

# Written evidence submitted by Focus on Labour Exploitation (FLEX) to The Employment Rights Public Bill Committee (ERB03).

## About Us

Focus on Labour Exploitation (FLEX) is a research and policy organisation working towards an end to labour exploitation. FLEX seeks to achieve this vision through the prevention of labour abuses, protection of the rights of those affected or at risk of exploitation and by promoting best practice responses to labour exploitation through research and evidence-based advocacy.

## Overview

We welcome the opportunities for improved employment rights presented by an Employment Rights Bill, as well as the stated intention to make work pay for working people, ban exploitative practices and enhance employment rights in the UK.

While employment rights are in dire need of strengthening, we need to ensure a level playing field, and make sure that **all** workers are able to enjoy fair rights and benefits. In its current form, the Employment Rights Bill fails to give meaningful access to vital protections for thousands upon thousands of some of the most at-risk workers. Whatever aims the bill has, this will result in an increase in inequality.

Restrictive visas have created a tiered workforce where migrant workers face significant barriers to enforcing their rights, driving a race to the bottom in terms of pay and conditions across the UK labour market. Such visas often limit the sector workers are permitted to work in, or which employers they can work for. This is often in addition to other restrictions such as no recourse to public funds. This creates multiple dependencies, where workers are reliant on their employer for income, and as their visa sponsor for their ability to remain in the UK, as well as often also being dependent on their employer for information about their situation in the UK and any access to advice, information, rights or entitlements. The result is a dynamic where migrant workers are doubly punished for speaking out - first, by unscrupulous employers who may cut their hours or sack them, then by immigration enforcement, for example if their visa is cancelled by their employer, or invalidated due to its tie to that employment. This has allowed for a proliferation of abuses, from non-payment of wages, to overwork, and sexual assault amongst a litany of other labour and criminal law violations. The Bill's failure to address these risks means that this two tier workforce will continue, and the gaps will only widen.

Restrictive visas may be time limited, non-renewable or not include a pathway to settlement, impeding workers' ability to avail of labour protections or bring a claim to the Employment Tribunal. If the worker's employer is also their visa sponsor this creates a double dependency and a reluctance to challenge poor employment conditions for fear of jeopardising their work visa. Further, restrictive visas may prohibit applications to bring dependents and prevent access to public funds, leaving workers without a safety net

when they need to escape their exploiters. For the Employment Rights Bill to work, we need to make sure that migrant workers are not excluded in practice from the rights it sets out.

Provisions such as the Fair Work Agency, establishing day-one rights and single worker status provide tangible opportunities to improve employment rights for workers. However, the draft Bill must be strengthened to ensure that unscrupulous employers and recruiters can't take advantage of migrant workers. The Employment Rights Bill will only be as strong as its weakest link. Failing to extend meaningful access to rights for workers on restrictive visas is not only unfair; it will also act to drive down standards for all.

### **Restrictive Visas**

Examples of restrictive visas which create risks of exploitation are the Overseas Domestic Worker (ODW) visa for work in a private household and the Seasonal Workers visa (SWV) for work in agriculture. Both visas are six months long and cannot be renewed.<sup>1</sup> Exploitation of workers on both routes is prevalent for reasons including the workers' multiple dependencies on employers; for their ability to remain in the UK, work, for information, and often for their accommodation. The short term nature of these visas increases these dependencies as workers, who have often paid large amounts to migrate, know that their best option is to not complain or to challenge poor working conditions, but to focus on earning what they can during the short time they are in the UK. The Employment Rights Bill must look at the particular risks of spurious dismissal faced by workers on short term visas, many of whom have accrued significant debts to travel to the UK and are at a considerable risk of debt bondage. If the short term nature of visas such as the Seasonal Workers visa means that workers spend all or most of their working period in the UK on probation they may not benefit from provisions such as Day One Rights. Even outside of the probation period there are significant hurdles to face to take an employment challenge with only a short period of time remaining on a non-renewable visa. Similarly, a restrictive immigration status and the need to maintain the job linked to a visa will reduce access in practice to the welcome protections included in the Bill against sexual harassment by third-parties as workers..

The exploitation of workers on the Health and Social Care Worker visa is also well documented. Care work in the UK continues to be undervalued and underfunded. Despite persistent labour shortages in the sector, care workers continue to face low-pay and poor working conditions. This is exacerbated for migrant workers who have arrived with migration debts and with repayment clauses in the event they leave a job before their contract ends. Where enforcement action against rogue employers results in removal of sponsor licences, workers can be doubly punished and left scrambling to find new work with a visa sponsor in a race against destitution, debt and the 60 day visa cancellation period. Fair Pay Agreements in the social care sector are not enough in-and-of-themselves to ameliorate the risks of exploitation caused by the visa itself.

---

<sup>1</sup> Other than in the instance of a positive NRM trafficking decision for an ODW visa holder

In fishing, the use of a loophole created by the misuse of the seafarers' transit loophole (Code 7 leave), designed to allow migrant fishes to transfer onto a vessel to work outside of UK waters, and can leave exploited migrant fishers with few options and unable to access employment law protections. If migrant fishers are working more than 12 nautical miles from the UK coast they are outside of jurisdiction. If they are closer, even if for a limited period, they are breaching the immigration rules. This means that migrant fishers who have little control over the work they do or where they do it can be criminalised by their own exploitation and workers who are injured at work or who need advice or information can be prevented from accessing this by employers citing the immigration rules. Contacting the authorities for help will more likely lead to an immigration enforcement response than support to access rights. The immigration restrictions on Code 7 leave restrict access to external support and to rest opportunities as well as access to medical support. This means that unscrupulous employers can use the limitations of the 'transit loophole' in the context of priority being given to Immigration Enforcement over workers' rights and access to justice, to control workers and prevent exploited workers from seeking assistance. Any amendment on seafarers must address the risks of exploitation faced by migrant fishers.

Despite the UK having ratified ILO Convention 190 (on violence and harassment at work) no UK authority holds responsibility for its application on fishing vessels. Nevertheless, even with stronger coordination across regulatory bodies, migrant fishing workers will face difficulties in reporting violations given the fact that only skilled workers are able to leave the fishing vessel and port freely without prior approval. Moreover, threshold issues remain, with few authorities having the ability to board a vessel unless the case is both reported and deemed to be sufficiently severe.

### **Fair Work Agency**

A Fair Work Agency (FWA) has the potential to bring clarity to the fragmented labour market enforcement system in the UK and build resilience against drivers of risk for workers. However, the effectiveness of the FWA is contingent on its design and resourcing. The FWA must enshrine its commitment to international labour standards and make sure that the UK is equipped to enforce labour protections for *all* workers.

The FWA must address the issues faced by workers in high-risk sectors who have multiple dependencies. It must provide fair and efficient remediation, whilst also being able address workers' immediate needs. This should include having powers to issue accommodation referrals, prevent visa sponsoring employers from cancelling visas, or to issue bridging visas that enable workers to pursue employment matters. An effective FWA must be well resourced to be able to conduct proactive inspections across all high risk sectors.

Having a structure that includes regional offices with expert local knowledge can help facilitate proactive inspections as well as providing workers with points of access on the ground. It is essential that there are secure reporting pathways in place with a separation between immigration and labour market enforcement powers, so that labour market inspections are never conducted in conjunction with immigration enforcement. An effective FWA must provide safe pathways for workers to report issues without fear of repercussions from their employer or immigration enforcement.

## 1. The Six Priorities for a Fair Work Agency

PRIORITIES	IN PRACTICE
Secure Reporting	<ul style="list-style-type: none"> <li>● All workers are able to safely report abuse or exploitation, which means:               <ul style="list-style-type: none"> <li>○ Workers must not have their immigration status checked or considered during labour inspections. Workers may choose to disclose their status when reporting complaints or seeking assistance and this information should never be shared without proactive informed consent.</li> <li>○ Workers must be protected from repercussions from employers if reporting violations. This should include protection against visa cancellation.</li> <li>○ Where a worker has given consent the FWA should also be able to make recommendations to the Home Office to enable workers to bridge or switch visa status if their visa will shortly expire.</li> </ul> </li> </ul>
Sufficient Resourcing	<ul style="list-style-type: none"> <li>● Resourcing is based on evidence drawn from the labour market, enforcement personnel and intelligence-based risk understandings.</li> <li>● Resourcing is based on regular assessments of labour market size and characteristics, risks present, and staffing and capital costs needed to undertake required activities.</li> <li>● Resourcing is cognisant of the need for both reactive (<i>i.e.</i> complaints-led) and proactive (<i>i.e.</i>, targeted based on risk assessments) enforcement and the appropriate proportion of each.</li> </ul>
International Standards	<ul style="list-style-type: none"> <li>● International best practice is followed in resourcing and practices, such as the World Bank recommended ratio of 60% proactive versus 40% reactive inspection and the ILO recommended ratio of 1 inspector per 10,000 workers.</li> </ul>
Fair and efficient remediation	<ul style="list-style-type: none"> <li>● Workers' cases are dealt with fairly and efficiently, with remediation outcomes appropriate to meet workers' needs.</li> <li>● Access to compensation and other appropriate remediation is timely, straightforward and at no cost to the worker. Whatever the outcome for the</li> </ul>

	<p>worker, they will have experienced a clear and unbiased approach to their case. This could be evaluated by surveys of workers who have made complaints or been identified during the course of targeted enforcement.</p>
Gender responsive	<ul style="list-style-type: none"> <li>• Enforcement strategies and responses recognise gender inequalities significantly affect the experiences of women and non-binary people in the labour market, both in terms of the types and levels of abuse and discrimination.</li> <li>• The FWA, and its specific departments, should have a published gender responsive strategy with sector-specific strategies that are tailored to meet the needs of women workers and with appropriate training for staff.</li> </ul>
Meaningful Worker Participation	<ul style="list-style-type: none"> <li>• Workers themselves and their representative organisations, such as trade unions and migrants groups, are involved in the design of UK labour market enforcement, such as the structure of the FWA changes to it and evaluations of it.</li> <li>• The statutory governance body of the FWA has a tripartite structure, including worker representative organisations. Schedule 2 of the Health and Safety at Work Act 1974 provides the requirement for a tripartite board for the governance of the Health and Safety Executive; a comparable approach should be taken to ensure this is in place on a statutory basis for a FWA.</li> </ul>

**Bridging Visas**

The UK’s work migration system needs to support and drive up employment standards for all workers. The Employment Rights Bill should introduce safety valves to mitigate circumstances where immigration status and sponsorship arrangements limit migrant workers’ options to challenge poor working conditions, or to access redress.

All work visas in the UK need to provide sufficient flexibility to the workers who have migrated to the UK to enable them to challenge poor or exploitative employment, and to withdraw their labour and find better employment. Not only would this protect individual workers, it also maintains working standards more generally and ensures compliance with UK employment law. To allow for this flexibility all work visas should be renewable subject to ongoing employment and should have a pathway to settlement.

The use of restrictive visas and absence of bridging visas in the UK combined with limited switching options on many routes means that workers who are unable to comply with their immigration status or who have their visa cancelled for any reason, including exploitation, may become undocumented. This undocumented status in turn increases the risk of exploitation, particularly as ‘hostile environment’ policies such as the Illegal Working Offence and associated right to work checks, mean that workers are often pushed into exploitative work.<sup>2</sup> While there is no evidence that the Illegal Working Offence and other ‘hostile immigration’ policies are effective at preventing irregularity in the UK, there is significant evidence showing how these policies prevent people from reporting crimes and unsafe working conditions to the authorities,<sup>3</sup> which further drives risks of exploitation. Migrants at Work has reported that several migrant workers attempted suicide after their employers’ sponsorship licence was revoked, with three care workers having died by suicide after becoming destitute following the loss of sponsorship.<sup>4</sup> Instead, the UK’s previous good practice should be replicated to protect all migrant workers including in the adult social care sector, migrants on the Seasonal Worker visa and on the Overseas Domestic Worker visa. The pre-2012 Overseas Domestic Worker visa’s portability provision was noted as playing a crucial role in facilitating migrant domestic workers’ ability to exit exploitative employment and pursue legal remedies against their employer.<sup>5</sup> The UK’s Ukraine Extension Scheme provided an option for eligible Ukrainian nationals in the UK to regularise or switch immigration status and has been recognised as preventing exploitation.<sup>6</sup>

The importance of bridging visas in preventing exploitation and the exploitation associated with this can be seen in their adoption in other countries. While it is vital that the specifics of a bridging visa are tailored for the UK specific context it is helpful to look at other models; For instance, in the Republic of Ireland, the Reactivation Employment Permit permits non-EU citizens who held a work permit but became undocumented through “no fault of their own” and have remained in the country.<sup>7</sup> “No fault of their own” can refer to labour exploitation and abuse, closure of the workplace without previous notice, being made redundant, or failure of the previous employer to submit the redundancy notification on time. Workers can apply for this permit with the formal offer of employment for any post, except for domestic work. Successful applicants receive a temporary residence permit which gives workers a period of temporary stay.

---

<sup>2</sup> Labour Exploitation Advisory Group (LEAG). (2020) Opportunity Knocks: improving responses to labour exploitation with secure reporting. FLEX: London. p.16.

<sup>3</sup> Labour Exploitation Advisory Group (LEAG). (2020) Opportunity Knocks: improving responses to labour exploitation with secure reporting. FLEX: London. The Home Office’s own research concedes that the deterrent effect of the hostile, or ‘compliant’ environment is unclear, see: Home Office (2023) A review of external evidence of the compliant environment: Literature synthesis of external evidence and best use of international examples.

<sup>4</sup> Migrants at Work & Migrants’ Rights Network (2023), Written evidence submitted by Migrants at Work and Migrants’ Rights Network.

<sup>5</sup> Kalayaan (2011). Ending the Abuse: policies that work to protect migrant domestic workers, p.3 ; The original ODW visa was cited internationally as good practice. See: International Labour Organization (2006), Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, p. 67.

<sup>6</sup> García-Vázquez, O., Cockbain, E., Roberts, K., and Fisher, O. (2024). From exploitation risks to mitigations: looking back locally on the implementation of the UK’s Ukraine Schemes. March 2024. London: FLEX (Focus on Labour Exploitation).

<sup>7</sup> PICUM (2022), Labour Migration Policy Case Study Series: Ireland. Available at: [https://picum.org/wp-content/uploads/2023/02/Labour-migration-policies\\_Case-study-series\\_Ireland\\_EN.pdf](https://picum.org/wp-content/uploads/2023/02/Labour-migration-policies_Case-study-series_Ireland_EN.pdf)

Another example of good practice is Australia where recent reforms protect migrant workers on temporary visas from being trapped in exploitative work due to their immigration status through provisions which prevent visa cancellations where there is evidence of exploitation and which provide for a Workplace Justice visa, permitting work in any sector, while the worker seeks redress. These measures enable migrant workers in exploitation to leave exploitation without risking their immigration status, giving them time to find decent work with a new sponsor, and to work to support themselves in the interim.<sup>8</sup>

In Finland, non-EEA workers who have experienced labour exploitation or significant negligence in the workplace can apply for special residence permits due to such exploitation.<sup>9</sup>

Similarly, Canada operates an Open Work Permit for victims of abuse. This permit is time limited and cannot be renewed. However, it's designed to give workers enough time to find a new employer and apply for a new work permit.<sup>10</sup>

New Zealand also adopted a Migrant Exploitation Protection Work Visa which allows migrant workers to find a job, providing them with a visa with an expiry date that matches their current work visa but not more than 6 months duration. It allows workers to work anywhere in New Zealand for any employer.<sup>11</sup>

These examples allow for workers, who would otherwise be at a high risk of exploitation, to regularise their status and access decent work. This ability to address workers on the shallower end of the continuum of exploitation can prevent workers' situation from deteriorating to the level where it might amount to modern slavery. To withhold access to practical assistance till exploitation reaches the modern slavery threshold fails to identify serious deteriorating abuse is deeply unethical, cost intensive and allows exploitation to thrive.

People who have been trafficked also need enough time to recover from their exploitation and rebuild their lives, in order to move on from their exploitation and to break the cycle of re-trafficking. However, the majority of identified survivors of trafficking are not granted any leave to remain at all.<sup>12</sup> It is impossible for survivors to recover and rebuild their lives, let alone consider pursuing justice, while living with the insecurity that comes with having no leave, or very short-term leave. Recognising the harmful impact that immigration insecurity has on survivors, research by organisations including the British Red Cross have called for people with positive conclusive grounds decisions to be automatically awarded leave to remain as a survivor of modern slavery for a minimum of 30 months<sup>13</sup> This position was supported by

---

<sup>8</sup> <https://www.migrantworkers.org.au/wjv>

<sup>9</sup> <https://picum.org/blog/labour-migration-policies-finland/>

<sup>10</sup> <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html#>

<sup>11</sup> <https://www.immigration.govt.nz/new-zealand-visas/visas/visa/migrant-exploitation-protection-visa>

<sup>12</sup> Helen Bamber Foundation (2023). Leave in Limbo: Survivors of trafficking with uncertain immigration status. August 2023

<sup>13</sup> See for example: British Red Cross (2019). Hope for the future: Support for survivors of trafficking after the National Referral Mechanism.

the Labour frontbench as recently as 2023.<sup>14</sup> Granting leave to survivors to allow them to move on from exploitation and begin to rebuild lives also makes economic sense. As well as decreasing risks of re-exploitation, including re-trafficking. A Cost Benefit Analysis shows significant financial benefits from victims being enabled to move on and rebuild lives as well as a great number of unquantifiable benefits.<sup>15</sup>

## Secure Reporting

All workers should feel safe to report labour abuse and exploitation, including to the Fair Work Agency which should facilitate secure and effective reporting. Key to this is ensuring that the outcomes of reporting work out well for workers, and facilitate access to justice and improved working conditions. In contrast, a lack of separation between law enforcement (as well as other public bodies such as the Gangmasters and Labour Abuse Authority) and immigration enforcement dissuades people (including the wider public) from reporting potential cases of modern slavery out of concern that it will result in negative immigration consequences for victims.<sup>16</sup> Recommendations made by the former Director of Labour Market Enforcement, Matthew Taylor, sought to address a number of the drivers that leave migrant workers vulnerable to labour abuse and exploitation, and ultimately recognised that it is 'vitally important to maintain a clear dividing line between labour market enforcement and immigration enforcement'.<sup>17</sup> In this context, the sharing of information on a potential victim of trafficking's migration status with immigration enforcement and the use of joint or simultaneous inspections with both immigration enforcement accompanying law enforcement or labour market enforcement authorities risks undermining trust in the community and putting people at risk.

Secure reporting pathways and procedures that prohibit this sharing of immigration status when victims of trafficking come forward have not been embedded within labour market enforcement or law enforcement activity.<sup>18</sup> Such pathways would separate immigration enforcement activities, such as sharing workers' undocumented status with the Home Office, from labour market enforcement. As a result, undocumented victims of labour abuse and exploitation would be more able to come forward without fear of immigration-related repercussions, such as arrest, detention and removal from the UK. Given the precarity of undocumented workers, compounded by isolation and lack of social protections, secure reporting is an important tool to ensure workers have meaningful access to protection and support. LEAG research has highlighted that simultaneous or joint operations, where labour market enforcement and law enforcement conduct investigations with immigration enforcement, undermine trust in enforcement mechanisms among migrant workers thereby impeding operational effectiveness at

---

<sup>14</sup> [https://bills.parliament.uk/publications/51208/documents/3442#:~:text=%E2%80%9C\(4\)%20Where%20subsection%20\(,\)%20access%20to%20support%20services.%E2%80%9D](https://bills.parliament.uk/publications/51208/documents/3442#:~:text=%E2%80%9C(4)%20Where%20subsection%20(,)%20access%20to%20support%20services.%E2%80%9D), p.4.

<sup>15</sup> University of Nottingham Rights Lab (2019). The Modern Slavery (Victim Support) Bill. A cost benefit Analysis.

<sup>16</sup> Birks, J. and Gardner, A. (2019) Introducing the Slave Next Door. Anti-trafficking Review. (13). 66-81, p.70.

<sup>17</sup> Director of Labour Market Enforcement (DLME). (2021), United Kingdom Labour Market Enforcement Strategy 2020/21. HM Government. p.104.

<sup>18</sup> Labour Exploitation Advisory Group (LEAG). (2020) Opportunity Knocks: improving responses to labour exploitation with secure reporting. FLEX: London. Pp.6-7.

identifying and addressing exploitation.<sup>19</sup> For instance, in 2022 the Low Pay Commission found that joint inspections stopped workers from reporting the non-payment of wages.<sup>20</sup>

“I didn’t want to leave at first because my employer threatened me with imprisonment for a long time if I did escape and she would have me deported.” Colette, Southeast Asian live-in care worker

Secure reporting procedures and pathways have been adopted in a number of different countries, yielding positive results.

### *United States of America*

Since the mid-1980s, major cities in the United States, including Chicago, New York City, Seattle, Philadelphia and the whole state of California, have adopted policies aimed at protecting the safety of all its residents. By passing resolutions that limit local civil servants and law enforcement officials’ involvement with immigration enforcement actions, these cities aim to promote migrants’ engagement as witnesses and allow them to come forward when they are victims of a crime, irrespective of their immigration status. In New York City, for example, the police have developed guidance that prohibits officers from inquiring about immigration status of victims of crime, witnesses or others who approach the police seeking assistance. This has helped to make secure reporting part of their culture, and ensures that officers are held accountable and disciplined if they violate the guidance.

As a result, studies found that large metropolitan areas in the United States that established this separation between policing and immigration enforcement have 65.4 per cent less violent and property crime per 10,000 people than those that work closely with immigration authorities.<sup>21</sup> Another benefit from introducing secure reporting was the development of a better and more timely awareness of risk and crime within the communities by local police.

“For police departments in general [in the United States], the way we measure our success as a police agency is based on crime complaints we received - how many people have filed a complaint in a police station, or have called 911, or have made their complaint in some way. [...] If you have a large segment of your population who is not willing or is hesitant to report crimes to your police department, you may not be grasping what is going on in the communities that you police.” - New York City Police Department senior police officer<sup>22</sup>

---

<sup>19</sup> LEAG (2020), *ibid*, pp.20-23.

<sup>20</sup> Low Pay Commission. (2022) Compliance and enforcement of the National Minimum Wage: the case of the Leicester textiles sector, p.32.

<sup>21</sup> Delvino, N. (2019). Safe reporting of crime for victims and witnesses with irregular migration status in the United States. Oxford: Center for Migration Policy and Society at Oxford University; Wong, Tom. 2017. “The Effects of Sanctuary Policies on Crime and the Economy.” Center for American Progress

<sup>22</sup> LAWRS. 2020. Migrants reporting crime: building trust with the police [Video]. YouTube.

Research also confirmed an increase in victims' engagement with the police in areas where secure reporting was guaranteed, as non-governmental organisations encouraged their clients to report crimes.<sup>23</sup> Secure reporting is also seen to increase integration and engagement amongst residents.

In the United States, all workers are protected by employment rights, even if they work without a permit. Workers are encouraged to report cases of underpayment to labour inspectors, who use public service announcements, partner with councils and ethnic minority media outlets to make workers with undocumented status aware that they can securely report to them. Workers can report at the federal or state level without fear of being removed from the country, and labour inspectors support them to recover unpaid wages. This is seen as a strategy to tackle unfair labour practices by employers that benefit from underpaying and exploiting workers, and to prevent severe forms of exploitation, such as forced labour and human trafficking.

In 2011, the US Department of Labor and the Department of Homeland Security established a Memorandum of Understanding to "reiterate the national policy goal that immigration enforcement will not interfere with employment and labour rights enforcement in the workplace." To achieve this goal, immigration enforcement agreed to withhold action on cases where a labour dispute was pending to allow all workers to access justice. The Memorandum of Understanding also clarified that immigration should not undertake enforcement visits in workplaces with an active labour dispute to allow inspectors to conduct their investigation and any related proceedings. Finally, this agreement established that immigration enforcement and the Department of Labor shall not "conduct joint or coordinated civil enforcement activities at a worksite". Inspectors only contact immigration authorities with the consent of the worker, usually to help regularise their status by applying for a 'T visa', which allows certain victims of human trafficking and their immediate family members to remain and work in the United States while their case is being investigated or the trafficker is being prosecuted. "If you hold the victims accountable [by reporting them to immigration authorities], you empower the traffickers, the criminals."<sup>24</sup>

As this example demonstrates, secure reporting doesn't prevent all data sharing with immigration authorities, but only protects against automatic data sharing without informed consent. It will often be necessary for the immigration authorities to be contacted at an appropriate stage, with the consent of the worker, to prevent visa cancellation or to support a switching or bridging application.

### *Belgium*

In Belgium, over 300 workers with insecure status have reported cases of unpaid wages to labour inspectors without suffering negative immigration consequences since 2010. Under the Belgian system, if a worker approaches a labour inspector to report cases of labour abuse, the concept of "professional secrecy" removes the labour inspector's duty to report undocumented migrants to immigration authorities.<sup>25</sup>

---

<sup>23</sup> Collingwood, Loren and Benjamin Gonzalez O'Brien. 2019. *Sanctuary Cities: The politics of refuge*. Oxford: Oxford University Press.

<sup>24</sup> FLEX and LAWRS (2022). *Preventing and addressing abuse and exploitation: a guide for police and labour inspectors working with migrants*.

<sup>25</sup> *Id.*

## *Brazil*

After identifying that Federal Police officers responsible for enforcing immigration were treating labour exploitation of migrant workers with insecure status solely as a violation of immigration policies, Brazilian labour inspectors stopped conducting simultaneous inspections with the Federal Police at a regional level, while advocating nationally for more protective rights for victims of human trafficking.

“We, the labour inspectors who were dealing with undocumented immigrants in the city of São Paulo, understood that by issuing deportation orders, the Federal Police not only violated human rights treaties ratified by Brazil but also supported the main manipulation tool used by unscrupulous employers to keep migrant workers from seeking assistance: the threat of deportation.” - Brazilian senior labour inspector<sup>26</sup>

Over time, other regions of the country started to identify cases of exploitation of undocumented migrant workers which were followed by immigration action. In light of these cases, labour inspectors and other specialist organisations supported the development of guidelines for interinstitutional use which clearly indicated best practices in supporting undocumented migrant workers.<sup>27</sup>

### **Illegal Working Offence**

The effect of the UK Government’s hostile environment policies in hampering reports to labour market enforcement is compounded by the illegal working offence which criminalises working without the correct immigration status and means that any earnings could be confiscated as the ‘proceeds of crime’. As such a worker wishing to complain about non compliance with the National Minimum Wage risks all their earnings as well as immigration detention and removal when complaining. This makes it harder for all migrants to challenge unfair conditions, change employers, take time off for sickness or demand fair wages, for fear of being reported to Immigration Enforcement.

The offence prevents migrant workers from reporting exploitation and seeking support from the state agencies meant to address such harm, *i.e.*, police and labour inspection, due to the fear of immigration repercussions. Exploiters are also able to use this threat to coerce and control workers.

### **Outsourced Workers**

There is a growing need for a better response to workplace abuse and exploitation because of the profound changes that have taken place over recent decades, with which labour market enforcement

---

<sup>26</sup> Labour Exploitation Advisory Group and Focus on Labour Exploitation. (2020). Opportunity Knocks: Improving responses to labour exploitation with secure reporting. London: Labour Exploitation Advisory Group and Focus on Labour Exploitation

<sup>27</sup> FLEX and LAWRS (2022). Preventing and addressing abuse and exploitation: a guide for police and labour inspectors working with migrants.

mechanisms have not kept pace. Employment relationships have become increasingly fissured,<sup>28</sup> i.e. broken into pieces, through practices such as offshoring, outsourcing and subcontracting and applies to sectors where work is frequently outsourced such as cleaning and security, as well as for a variety of service industries that have more recently fissured.<sup>29</sup>

Fissuring creates longer and more complex supply chains and allows client companies – brands at the top of the chain – to attempt to avoid liability for labour rights violations while retaining much of the power to influence, if not determine, the wages and conditions of workers employed by their service providers. Client companies across various sectors are shifting what are considered non-core activities – everything from cleaning and catering to manufacturing and accounting – onto other businesses at home and abroad to focus on creating a brand recognisable to consumers and investors.<sup>30</sup>

There is a need to ensure that outsourced workers (including agency workers) are able to avail of the protections set out in the Employment Rights Bill, such as the right to guaranteed hours. There is a need to ensure that any consultation is premised on the assumption that a failure to properly include outsourced workers within the scope of the Bill will result in an increased reliance on outsourced workers by unscrupulous employers as a means to circumvent employment law protections.

### **Access to Justice**

There are significant barriers to taking a case, for instance, to an Employment Tribunal, including time limits, a lack of legal aid or access to qualified representatives, and knowing where to go.<sup>31</sup>

The real-term cuts to legal aid since 2010 have also impeded workers' abilities to seek redress.<sup>32</sup> With the limited exception of discrimination claims under the Equality Act 2010, or where exceptional case funding is secured, civil legal aid is no longer available for either advice or representation in employment law matters as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This has meant that often already overstretched civil society organisations must step in to support workers, where they are otherwise unable to avail of support from law firms, though may struggle to find staff with the requisite expertise and qualifications to support workers.<sup>33</sup> Though the NRM provides support for

---

<sup>28</sup> The 'fissured workplace' describes a business model where employment relationships have been broken into pieces, often shifted to subcontractors, third-party companies or to individuals classed as independent workers. See Weil, D. 2014. *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*. Cambridge MA: Harvard University Press

<sup>29</sup> Blasi, J. and Bair, J. 2019. *An Analysis of Multiparty Bargaining Models for Global Supply Chains*. Conditions of Work and Employment Working Paper No.105. Geneva: International Labour Office. p.1.

<sup>30</sup> Huws, U. and Podro, S. 2012. *Outsourcing and the Fragmentation of Employment Relations: The Challenges Ahead*. ACAS Future of Workplace Relations Discussion Paper.; Weil, D. and Goldman, T. 2016. *Labour Standards, the Fissured Workplace, and the On-Demand Economy*. Perspectives on Work: Employment Regulation.

<sup>31</sup> Labour Exploitation Advisory Group (2024). "“So I decided to carry on...”: The continuum of exploitation in practice. Focus on Labour Exploitation, p.26.

<sup>32</sup> Young Foundation and FLEX. (2023) *Rights and Risks: Migrant labour exploitation in London*, p.19.

<sup>33</sup> *Ibid*, p.20.

survivors to obtain legal aid for immigration advice,<sup>34</sup> this does not extend to support for employment law matters, which they may have experienced as part of their exploitation.

For workers to be able to enforce their rights, there is an urgent need to extend the scope of legal aid to cover employment advice and representation in Employment Tribunals for all workers as well as covering enforcement of awards. The Government must improve access to legal aid by making the financial eligibility criteria less stringent and ensuring it is sustainable for legal aid practitioners to continue providing this service. This would facilitate access to support at early stages of abuse and do much to prevent exploitation worsening. People in the NRM should receive non means tested legal aid.

The Government must extend the timeline for bringing all Employment Tribunal claims including unlawful deduction of wages claims and claims under the Equality Act 2010 cases, from three months minus one day to six months, at a minimum. This should be done in recognition of the many barriers workers face, which often delay reporting, including the psychological impact of trauma caused by severe forms of abuse.

## **Recommendations**

The Bill must be amended to include the following vital provisions to address the UK's migrant labour exploitation crisis:

1. All UK work visas should be renewable subject to ongoing employment. The UK should end the use of short term work visas.
2. Workers' visas should not be cancelled where enforcement action is taken against their employer – sponsor. Workers must be enabled to find alternative employment in the sector.
3. Bridging visas should be created, providing options for workers to seek redress and support themselves while finding employment with a new sponsor.
4. Labour market enforcement agencies should not report workers' migration status to the Home Office or engage in joint or simultaneous inspections with immigration enforcement, as this is shown to interfere with their primary duties and efficiency in contravention of International Labour Organisation Convention 81.
5. The Fair Work Agency must be accessible to workers in practice, and provided with robust enforcement powers. These reforms must be grounded in the principles of protected reporting, evidence-based resourcing, compliance with international standards at a minimum, fair and efficient remediation, gender sensitivity, and meaningful worker participation.

## **November 2024.**

---

<sup>34</sup> Home Office and UK Visas and Immigration. (2024) Guidance: National referral mechanism guidance: adult (England and Wales).