locked in’ on-site; audit limitations; isolation of home carers, increased risk for black and minority ethnic staff; obscured signs of exploitation and unacknowledged home care workload increases (op cit.).
- vii) A two-year, comparative European research study currently underway at the University of Nottingham suggests that domestic servitude risks may

exist among four different groups of care workers involved in the delivery of personalized, home-based care, namely: family care-givers; migrant care workers employed directly as personal assistants by private individuals; migrant care workers introduced to potential care recipients by unregulated care agencies and employed under the ‘direct payment’ cash for care scheme; and migrant family care-givers who migrate to provide care, particularly for their children, and who may be coerced and defrauded of their benefits by predatory, unregulated labour agencies.

3. How effective are providers at respecting the human rights of people under their care?

3.1. Private-sector organisations that deliver residential care services on behalf of local authority procurers have a duty to respect and protect not only the human rights of those service-users for whom they care but also the care-workers whom they employ. This is important because academic research and the reports of investigative journalists suggest that care-workers themselves are vulnerable to human rights abuses (Craig and Clay, 2017; Emberson and Trautrim, 2020; Slawson, 2017).

3.2. Respecting the human rights of care workers

3.2.1. Research conducted for Nottinghamshire County Council in 2017-8 found gaps in providers’ recruitment and selection procedures that could lead to the risk of employing exploited care workers within residential care and nursing home services providing adult social care (Emberson and Trautrim, 2020).

3.2.2. Care Quality Commission recruitment and selection checks currently focus upon ensuring care workers’ competence to assure patient safety. The monitoring and assurance of care workers’ human rights is neglected (Craig and Clay, 2017).

3.3. Limitations of the current remit of Section 54 of the UK Modern Slavery Act (2015): Transparency in Supply Chains (TISC)

3.3.1. Most private organizations providing residential care and nursing home and domiciliary care services fall below the current £36 million threshold at which commercial organizations are required by law to provide a statement of the steps that they have taken to eradicate modern slavery from their supply chains, or to state that they have taken no such steps.

3.3.2. Until the UK Government acts upon the recommendations of the Independent Review Committee, there is currently no required due diligence to eradicate modern slavery from the publicly-funded labour supply chains of either private or voluntary residential and domiciliary care providers.

3.3.3. An even more significant managerial gap exists in relation to the protection of care workers’ human rights, including article 4, where care services are paid for under the UK and devolved Governments’ ‘direct payment’ cash for care schemes.

- 3.3.4. These direct payment schemes allow those in need of care either to contract with a supervisory or introductory agency, to directly employ a care worker, or to obtain the services of a self-employed care worker. With the exception of supervised agency staff, there is no provider organization with responsibility or oversight for the human rights of those providing these care services.
- 3.3.5. Research evidence from across Europe suggests that the demand for personalized delivery of home care has increased since Covid-19 due to the perceived threat to life for elderly service users entering residential care and nursing homes. This trend may be expected to increase the number of care workers employed beyond the oversight of existing providers.

- 4. How effective are regulators in protecting residents from human rights breaches and in supporting patients and residents who make complaints about their care provider?

I am not submitting evidence in response to this question.

- 5. What lessons need to be learned from the pandemic to prevent breaches of the legislation in future?
 - 5.1. Digitalization of recruitment and selection procedures reduces the visibility of the signs of human rights breaches⁴.
 - 5.1.1. Providers with responsibility for the recruitment of care workers should include checks on any pre-recruitment costs incurred by applicants for care work.
 - 5.1.2. Local authority and CQC inspectors with responsibility for monitoring of care workers should ask care workers about pre-recruitment costs to guard against debt bondage and the payment of extortionate recruitment fees.
 - 5.2. Cashflow pressures increase the likelihood of remuneration risks and illegal rates of pay.
 - 5.2.1. Local authorities should pay providers on time and in full according to agreed schedules.
 - 5.3. Lockdown restrictions can lead to care workers' freedom of movement being curtailed.
 - 5.3.1. Local authority and CQC inspectors should remain alert for unexpected signs of care workers informally 'living-in' on the premises of residential care and nursing homes during routine inspections.
 - 5.4. The inadequate supply of care workers may lead to the greater use by providers of unregulated, introductory agencies or informal agents with a commensurate increase in the risk of human rights abuses.

⁴ The recommendations made in this section include proposals described in more detail in the Rights Lab policy briefing note and associated report produced by Brady and Emberson (2020a,b).

- 5.4.1. Local authority and CQC inspectors should pay particular attention to the adequacy of providers' recruitment and selection procedures in relation to temporary agency staff.
- 5.5. An increase in the proportion of care workers employed under 'direct payment' cash-for-care arrangements threatens to reduce local authority and providers' oversight of human rights.
 - 5.5.1. Local authorities' financial review of direct payment recipients' expenditure should ensure routine checks to ensure that multiple payments are not being made into a single bank account; this can be evidence of organized care worker exploitation.

6. References

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