

FOCUS ON LABOUR EXPLOITATION

OPPORTUNITY KNOCKS: IMPROVING RESPONSES TO LABOUR EXPLOITATION WITH SECURE REPORTING



Opportunity Knocks: Improving responses to labour exploitation with secure reporting

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The Labour Exploitation Advisory Group (LEAG) is a group of experts from ten organisations working with workers in, or at risk of, human trafficking for labour exploitation. LEAG members include Focus on Labour Exploitation, Latin American Women's Rights Service, East European Resource Centre, Unite the Union, Ashiana Sheffield, British Red Cross, Kalayaan, Bail for Immigration Detainees, Praxis Community Projects and Equality.

Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation.

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PICUM
PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

**OPPORTUNITY
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EXECUTIVE SUMMARY

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‘Insecure immigration status’ refers to migrants, both documented and undocumented, who are currently required to prove they have a ‘right to work’ in the UK and who experience barriers accessing support or enforcing their rights.”

The research examines the practices and policies of labour inspectorates and the Metropolitan Police and their relationship with the Home Office’s Immigration Enforcement team. Findings are based on these agencies’ engagement with immigration enforcement action; frontline organisations’ experience supporting migrant workers; and cases of people who have insecure immigration status and have chosen not to report to statutory agencies as a result.

‘Insecure immigration status’ refers to migrants, both documented and undocumented, who are currently required to prove they have a ‘right to work’ in the UK and who experience barriers accessing support or enforcing their rights. This group covers people who are lawfully in the UK but are banned from working as a result of visa restrictions (e.g. tourist visas), have limitations to their ‘right to work’ (e.g. students working more than 20 hours per week), subject to other conditions that restrict their access to employment in the UK (e.g. asylum-seekers, some potential victims of modern slavery offences who are currently in the National Referral Mechanism), European nationals and people on work-visas who face barriers reporting issues at work due to a limited understanding of their rights and entitlements in the UK.¹ It also includes those with undocumented status, such as people who have irregularly entered or stayed in the country, whose leave to enter or remain has expired or has been denied (e.g. negative asylum claims).²

It provides an overview of the ways in which labour inspectorates and police provide information about workers with insecure immigration status to the Home Office Immigration Enforcement team. This addresses an important gap in the existing body of evidence regarding the existence, or lack thereof, of secure reporting systems for migrants to seek support when experiencing violations to their employment rights in the UK. It establishes a framework to analyse how migrants’ information becomes available to immigration authorities following their interaction with other statutory agencies. By identifying these information flows and practices, this framework assists in the identification of the types of secure reporting mechanisms that should be put in place to ensure migrants are not made vulnerable to immigration repercussions if they seek the support of labour inspectors and police.

Findings draw on desk-based research, interviews with migrant workers in the UK, stakeholders and civil servants from six countries. Analysis of the UK context was built on information gathered through meetings with seven labour market and law enforcement agencies, as well as parliamentary questions and Freedom of Information requests submitted by Focus on Labour Exploitation (FLEX).

MAIN FINDINGS

During the last decade, the UK has implemented a number of strategies aimed at addressing abuse and exploitation in its labour market, such as enacting the Modern Slavery Act 2015 to deal with criminal cases of exploitation and establishing the role of Director of Labour Market Enforcement (DLME) to coordinate responses along the continuum of exploitation. However, these responses have been undermined by the expansion of immigration deter-

¹ LEAG/FLEX, [Lost in Transition: Brexit and Labour Exploitation](#), August 2017.

² LEAG recognises that, in some cases, a person can be undocumented even if they were born in the UK and therefore does not fall under the ‘migrant’ category, however, this report focuses on the experiences of those who have migrated to the UK.

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The offence of ‘illegal working’ pushes workers with insecure immigration status into precarious jobs in the informal economy where they are less protected against abusive employment practices.”

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National and international evidence shows that when labour market and law enforcement agencies embrace immigration enforcement tasks, even if indirectly, they become less effective.”

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Workers are enduring long periods of abuse and exploitation for fear that their personal information will be passed onto immigration authorities.”

rence policies that have made statutory and non-statutory stakeholders responsible for reporting migrants with insecure immigration status to the Home Office.³ These policies also criminalised the act of working without required documentation. Undocumented workers are now liable for custodial sentences, fines, and can have their earnings and savings seized by the UK government “as the proceeds of crime”.⁴

In practice, the offence of ‘illegal working’ pushes workers with insecure immigration status into precarious jobs in the informal economy where they are less protected against abusive employment practices. It also strengthens one of the main tools exploitative employers use to coerce and control migrants in abusive situations: the threat of reporting to the authorities. Abusive employers are able to capitalise on this by withholding wages, underpaying, assigning excessively long hours and refusing to guarantee safe working conditions as they know they are unlikely to be held accountable for these violations.

Another main feature of the ‘hostile environment’ is that the Home Office seeks help from statutory agencies to enforce immigration policy by asking them to report cases of potential ‘illegal working’ and, in some cases, to conduct simultaneous operations with Immigration Enforcement. These operations seek to identify workers experiencing abuse and exploitation and to identify people in breach of the offence of ‘illegal working’.

National and international evidence shows that when labour market and law enforcement agencies embrace immigration enforcement tasks, even if indirectly, they become less effective in delivering their primary functions. Indeed, this report provides a number of examples of situations in which labour inspectors and police officers were unable to support workers experiencing exploitation and identify their exploiters, due to these agencies’ perceived, and actual, close relationship with Immigration Enforcement.

Prioritisation of immigration offences is leading victims of exploitation to be arrested, detained and even removed from the UK without access to support, causing re-traumatisation, worsening of physical and mental health conditions, and creating mistrust in the systems that are supposed to safeguard them. Focus on immigration is also hampering the UK’s response to labour exploitation. This report shows that workers are enduring long periods of abuse and exploitation for fear that their personal information will be passed onto immigration authorities.

REPORTING INFORMATION ABOUT MIGRANT WORKERS TO IMMIGRATION ENFORCEMENT

Findings suggest that no labour market enforcement agency has a legal duty to report workers with insecure status to the Home Office. However, legal gateways that allow for this information sharing exist and are being used. The police do not have a duty to report undocumented victims of crime to the Home Office.⁵ However, if someone is not a victim of crime, it is unclear whether police officers have a duty to act on their immigration status.

None of the agencies have a duty to check migrants’ immigration status, yet they might become aware of this information during the course of their

³ Franck Düvell, [Does Immigration Enforcement Matter \(DIEM\)? Irregular immigrations and control policies in the UK](#), 2016; Joe Watts, [Amber Rudd admits deportation targets are used by Home Office after denying it](#), The Independent, 26 April 2018.

⁴ Home Office, [Immigration Act 2016 Factsheet – Illegal Working \(Sections 34-38\)](#), July 2016.

⁵ National Police Chiefs’ Council, [Information Exchange regarding Victims of Crime with No Leave to Remain](#), 03 October 2018.

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Despite variations in frequency and regularity, all agencies have reported migrant workers to Immigration Enforcement at least once since 2016.”

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Insufficient funds for labour inspectorates to carry out their work coupled with migrants’ fear of reporting have allowed abusive employers to underpay and mistreat their workers, as profits generated through non-compliance are higher than the risk of being caught.”

activities. LEAG only found evidence of the Metropolitan Police actively seeking to identify undocumented migrants during its regular activities.

Despite variations in frequency and regularity, all agencies have reported migrant workers to Immigration Enforcement at least once since 2016.⁶ Between 2016 and 2019, the Gangmasters and Labour Abuse Authority (GLAA) shared 89 reports for immigration enforcement purposes with the Home Office, the Health and Safety Executive (HSE) and HMRC National Minimum Wage (HMRC NMW) team reported information at 12 separate times each, while Employment Agency Standards Inspectorate (EAS) provided information only once.⁷ The EAS has not reported information on potential ‘illegal working’ to the Home Office since 2018.

Only the HSE has not conducted any simultaneous operations with Immigration Enforcement during this period.⁸ HMRC NMW carried out the highest number of operations with Immigration Enforcement, a total of 446 simultaneous operations, averaging 26% of all their joint inspections.⁹

The Metropolitan Police (Met) makes use of the Immigration Enforcement National Command and Control Unit, a 24/7 point of contact for UK police forces to enquire about individuals’ immigration status, which can be used to support victims’ NRM referral or gather information on their exploiter. While the Met does not use this channel to report migrants, the Home Office confirmed that information gathered during these calls is used for immigration enforcement action.¹⁰

All agencies described referring vulnerable workers and potential victims of exploitation to the GLAA and/or police for specialist support. However, since both agencies report information about potential ‘illegal working’ to the Home Office, migrants’ may become vulnerable to arrest, detention and removal following these referrals.

OBSTACLES AND OPPORTUNITIES TO PROTECT MIGRANT WORKERS FROM EXPLOITATION

Insufficient funds for labour inspectorates to carry out their work coupled with migrants’ fear of reporting have allowed abusive employers to underpay and mistreat their workers, as profits generated through non-compliance are higher than the risk of being caught. This cycle of impunity particularly affects workers in low-income sectors who feel pressured to accept worse pay and conditions. It also places a burden on fair employers who are unable to compete with businesses that are undercutting the system.

Following the end of the Brexit transition period, the number of workers with insecure immigration status is expected to rise, as visa restrictions and conditions to employment in the UK will become applicable to a large portion of the country’s migrant population. In addition, the lack of a major low-paid visa route in the new immigration system, as announced in February 2020,¹¹ may lead to a rise in undocumented work. It is essential that the

⁶ Information acquired through Freedom of Information requests to EAS 2019/20380; GLAA 19-20 27; HSE 201910343; HMRC NMW 2019 02181.

⁷ Please note, data is not directly comparable as agencies’ data collection format and periods differ slightly. However, this data is still useful to understand the regularity of reporting for immigration enforcement purposes between each agency with the Home Office.

⁸ Information acquired through Freedom of Information request to HSE 201910343.

⁹ Information acquired through Freedom of Information request to HMRC NMW 2019 02181.

¹⁰ UK Parliament, [UK Border Agency: Written Question – 7744](#), 04 November 2019.

¹¹ Home Office, [Home Secretary announces new UK points-based immigration system](#), 18 February 2020.

UK responds to this new terrain by ensuring its policies towards migrants and labour rights do not create new, or exacerbate existent, risks.

The following recommendations aim at supporting UK labour market and law enforcement agencies to introduce, and strengthen, secure reporting systems that increase their ability to deliver their primary duties, build trust with migrant communities, and improve the UK's responses to labour exploitation.

RECOMMENDATIONS

TO THE UK GOVERNMENT

- Increase resources to labour market enforcement agencies to meet the International Labour Organisation's target of one inspection per 10,000 workers, at a minimum.¹²
- Provide labour market enforcement agencies with powers to investigate and award outstanding wages and compensation.
- Ensure that mechanisms are in place for all workers, including those without permit to work, to recover wages for unpaid worked hours.
- Repeal section 24B of the Immigration Act 1971 which criminalises the act of working without required documentation in the UK, as it is proven to increase risk of exploitation.
- Transpose paragraph 17 from the preamble of the European Union Directive 2009/52/EC into national legislation, providing a presumption of an employment relationship of at least three months' duration in the case of an employment dispute between an employer and an undocumented worker, with the burden of proof being on the employer.¹³
- End the use of the information provided by the police through the Immigration Enforcement National Command and Control Unit to conduct immigration enforcement action.

TO THE DIRECTOR OF LABOUR MARKET ENFORCEMENT

The following recommendations do not require changes to current immigration policy to be adopted.

- Assess labour market enforcement agencies' engagement with migrant workers and their levels of trust in these agencies, as well as the impact of the lack of secure reporting systems in their ability to fulfil their primary duties.
- Issue guidance to the agencies under the Director's remit requiring them not to conduct simultaneous or coordinated operations with, or actively report migrant workers to, Immigration Enforcement, as it negatively affects their labour market enforcement responsibilities.
- Upon the establishment of the Single Enforcement Body for employment rights, a Memorandum of Understanding should be instituted with the Home Office clearly stating that:

¹² International Labour Organisation, [Strategies and practice for labour inspection](#), November 2006.

¹³ European Union, [Directive 2009/52/EC](#)

- immigration enforcement priorities must not interfere with labour rights enforcement in the workplace;
 - labour market enforcement agencies should not conduct simultaneous or coordinated operations with immigration authorities, as labour rights should be at the centre of all inspections conducted by labour inspectorates;
 - labour market enforcement agencies should not report immigration offences to the Home Office, as this is shown to interfere with their primary duties and efficiency;
 - labour market enforcement agencies should not establish bulk data-sharing agreements or make their databases available to the Home Office for immigration enforcement purposes.
- In the event that a shadow body is established for the transition period between the current plural inspectorate system and the institution of the Single Enforcement Body, apply guidance and practices that embed secure reporting mechanisms at an early stage.

TO EACH LABOUR MARKET ENFORCEMENT AGENCY

The following recommendations do not require changes to current immigration policy to be adopted.

- Develop guidance on supporting migrant workers, clearly stating that:
 - inspectors will not actively enquire about workers' immigration status during visits and investigations, for immigration enforcement purposes;
 - inspectors will not seek out matters of concern to immigration enforcement bodies;
 - inspectors will not report information for immigration enforcement purposes;
 - inspectors will not conduct simultaneous or coordinated operations with immigration authorities;
 - inspectorates will appoint a Single Point of Contact (SPOC) to oversee compliance with this guidance and ensure that migrants who have experienced abuse and exploitation are referred to the appropriate supporting agency.
- Work with migrant community organisations to inform migrant workers about their rights and ensure that migrants know they are secure to report labour abuse and exploitation.

TO THE METROPOLITAN POLICE

The following recommendations do not require changes to current immigration policy to be adopted.

- Develop clear rules and provide guidance on supporting migrants applicable to all Basic Command Units under the Metropolitan Police Service. The guidance should clearly state that:
 - police will not actively enquire about immigration status or carry out immigration checks for immigration enforcement purposes, during visits and investigations;
 - police will not seek out matters of concern to immigration enforcement bodies;
 - police will not report information for immigration enforcement purposes;
 - police will not conduct simultaneous or coordinated operations with immigration authorities;
 - appoint a Single Point of Contact (SPOC) in every Basic Command Unit to oversee compliance with this guidance.
- Work with migrant organisations to build trust between migrant communities and the Metropolitan Police, and ensure migrants are aware that they can securely report exploitation to the police.

INTRODUCTION

This report provides an overview of the ways in which labour inspectorates and police provide information about workers with insecure immigration status to the Home Office Immigration Enforcement team. It addresses an important gap in the existing body of evidence regarding the existence, or lack thereof, of secure reporting systems for migrants to seek support when experiencing violations to their employment rights in the UK. It establishes a framework to analyse how migrants' information becomes available to immigration authorities following their interaction with other statutory agencies. This framework assists in the identification of the types of mechanisms that should be put in place to ensure migrants are not made vulnerable to immigration repercussions if they seek support of labour inspectors and police.

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Migrant workers with insecure status often feel unable to report cases of abuse and exploitation for fear that government authorities will prioritise their immigration status over the workplace violations they have experienced.”

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When workers are unable to seek help and enforce their employment rights, abuse can compound and worsen over time, increasing their risk of exploitation.”

Additionally, this research contributes to the development of a better understanding of the experiences of migrant workers with insecure status who are facing abuse and exploitation at work. It provides actionable recommendations for statutory agencies to build trust with migrant workers and to improve identification of potential victims of labour exploitation by introducing secure reporting systems.

‘Insecure immigration status’ refers to migrants, both documented and undocumented, who are currently required to prove they have a ‘right to work’ in the UK and who experience barriers accessing support or enforcing their rights. This group covers people who are lawfully in the UK but are banned from working as a result of visa restrictions (e.g. tourist visas), have limitations to their ‘right to work’ (e.g. students working more than 20 hours per week), subject to other conditions that restrict their access to employment in the UK (e.g. asylum-seekers, some potential victims of modern slavery offences who are currently in the National Referral Mechanism), European nationals and people on work-visas who face barriers reporting issues at work due to a limited understanding of their rights and entitlements in the UK.¹⁴ It also includes those with undocumented status, such as people who have irregularly entered or stayed in the country, whose leave to enter or remain has expired or has been denied (e.g. negative asylum claims).¹⁵

In supporting people to address exploitation at work, Labour Exploitation Advisory Group (LEAG) members have found that migrant workers with insecure status often feel unable to report cases of abuse and exploitation for fear that government authorities will prioritise their immigration status over the workplace violations they have experienced, or that as a result of seeking help they will face serious personal consequences. Fear that reporting will put them at risk of arrest, detention and removal from the UK leads migrants to endure long periods of abuse so they can continue to provide for themselves and their families. Abusive employers are able to capitalise on this fear by withholding wages or underpaying, assigning excessively long hours and refusing to guarantee safe working conditions as they know they are unlikely to be held accountable for these violations. If workers try to negotiate better pay and conditions, employers are able to use the threat of reporting to police or immigration authorities to disempower them or unfairly dismiss them without fear of repercussions. When workers are unable to seek help and enforce their employment rights, abuse can compound and worsen over time, increasing the risk of exploitation.

¹⁴ LEAG/FLEX, [Lost in Transition: Brexit and Labour Exploitation](#), August 2017.

¹⁵ LEAG recognises that, in some cases, a person can be undocumented even if they were born in the UK and therefore does not fall under the ‘migrant’ category, however, this report focuses on the experiences of those who have migrated to the UK.

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This cycle of impunity makes everyone worse off by putting fair employers at a disadvantage, directly or indirectly pressuring workers in low-income sectors to accept worse pay and conditions, and obstructing government's efforts to prevent modern slavery offences and prosecute exploitative employers.”

With workers too afraid to report, government authorities are unable to gather valuable intelligence to identify abusive and exploitative employers. This cycle of impunity makes everyone worse off by putting fair employers at a disadvantage, directly or indirectly pressuring workers in low-income sectors to accept worse pay and conditions, and obstructing government's efforts to prevent modern slavery offences and prosecute exploitative employers.

Recognising the importance of secure reporting systems for a healthy labour market, this report explores how information travels between labour market and law enforcement agencies to Immigration Enforcement to understand under which circumstances migrants with insecure immigration status in the UK are able to report problems at work without risking negative immigration consequences. It covers the four main labour market enforcement bodies, namely Her Majesty's Revenue and Customs National Minimum Wage team, the Employment Agency Standards Inspectorate, the Gangmasters and Labour Abuse Authority and the Health and Safety Executive. Since policy and practice vary significantly across each police force in the UK, this report focuses on the Metropolitan Police, as most migrants supported by LEAG members work in the Greater London area.

Findings draw on desk-based research, interviews with migrant workers in the UK, in addition to stakeholders and civil servants from six countries. LEAG has held meetings with seven labour market and law enforcement agencies between April 2019 and January 2020 to better understand their engagement with Immigration Enforcement. Gaps in information were addressed through parliamentary questions and Freedom of Information requests submitted by FLEX. Case studies are provided to illustrate our findings and all workers' names have been changed to ensure anonymity.

Finally, while this report provides a valuable insight into the way information is provided by each labour market enforcement agency and the Metropolitan Police to the Home Office Immigration Enforcement team, it may not cover all the ways information is provided by these agencies, as findings are dependent on the information made available by each agency.

This report is divided into three sections:

Section 1 explores the UK government's policies and practices that affect migrants' willingness to report workplace violations to relevant authorities, and their effect on labour market and law enforcement efforts to identify and prevent labour exploitation.

Section 2 proposes a framework to characterise the ways information travels from statutory agencies to Immigration Enforcement. It then uses this framework to summarise each agency's practices in reporting migrant workers with insecure status to Immigration Enforcement.

Section 3 explores the information flows from each labour inspectorate and the police to the Home Office's Immigration Enforcement team in more detail, analysing its impact on each agency's ability to deliver their primary functions and how it affects migrant workers experiencing abuse and exploitation in the UK. It presents international strategies to address this issue and increase collaboration between migrants and enforcement agencies. Finally, this section explores the challenges and opportunities within the UK's current political scenario, including end of Brexit transition period and the plans for a new Single Enforcement Body for employment rights in the UK.



RESEARCH FINDINGS

1. BARRIERS TO REPORTING WORKPLACE ABUSE AND EXPLOITATION

*"I see modern slavery as the extreme end of a continuum of non-compliant behaviour. I am keen to ensure that the links between modern slavery and other forms of labour market exploitation (both in terms of the individuals involved and the conditions that enable it to happen) are recognised so that the whole spectrum of behaviour can be tackled in a coherent and effective manner."*¹⁶

Sir David Metcalf CBE, former UK Director of Labour Market Enforcement

“

Labour exploitation happens as part of a continuum of experiences that range from decent work through minor and major labour law violations to extreme exploitation.”

The statement above, included in the former Director’s 2018/19 Annual Strategy, rests on an understanding that labour exploitation happens as part of a continuum of experiences that range from decent work through minor and major labour law violations to extreme exploitation.

LEAG and others have shown a causal relationship running along the continuum between labour abuses and severe exploitation,¹⁷ meaning that when labour rights are not enforced, abuses risk escalating into criminal cases

¹⁶ Director of Labour Market Enforcement, [United Kingdom Labour Market Enforcement Strategy 2018/19](#), May 2018, p.4.

¹⁷ FLEX, [Risky Business: tackling exploitation in the UK labour market](#), 2017; LEAG/FLEX, [Labour compliance to exploitation and the abuses in between](#), August 2016; Bridget Anderson and Julia O’Connell Davidson, [Is Trafficking in Human Beings Demand Driven? A multi-Country Pilot Study](#), 2003; International Organisation for Migration; Klara Skrivankova, [Between decent work and forced labour: examining the continuum of exploitation](#), 2010; Kendra Strauss and Siobhán McGrath, Temporary migration, precarious employment and unfree labour relations: Exploring the ‘continuum of exploitation’ in Canada’s Temporary Foreign Worker Program, 2017, *Geoforum*, 78, p.199-208; Genevieve LeBaron *et al.*, [Confronting root causes: forced labour in global supply chains](#), 2018.

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Labour exploitation prevention is directly linked to workers' ability to enforce their employment rights and government agencies' ability to protect them.”

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Those who are most at risk of exploitation, are also the least likely to confront their employers or report workplace violations to relevant government authorities.”

of exploitation, such as the offences covered in the UK Modern Slavery Act 2015.¹⁸ Consequently, labour exploitation prevention is directly linked to workers' ability to enforce their employment rights and government agencies' ability to protect them.

In the UK, a number of government agencies have different responsibilities, power and remit to ensure that workers are treated fairly, protected from abuse and exploitation and given access to justice if they have their rights violated.

Labour inspectorates, also referred to as labour market enforcement agencies, are responsible for protecting workers and enforcing working conditions, such as those related to hours, wages, health and welfare.¹⁹ In the UK, labour inspectors are tasked with “protecting the most vulnerable workers who are unable to look after themselves”, while most workers are expected to seek redress through individual claims to the employment tribunal system.²⁰ At the extreme end of the continuum where exploitation is present, agencies with law enforcement power are responsible for addressing cases that are covered by criminal law.²¹

All these agencies are crucial in identifying and holding abusive and exploitative employers accountable, which promotes a fairer and level playing field for compliant businesses.

Despite the vital role these agencies play in ensuring a healthy labour market, not all workers are able to benefit from their protection. In fact, several studies have shown that those who are most at risk of exploitation, are also the least likely to confront their employers or report workplace violations to relevant government authorities.²²

This section examines the policies that create barriers for migrant workers to report abuses and exploitation to labour inspectors and police officers in the UK.

¹⁸ Modern Slavery Act 2015, [PART 1: Offences](#).

¹⁹ International Labour Organisation, [Convention 81, Labour Inspector Convention](#), 1947; in some cases labour inspectorates may also be tasked with enforcing criminal law. This case is explored in more detail in Section 3.2.

²⁰ Department for Business Innovation & Skills, [Flexible, effective, fair: promoting economic growth through a strong and efficient labour market](#), October 2011, p.7.

²¹ College of Policing, [Code of Ethics: a code of practice for the principles and standards of professional behavior for the policing profession of England and Wales](#), July 2014, p.2.

²² LEAG/FLEX, [Labour compliance to exploitation and the abuses in between](#), August 2016; Joseph Carens, [The Rights of Irregular Migrants](#), 2008; Carmen Gutierrez and David Kirk, [Silence Speaks: the relationship between immigration and the underreporting of crime](#), 2015; François Crépeau and Bethany Hastie, [The Case for 'Fire-wall' Protections for Irregular Migrants: Safeguarding Fundamental Rights](#), 2016; European Union Agency for Fundamental Rights, [Protecting Migrant workers from exploitation in the EU: boosting workplace inspections](#), 2018; Resolution Foundation, [From rights to reality: enforcing labour market laws in the UK](#), September 2019.

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The Immigration Act 2016 made it a criminal offence to work in the UK without required documentation and allowing government to seize wages from migrants with insecure status “as the proceeds of crime.”

1.1 IMMIGRATION DETERRENCE POLICIES IN THE UK

For years, UK immigration policy has attempted to reduce the prevalence of undocumented migration through the adoption of deterrence mechanisms. These are based on the idea that “the state should do nothing to facilitate the presence of irregular migrants within its territory or to reward those who have violated immigration laws, and indeed that it should actively make life more difficult for irregular migrants where it can do so in order to encourage those present to go home and to discourage new ones from coming”.²³

Building on policies established by her predecessors, then Home Secretary Theresa May coined the term ‘hostile environment’ to describe the UK’s implementation of these mechanisms. Among the many measures introduced by this aim, UK immigration deterrence policies established requirements for landlords, employers, banks, doctors, local authorities and other government agencies to refuse services to people who cannot provide evidence of their regular immigration status in the UK, while also requiring specific stakeholders to provide data and to report migrants with insecure status to Immigration Enforcement.²⁴

In the realm of employment, much like other areas, implementation of the ‘hostile environment’ was gradual and built on previous policies. Restrictions to the employment of migrants have been in place since the 1996 Asylum and Immigration Act which introduced civil penalties for employers if they hired people who did not hold the required authorisation to work in the UK, making them responsible for checking whether prospective workers had regular status. The 2006 Asylum, Immigration and Nationality Act strengthened sanctions for employers who failed to comply with this requirement. Civil penalties were applied to employers who ‘carelessly’ hired people without required documentation and criminal sanctions, of maximum two years in prison, for those who ‘knowingly’ did so.²⁵ Almost a decade later, the Immigration Act 2014 doubled the civil penalty to £20,000 per migrant worker with insecure status and two years later the UK increased custodial sentences for employers to a maximum of five years.²⁶

The Immigration Act 2016 went even further by making it a criminal offence to work in the UK without required documentation and allowing government to seize wages from migrants with insecure status “as the proceeds of crime”.²⁷ Those found working without required documents are also liable for a maximum custodial sentence of six months and/or a fine of the statutory maximum, which is unlimited in both England and Wales.

²³ François Crépeau and Bethany Hastie, [The Case for ‘Firewall’ Protections for Irregular Migrants: Safeguarding Fundamental Rights](#), 2016, p.170.

²⁴ Franck Düvell, [Does Immigration Enforcement Matter \(DIEM\)? Irregular immigrations and control policies in the UK](#), 2016; Joe Watts, [Amber Rudd admits deportation targets are used by Home Office after denying it](#), The Independent, 26 April 2018.

²⁵ Peter Dwyer *et al.*, [Forced labour and UK immigration policy: status matters?](#), 2011; Lea Sitkin, Coordinating internal immigration control in the UK, 2014, *International Journal of Migration and Border Studies*, 1(1), p.39-56.

²⁶ Melanie Gower, Doug Pyper, Wendy Wilson, [Immigration Bill \[Bill 74 of 2015-16\]](#), House of Commons Library, 06 October 2015; Home Office, [Immigration Act 2016 Factsheet – Illegal Working \(Sections 34-38\)](#), July 2016.

²⁷ Home Office, [Immigration Act 2016 Factsheet – Illegal Working \(Sections 34-38\)](#), July 2016.

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This new offence of ‘illegal working’ has pushed migrants with insecure status further underground because now, if they come forward about workplace problems, they not only risk being arrested, detained and removed from the UK but also having their income and savings seized, putting them and their families, in the UK and abroad, at risk of destitution.”

“

Even when the threat does not come directly from the employer, migrants often feel unable to report exploitative working conditions for fear that their personal information will be passed onto immigration authorities.”

At the time, former Prime Minister David Cameron explained:

“[We will deal] with those who shouldn’t be here by rooting out illegal immigrants and boosting deportations. [...] That starts with making Britain a less attractive place to come and work illegally. [...] We’ll take a radical step – we’ll make illegal working a criminal offence in its own right. That means wages paid to illegal migrants will be seized as proceeds of crime and more businesses will be told when their workers’ visas expire, so if you’re involved in illegal working – employer or employee – you’re breaking the law.”²⁸

David Cameron, former UK Prime Minister

As demonstrated in this report, this new offence of ‘illegal working’ has pushed migrants with insecure status further underground because now, if they come forward about workplace problems, they not only risk being arrested, detained and removed from the UK but also having their income and savings seized, putting them and their families, in the UK and abroad, at risk of destitution. Although targeted at undocumented migrants, these ‘hostile environment’ policies have been shown to negatively affect people with all immigration statuses and British ethnic minority groups who experience increased discrimination, while generating mistrust in statutory agencies.²⁹

1.2 THE IMPACT OF IMMIGRATION DETERRENCE POLICIES ON MIGRANT WORKERS

Significant national and international evidence has shown the use of insecure immigration status to coerce workers to endure exploitative working conditions, such as abuse of migrants with undocumented status or on visas that tie them to specific employers, restrict their ability to find alternative jobs, or limit their work entitlements.³⁰ Employers’ control over migrants is strengthened when workers see no alternatives to their current situation or believe that raising a complaint will lead to them being penalised. By criminalising undocumented work, the UK strengthened one of the main tools exploitative employers use to keep migrants under precarious pay and working conditions: the threat of reporting them to the authorities.

Even when the threat does not come directly from the employer, migrants often feel unable to report exploitative working conditions for fear that their personal information will be passed onto immigration authorities, putting them at risk of being stripped of their source of income, detained and separated from their families.

In parallel with the criminalisation of undocumented work, the UK adopted a number of measures that aimed at “ensuring that effective measures are in place to identify and tackle non-compliance [...] across the entire spectrum of exploitation”³¹ by giving “labour market enforcement bodies new tools to tackle rogue businesses prepared to exploit their workers”.³²

²⁸ David Cameron, [Prime Minister speech on immigration](#), 21 May 2015.

²⁹ Joint Council for the Welfare of Immigrants, [Right to Rent declared unlawful: What next?](#), 01 March 2019; Kevin Rawlinson and Amelia Gentleman, [Home Office Windrush report damns hostile environment policy](#), The Guardian, 27 June 2019.

³⁰ Migrant Forum in Asia, [Reform of the Kafala \(Sponsorship\) System](#); European Union Agency for Fundamental Rights, [Protecting migrant workers from exploitation in the EU: boosting workplace inspections](#), 2018; Centre for Social Justice, [It happens here: Equipping the United Kingdom to fight modern slavery](#), March 2013, p.83; François Crépeau and Bethany Hastie, [The Case for ‘Firewall’ Protections for Irregular Migrants: Safe-guarding Fundamental Rights](#), 2015.

³¹ Department for Business Innovation & Skills and Home Office, [Tackling Exploitation in the Labour Market: Government Response](#), January 2016, p.8.

³² Home Office, [Immigration Act 2016 Factsheet – Labour market enforcement \(Sections 1-33\)](#), July 2016.

The Immigration Act 2016 created the role of the Director of Labour Market Enforcement who would go on to set strategic priorities for three labour inspectorates and target efforts to increase compliance with employment law. This Act also expanded the remit of, and gave new powers to, the Gangmasters Licensing Authority, which was renamed Gangmasters and Labour Abuse Authority (GLAA). James Brokenshire, then Immigration Minister, explained these policies by stating that:

“Exploiting or coercing people into work is not acceptable. It is not right that unscrupulous employers can force people to work or live in very poor conditions, withhold wages or mislead them into coming to the UK for work. Some employers seem to think that by employing workers who are less likely to complain, including vulnerable migrants, they can undercut the local labour market and mistreat them with impunity. The unscrupulous need to know that breaking the law is a high-risk activity and the full force of the state will be applied to them.”³³

James Brokenshire, former UK Immigration Minister

“

By criminalising undocumented work, the UK built a conflicting system that increased vulnerable workers' risk of exploitation while making it more difficult for labour market enforcement agencies to prevent it.”

The former Minister rightly points out that abusive employers are able to operate with relative impunity with regard to abusing migrant workers who are least likely to complain about precarious treatment and work conditions, thus making those workers vulnerable. However, his statement overlooks the detrimental impact immigration deterrence policies have on workers' ability and willingness to report abuse in the workplace. By criminalising undocumented work, the UK built a conflicting system that increased vulnerable workers' risk of exploitation while making it more difficult for labour market enforcement agencies to prevent it.

Research undertaken by the European Union Agency for Fundamental Rights (FRA) in eight European countries, including the UK, uncovered that migrant workers rank their insecure status as the primary reason they were made vulnerable to exploitation while in Europe as well as the main reason this group chose not to report exploitation, demonstrating that migrants feel unsupported to leave abusive workplaces.³⁴

This concern is shared by workers supported by LEAG members who have described feeling unable to raise complaints as a result of their insecure immigration status. Mauricio, a Colombian cleaning supervisor and former undocumented migrant interviewed by Focus on Labour Exploitation (FLEX) described his experience of working without required documentation in the UK:

“Illegal people are very afraid. They are afraid of losing their jobs. [...] You're also hiding, you're always scared. When you see the police you think, 'oh, they'll come for me'. You get paranoid.”

He continued:

“If you have a visa to work, it's a different situation. With a visa you already have something to back you up. With a visa you can go anywhere. It's, well it's not the best thing, because in one year you probably don't know the laws in England, you're probably still going to be experiencing abuse, but you have some back up. But if you're completely illegal, you don't have backup. You have nothing.”

³³ Ibid.

³⁴ European Union Agency for Fundamental Rights, [Protecting migrant workers from exploitation in the EU: workers' perspectives](#), 2019, p.74.

“

It is better to survive abuse at work than having the Home Office knocking on your door.”

“

Fear that reporting workplace issues will lead to negative immigration consequences also affects documented migrants who are unaware of their status or the rights derived from it.”

Luisa, a Peruvian undocumented cleaner supported by LEAG member Latin American Women's Rights Service (LAWRS) explained her unwillingness to report workplace violations:

“When you are facing such precarity, you are made to feel grateful for the scraps. You keep your mouth shut, turn a blind eye, you lie to yourself. Because it is better to survive abuse at work than having the Home Office knocking on your door.”

Carmen, another LAWRS service user from Ecuador working in hospitality, shared her views:

“When you are a migrant woman you are exposed to particular vulnerabilities. What might seem mundane to a British person might be very anxiety-inducing and dangerous [for us], like renting a room, opening a bank account, having to rent a National Insurance number if you are undocumented. You can't even report a crime safely, which is your right, for fear that you might be discriminated against. So people abuse us and make us vulnerable.”

Undocumented workers supported by LEAG members describe feeling caught between an abusive employer on one side, and the Home Office on the other, having no pathways to report workplace violations without the risk of losing the income upon which their families depend, being detained or removed from the country, as described by Angelica, a Venezuelan undocumented worker supported by LAWRS:

“When you are undocumented you are forced to choose between many impossible choices. You have to choose between letting your employer steal away half your wages or keeping your children fed. You have to choose to either stay with a violent man or choose to sleep on the street. You have to choose between being robbed because they know you are undocumented or being raided by the immigration officers. Your life becomes a series of impossible choices. You just have to choose the one that makes you sleep a little bit better at night.”

The same concern was shared by migrant workers interviewed by the FRA. They regarded exploitation as unavoidable for undocumented workers, describing that they would be exploited one way or another, either by an abusive employer or by the immigration system.³⁵

This fear that reporting workplace issues will lead to negative immigration consequences also affects documented migrants who are unaware of their status or the rights derived from it.

Kalayaan explained that many migrant domestic workers who are victims of abuse and exploitation in the UK are unaware of their immigration status and rights entitlements. Concern that reporting to the authorities could lead to negative consequences stops many of them from seeking support, even when they are compliant with ‘right to work’ requirements, leading them to endure long periods of exploitation.

European workers also reported feeling concerned about being able to securely report workplace abuse and exploitation. Shortly after the 2016 United Kingdom European Union membership Referendum, which decided the UK would leave the European Union, a LEAG member supported Natalia, a European woman who had her workload intensified in a way that required her to work extra hours without additional pay. Natalia felt unable to complain as her employer stated that she “should behave now” because

³⁵ *Ibid*, p.67.

she is European and since the UK had decided to leave the European Union she was made to believe her ability to enforce her rights was at risk.³⁶ Following the this referendum, LEAG members have identified a sharp increase in demand for advice on employment rights for Europeans, as uncertainty around their current and future entitlements have made them unsure about whether it was still safe to report cases of abuse and exploitation.³⁷

With freedom of movement for European nationals set to end in December 2020, many European workers will become subject to visa restrictions and conditions, making it imperative that migrant workers have access to secure systems to report workplace problems in order to reduce risk of exploitation.

Similar issues affect the police's relationship with migrant communities. In its 2019 report, the FRA conducted a survey with 237 migrant workers that found that 57% did not report their case of severe labour exploitation to the police for fear of losing their jobs, being arrested or removed from the country, or getting in trouble for reporting.³⁸ Migrant workers in the UK described mistrusting the police due to a belief that their immigration status would take priority over their experience of severe exploitation.

Despite community engagement and trust being considered "central to the British policing model",³⁹ migrant communities in the UK describe feeling unsafe to disclose the crimes committed against them. This affects not only those experiencing labour exploitation, but other violent crimes. This is well evidenced in the 2019 report 'Right to be believed: migrant women facing violence against women and girls (VAWG) in the 'hostile environment' in London' by King's College London, LAWRS and the Step Up Migrant Women UK campaign, a coalition of over 40 organisations supporting Black and Minority Ethnic women in the UK.⁴⁰ The research found that 27% of women who reported to the police had their residence status questioned and 18% were arrested for immigration issues as a result of reporting. These findings explain why 62% of women experiencing VAWG interviewed during the research felt like they could not get support due to their immigration status, while 54% feared the police would not believe them as a result of their insecure status.

Mistrust in police is present in groups other than migrants. A study conducted by the University of Nottingham concluded that the British public are reluctant to report potential cases of modern slavery for fear that it could lead to negative immigration consequences for potential victims, due to their perceived close relationship with Immigration Enforcement.⁴¹

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Migrant workers in the UK described mistrusting the police due to a belief that their immigration status would take priority over their experience of severe exploitation.”

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The British public are reluctant to report potential cases of modern slavery for fear that it could lead to negative immigration consequences for potential victims.”

36 LEAG/FLEX, [Lost in Transition: Brexit and Labour Exploitation](#), August 2017.

37 *Ibid*, p.4.

38 European Union Agency for Fundamental Rights, [Protecting migrant workers from exploitation in the EU: workers' perspectives](#), 2019, p.89.

39 National Police Chiefs' Council, [Public Perceptions on Policing in England and Wales 2018](#), 11 January 2019.

40 Cathy McIlwaine *et al.*, [The right to be believed: migrant women facing Violence Against Women \(VAWG\) in the 'hostile immigration environment' in London](#), May 2019.

41 Jen Birks and Alison Gardner, [Introducing the Slave Next Door](#), 2019.

1.3 SUPPORTING IMMIGRATION AUTHORITIES MAKES LABOUR INSPECTORS AND POLICE LESS EFFICIENT

Another feature of these immigration deterrence policies is that they impose responsibility for immigration enforcement onto other public agencies:

“Besides the Home Office, other bodies in the public and private sectors have a role to play in making it difficult for illegal migrants to remain in the country.”⁴²

Theresa May, former UK Home Secretary

“I will hold every part of government to account on our relentless drive to control immigration.”⁴³

David Cameron, former UK Prime Minister

“

The requirement for public agencies to support immigration enforcement activities is seen to create conflicting priorities and to hinder their ability to carry out their primary duties to the best of their abilities.”

The requirement for public agencies to support immigration enforcement activities is seen to create conflicting priorities and to hinder their ability to carry out their primary duties to the best of their abilities. Problems with regard to the National Health Service (NHS) have been widely reported.⁴⁴ After the NHS was made responsible for referring undocumented migrants to the Home Office, a study by the King’s College London Centre for Global Health found that one third of migrants with undocumented status who required medical treatment were deterred from seeking timely assistance for fear that their information would be given to immigration authorities.⁴⁵ Many doctors have spoken out about how this new responsibility harmed public health and interfered with their primary duty to treat individual patients.⁴⁶ It also tarnishes trust between doctors and patients, which is seen as vital for doctors to do their jobs well.⁴⁷

In 2018, the Memorandum of Understanding between the NHS and the Home Office was amended to limit the reporting of migrant patients with insecure status to Immigration Enforcement. Under the current agreement, the NHS will only report information about undocumented patients in cases of ‘serious criminality’.⁴⁸ Some LEAG members report that, despite this agreement, there have been cases of both documented and undocumented migrants being threatened with, or suffering, immigration enforcement action via NHS services within the last year. Nonetheless, where this agreement is applied properly and appropriately, it represents a positive step forward in ensuring that people within the UK can access healthcare when needed.

These added tasks also create barriers to a healthy labour market. In the case of labour inspectors, experts have been alerting them to the unintended consequences of embracing duties that help to enforce immigration and foster workers’ mistrust of inspectors. Academics, practitioners, non-gov-

⁴² Home Office, [Tackling illegal immigration in privately rented accommodation](#), 03 July 2013, p.6.

⁴³ David Cameron, [Prime Minister speech on immigration](#), 21 May 2015.

⁴⁴ The National Health Service (NHS) is the UK’s public healthcare system, whose founding principles are that services should be comprehensive, universal and free at the point of delivery. See Department of Health & Social Care, [The NHS Constitution for England](#), updated 14 October 2015.

⁴⁵ May Bulman, [Pregnant and ill migrants going without medical care as Government intensifies NHS immigration policy](#), The Independent, 23 October 2017.

⁴⁶ Doctors of the World, [Doctors spook May’s “go home” vans in protest to “hostile environment” in the NHS](#), 30 April 2018; Alex Matthews-King, [NHS ‘hostile environment’ and charges limiting care to children of migrants in breach of UN pledges, doctors say](#), The Independent, 15 March 2019; Medact, [Patients Not Passports: challenging healthcare charging in the NHS](#), 2019; Sophie J. Weller *et al.*, [The negative health effects of hostile environment policies on migrants: A cross-sectional service evaluation of humanitarian healthcare provision in the UK](#), 2019; Sophie Weller and Rob Aldridge, [The UK government’s “hostile environment is harming public health](#), 23 July 2019.

⁴⁷ General Medical Council, [The duties of a doctor registered with the General Medical Council](#), n.d.

⁴⁸ Doctors of the World, [The government will halt data sharing with the Home Office expect for serious crime](#), 9 May 2018.

ernmental and supranational organisations, like the International Labour Organisation (ILO) and European Union, have issued recommendations to national labour inspectorates to warn them about the risk of being side-tracked from their primary responsibilities of assisting workers to enforce their labour rights and of identifying business that are not complying with employment law.⁴⁹

According to article 3 of the ILO Convention 81, the ‘Labour Inspection Convention’, which the UK has ratified, labour inspectors are responsible for securing enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in work, such as provisions relating to hours, wages, safety, health and welfare. To ensure these agencies are able to conduct this vital role, the ILO highlights that:

“any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.”⁵⁰

In 2017, the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEARC) clarified that:

“the main objective of the labour inspection system is to protect the rights and interests of all workers, and to improve their working conditions, rather than to enforce immigration law, and therefore any cooperation between the labour inspectorate and immigration authorities should be carried out cautiously.”⁵¹

Despite these recommendations, labour inspectorates in Europe have increasingly been made responsible for helping immigration authorities identify workers with insecure status. A 2019 FRA report on severe exploitation of migrant workers in eight European countries, including the UK, found that migrants with documented and undocumented status rarely report workplace issues to labour inspectors for fear that they would not be believed. One interviewee said: “labour inspectors [are] focused on undocumented migration status rather than workers’ rights”,⁵² while a focus group participant stated that “workers in an irregular situation are visible when doing something wrong, but they do not exist when it comes to securing their rights”.⁵³

The police experience similar barriers. Police are essential in assisting victims of modern slavery offences, such as human trafficking and forced labour, to access justice. They have the knowledge, access and experience to gather intelligence on exploiters, conduct investigations and prevent others from being victimised by dismantling criminal operations. When migrants are unable to securely report their experiences, police may miss out on valuable intelligence that helps them to identify and investigate serious crimes.

⁴⁹ Joseph Carens, [The Rights of Irregular Migrants](#), 2008; European Union Agency for Fundamental Rights, [Fundamental rights of migrants in an irregular situation in the European Union](#), 2011; François Crépeau and Bethany Hastie, [The Case for ‘Firewall’ Protections for Irregular Migrants: Safeguarding Fundamental Rights](#), 2016; International Labour Organisation, [Report IV: Addressing Governance challenges in a changing labour migration landscape](#), International Labour Conference, 106th Session, 2017, p.25; Renato Bignami, [Labour rights or immigration enforcement? The case of labour inspections in Brazil](#), 26 October 2017; Judy Fudge, [Illegal Working, Migrants and Labour Exploitation in the UK](#), 2018, Oxford Journal of Legal Studies, 38(3), p.557-584; Franck Düvell *et al.*, [Does Immigration Enforcement Matter \(DIEM\)? Irregular Immigrants and Control Policies in the UK: Final Report](#), 2018; European Union Agency for Fundamental Rights, [Protecting migrant workers from exploitation in the EU: workers’ perspectives](#), 2019.

⁵⁰ International Labour Organisation, [Convention 81: Labour Inspector Convention](#), 1947.

⁵¹ Emphasis added. International Labour Organisation, [Report IV: Addressing Governance challenges in a changing labour migration landscape](#), International Labour Conference, 106th Session, 2017, p.25.

⁵² European Union Agency for Fundamental Rights, [Protecting migrant workers from exploitation in the EU: workers’ perspectives](#), 2019, p.74.

⁵³ *Ibid.*, p.78.

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Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties.”

International Labour Organisation

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Labour inspectors are focused on undocumented migration status rather than workers’ rights.”

Migrant Worker

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Workers in an irregular situation are visible when doing something wrong, but they do not exist when it comes to securing their rights.”

Migrant Worker

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Trends toward strict law enforcement of immigration law actually undercut public safety by creating cynicism of the police and the legal system.”

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If the police and labour inspectors seek to prevent labour exploitation, they must build trust with all communities, including with undocumented migrants, and guarantee that information about their immigration status will be kept safe in their hands.”

Multiple studies in the United States have found that the public’s cooperation with police increases when local residents, citizens and non-citizens, regular or not, believe that laws are enforced fairly and that contrarily, trends toward strict law enforcement of immigration law may actually undercut public safety by creating cynicism of the police and the legal system.⁵⁴ Following a review of policing best practices in the US, then President Barack Obama concluded:

“Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services. [...] It’s not just a problem for a particular community or a particular demographic. It means that we are not as strong as a country as we can be. And when applied to the criminal justice system, it means we’re not as effective in fighting crime as we could be.”⁵⁵

Barack Obama, former United States President

Police chiefs across the US have flagged their concerns that current proposals to enhance enforcement of immigration laws by local police, adopting a similar system as the UK, “will have the unintended consequence of actually increasing crime and making communities less safe” and that “had undocumented people not stepped forward to report crimes and cooperate with the police, we would have more dangerous offenders committing more crimes, and more serious crimes, against innocent victims.”⁵⁶

The complexity of modern slavery cases means that law enforcement effectiveness often depends on victims’ collaboration in investigations and prosecutions, and yet, LEAG members report most victims with insecure status whom they support are afraid to engage due to immigration concerns. In LEAG’s experience, victims with insecure status only collaborate with the police if they are already in the National Referral Mechanism (NRM) and therefore have already come to the attention of the Home Office. Alternatively, LAWRS mentioned that, in some cases, victims who are not in the NRM will report to the police if they experience extreme abuse, such as sexual assault or rape in the workplace, but only with support from the organisation. LAWRS clarified this is only possible when workers have already decided to leave the UK and returning does not pose a threat to them or their families. In these cases, coming to the attention of the Home Office is no longer seen as a problem.

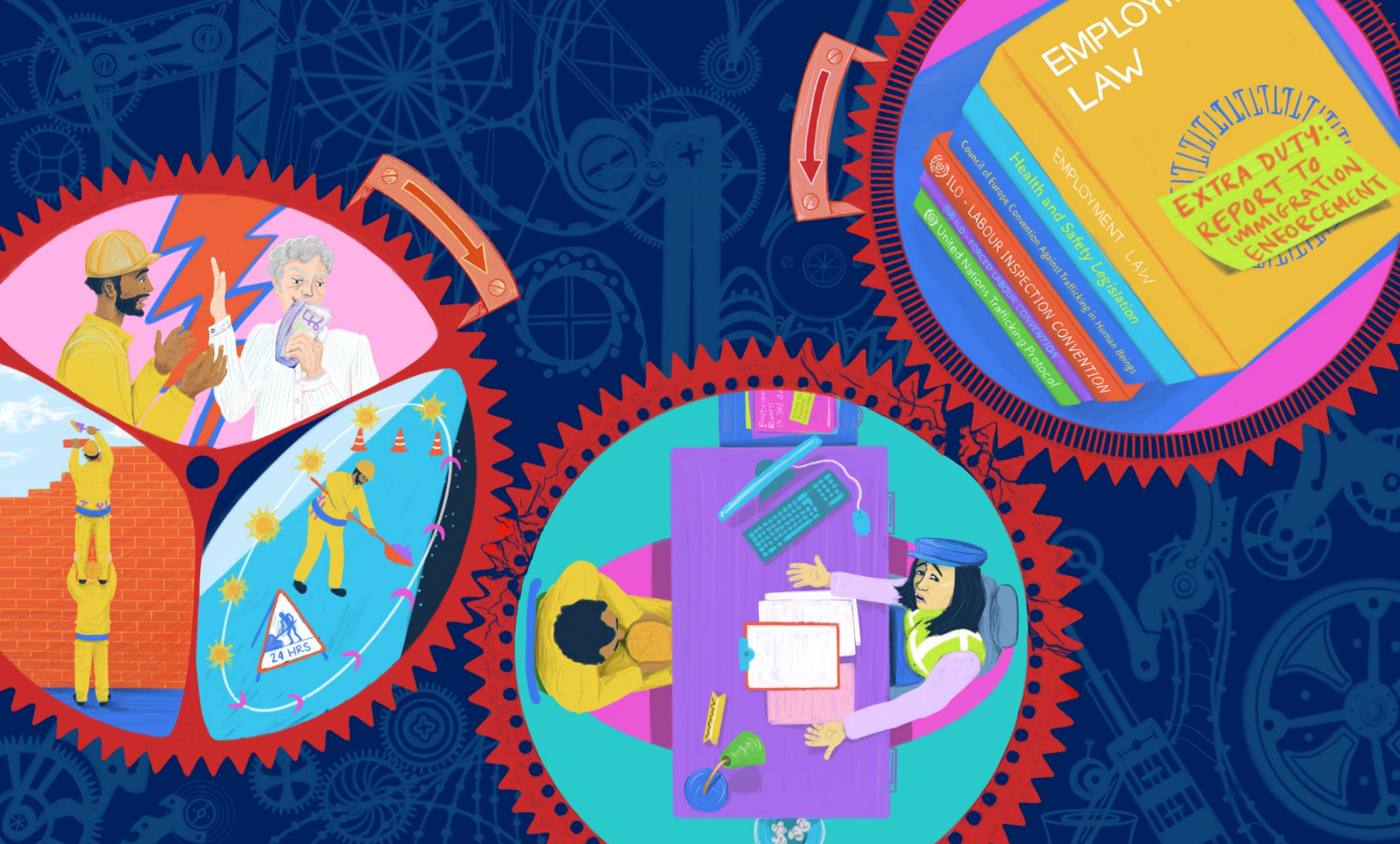
As demonstrated, ‘hostile environment’ policies have placed an additional burden onto police and labour inspectorates by requiring that they help the Home Office enforce immigration regulations, which is making these agencies unable to efficiently conduct their primary roles. If the police and labour inspectors seek to prevent labour exploitation, they must build trust with all communities, including with undocumented migrants, and guarantee that information about their immigration status will be kept safe in their hands.

⁵⁴ David S. Kirk *et al.*, *The Paradox of Law Enforcement in Immigrant Communities: Does Tough Immigration Enforcement Undermine Public Safety?*, May 2012, *The Annals of the American Academy of Political and Social Science*, Vol. 641, *Immigration and the Changing Social Fabric of American Cities*, p.79-98; Carmen Gutierrez and David Kirk, *Silence Speaks: the relationship between immigration and the underreporting of crime*, 2015; Danyelle Solomon *et al.*, *The Negative Consequences of Entangling Local Policing and Immigration Enforcement*, March 2017.

⁵⁵ United States Department of Justice, *Final report of the President’s Task Force on 21st Century Policing*, May 2015.

⁵⁶ Chuck Wexler, *Police chiefs across the country support sanctuary cities because they keep crime down*, Los Angeles Times, 06 March 2017; Christine Hauser, *Virginia Officer Who Turned Driver in Crash Over to ICE Is Suspended*, The New York Times, 02 October 2019.

The following section examines how engagement with, and support of, immigration authorities operate in practice in each labour market enforcement agency and the Metropolitan Police. It provides a framework to analyse how information about workers' immigration status flows from these agencies to the Home Office Immigration Enforcement team.



2. EXAMINING THE REPORTING OF MIGRANT WORKERS' INFORMATION TO THE HOME OFFICE

Section 1 explained the gradual adoption of immigration-related tasks by labour inspectorates and police in the UK and internationally, which has limited these agencies' ability to effectively deliver their primary roles. It also examined the impact of these policies on how workers perceive and interact with these agencies. This section looks at how these immigration tasks operate in practice, presenting the different ways information flows from labour inspectorates and the police to the Home Office Immigration Enforcement team.

2.1. COLLECTING AND REPORTING IMMIGRATION DATA FOR ENFORCEMENT PURPOSES

The ways in which migrants with undocumented status become vulnerable to arrest, detention and removal when they report cases of abuse and exploitation varies depending on how each specific government agency is required to, or chooses to, provide information to the Home Office. LEAG has identified the following ways migrant workers' information ends up in the hands of Immigration Enforcement once they come into contact with the police or labour inspectorates.

LEGAL DUTY TO REPORT TO IMMIGRATION ENFORCEMENT

Frequency and regularity of reports to Immigration Enforcement depend on whether the agency is legally bound to make them aware of irregularities with migrants' status; the types of information-sharing agreements, or lack thereof, between the agency and the Home Office; and willingness to hand this information over.

Throughout this research paper, reporting is considered compulsory when the agency has a legal duty to act on someone's insecure or undocumented status, meaning it is established in the law that they must support immigration activities by enforcing it themselves or reporting individuals to the Home Office. All other forms are considered discretionary, including commitments established by memoranda of understanding or other agreements, as these are entered into with the consent of all parties and can be terminated without significant impact to each agency's core purpose.

CHECKS ON IMMIGRATION STATUS

LEAG has identified two main ways labour inspectorates and police become aware of workers' status.

INCIDENTAL IDENTIFICATION: while the agency is not actively seeking to identify irregularities with migrants' status, it might become aware of this information during the course of its activities. Examples of this include: workers willingly disclosing their status; employer or colleagues exposing migrants with insecure status; uncovering irregularities to workers' 'right to work' status while conducting checks on the employers' compliance with such requirements; among others.

INTENDED IDENTIFICATION: the agency actively seeks to identify irregularities with migrants' status during its regular activities or as part of specific operations. This includes requesting proof of 'right to work' from workers; cross-checking information held by other agencies to verify migrants' entitlement to work in the UK; etc. The agency may conduct these checks despite not having a legal duty to do so.

TYPES OF REPORTING TO IMMIGRATION ENFORCEMENT

LEAG has identified seven main ways information about a worker's immigration status travels from labour inspectorates and police to Immigration Enforcement and can render them vulnerable to negative immigration consequences.

ACTIVE REPORT: occurs when agency staff actively report migrants with insecure status to Immigration Enforcement. This supply of information can be done by different means of communication (e.g. phone, via email, during meetings, etc.) and can be sporadic or regular.

PASSIVE REPORT: data about an individual's immigration status is made available to Immigration Enforcement without the need for an active report. Among passive report channels identified are:

- **SIMULTANEOUS INSPECTIONS OR RAIDS:** while police officers and labour inspectors might not personally check individuals' immigration status or 'right to work' entitlements, some agencies invite Immigration Enforcement staff to carry out immigration checks during simultaneous inspections or raids that are primarily aimed at supporting vulnerable workers.
- **JOINT OR AVAILABLE DATABASES:** occurs if the agency collects information on migrants' immigration status and this is made available to the Home Office through a shared database or when Home Office staff are given access to the respective agency's systems.
- **BULK DATA SHARING:** usually established by an agreement between two or more agencies that commit to provide each other with relevant information from their respective databases. The exchange is

generally done regularly, in large quantities and restricted to groups of people or categories relevant to the individual and joint organisational objectives of all parties.

- **ADVICE OR INFORMATION CHANNELS:** occurs when a person or an agency uses the available channels to seek information or advice from the Home Office and the data provided is made available to Immigration Enforcement.
- **SECONDED OR EMBEDDED IMMIGRATION OFFICERS:** occurs when Immigration Enforcement officers are present in the agency's day-to-day operations, which prevents individuals from accessing the agency without coming to the attention of the Home Office.
- **CHAIN REFERRALS:** even when an agency does not directly share an individual's details with the Home Office, a person can be made vulnerable to immigration consequences when this agency refers them to a second agency for further support, and the respective agency reports the individual via any of the types of reporting described above.

2.2 INFORMATION FLOWS TOWARDS IMMIGRATION ENFORCEMENT IN PRACTICE

In the UK, five agencies are responsible for addressing issues along the continuum of exploitation:

- Her Majesty's Revenue and Customs' National Minimum Wage team (HMRC NMW) is dedicated to the enforcement of the national minimum and living wages⁵⁷;
- Employment Agency Standards Inspectorate (EAS) enforces legislation related to employment agencies and employment businesses;
- Health and Safety Executive (HSE) specialises on occupational health and safety in higher risk sectors, and aspects of the working-time regulations;
- Gangmasters and Labour Abuse Authority (GLAA) is responsible for addressing labour exploitation, including criminal cases, and for enforcing licensing standards of suppliers of labour in agriculture and food processing; and
- the police, as well as other specialist law enforcement agencies, work to address criminal cases of exploitation.

The four labour market enforcement agencies are part of a plural system through which responsibility for oversight, management and budgeting falls under different government departments. In 2017, the Director of Labour Market Enforcement (DLME) was tasked with fostering cooperation between these enforcement bodies by setting a strategic direction for these agencies, with the exception of the HSE which falls outside of the Director's remit.

This plural system means that each agency has developed its own way of working with other government bodies, including the Home Office's Immigration Enforcement team.

⁵⁷ In the UK, national minimum wage applies to workers between 16-24 years old, while the living wage applies to workers 25 years old or older, with a few exceptions. See UK Government, [The National Minimum Wage and Living Wage](#); The government's national living wage is not to be confused with the Living Wage Foundation's calculation of the 'real' UK and London Living Wages, which are independent and based on what workers and their families need to live. See Living Wage Foundation, [What is the real Living Wage?](#).

Based on the aforementioned categories, LEAG has identified the following ways information about workers with insecure and undocumented status is collected and travels from each agency to the Home Office.

	HMRC NMW (on behalf of BEIS)	GLAA (sponsored by the Home Office)	EAS (part of BEIS)	HSE (sponsored by the DWP)	Met Police (MOPAC & Metropolitan Police Commissioner)
Legal duty to report to Immigration Enforcement					
Compulsory sharing of immigration data	No	No	No	No	Not for victims of crime
Checks on immigration status current practices					
Does the agency have a duty to check workers' 'right to work' entitlements during their inspections?	No	No ⁵⁸	No	No	No
Intended identification	No	No	No	No	Yes
Incidental identification	Yes	Yes	Yes	Yes	Yes
Systems guiding reports on workers' status to Immigration Enforcement					
Does the agency routinely report undocumented migrants to immigration enforcement?	Yes, on receipt of requests	Yes	No	No	Varies according to individual police officers' discretion
Does the agency have a formal agreement that guides the way they report undocumented workers to the Home Office?	No	Yes, not publicly available	No	Yes, publicly available	No
Does the agency have written internal guidance or a policy advising staff on what to do when they encounter workers with undocumented status?	No	No	No	Yes, publicly available	Yes, publicly available
Types of reporting to Immigration Enforcement					
Active report	Yes	Yes	No	Yes	Yes
Simultaneous operations with Immigration Enforcement	Yes	Yes	Yes	No	Yes
Joint or available databases	No	No	No	No	No
Bulk data-sharing	No	No	No	No	No
Home Office advice and information channels	No	No	No	No	Yes
Seconded or embedded immigration officers	No	No	No	No	No
Chain referrals	Yes	Yes	Yes	Yes	Yes

⁵⁸ The GLAA has a duty to check employer compliance with 'right to work' requirements under its licensing standards. This activity may lead to the identification of workers' personal immigration statuses which may be passed to Immigration Enforcement. Under the Immigration Act 2016, which expanded the GLAA's powers (see Section 3.2), the GLAA has a duty to investigate labour market offences in England and Wales.

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No labour market enforcement agency has a duty to report workers with insecure status to the Home Office. However, legal gateways that allow for this information sharing exist and are being used.”

LEGAL DUTY TO REPORT TO IMMIGRATION ENFORCEMENT

Following the fact that information-sharing is only compulsory when the agency has a legal duty to act on someone's irregular immigration status, LEAG has concluded that no labour market enforcement agency has a duty to report workers with insecure status to the Home Office. However, legal gateways that allow for this information sharing exist and are being used. The police's responsibility, on the other hand, is more complex. For those who were witnesses or victims of crime, current National Police Chiefs' Council guidance states that they must not actively conduct immigration checks but that if they become aware someone has insecure status, officers are encouraged to inform Immigration Enforcement.⁵⁹ If someone is not a victim of crime, it is unclear whether police officers have a duty to act on individuals' immigration status.

CHECKS ON IMMIGRATION STATUS

All agencies reported cases of incidental identification, which in some cases led to reports to Immigration Enforcement.⁶⁰ Among all the labour market enforcement agencies, the GLAA incidentally identified migrants with insecure status most often. Only the Metropolitan Police had cases of intentional identification.

The GLAA's higher number of incidental identifications can be explained by its responsibilities as a license scheme operator. As part of their Licensing Standards, the GLAA must ensure employers are compliant with 'right to work' requirements which in some cases may lead to the identification of workers with insecure or undocumented status. Information about the employer and worker may be shared with the Home Office following this identification.⁶¹

The Metropolitan Police performs intentional identification in two main ways. Police officers check immigration status when that is beneficial to their case, for instance, to gather evidence to support a potential victims' National Referral Mechanism (NRM) referral as well as to seek intelligence to prosecute exploiters. LEAG and others also identified cases in which officers actively enquired workers about their immigration status upon contact with the police, which has led to victims being arrested and subsequently detained.⁶²

TYPES OF REPORTING TO IMMIGRATION ENFORCEMENT

Despite variations in frequency and regularity, all agencies have reported migrant workers to Immigration Enforcement at least once since 2016.⁶³ Only the Health and Safety Executive has not conducted any simultaneous inspections with Immigration Enforcement during this period.⁶⁴ This highlights the widespread and conflicting practice of carrying out inspections that aim at simultaneously identifying labour abuses *and* immigration offences.

⁵⁹ National Police Chiefs' Council, [Information Exchange regarding Victims of Crime with No Leave to Remain](#), 03 October 2018.

⁶⁰ Information acquired through Freedom of Information requests to EAS 2019/20380; GLAA 19-20 27; HSE 201910343; HMRC NMW 2019 02181.

⁶¹ Information acquired through Freedom of Information request to GLAA DD/LI/02.

⁶² LEAG/FLEX, [Detaining Victims: Human Trafficking and the UK Immigration System](#), July 2019; Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, [Stolen freedom: the policing response to modern slavery and human trafficking](#), October 2017; Hestia, [Underground Lives: Police responses to victims of modern slavery](#), March 2019; Annie Kelly, [First slavery 'super-complaint' accuses police of fuelling victims' trauma](#), 25 March 2019.

⁶³ Information acquired through Freedom of Information requests to EAS 2019/20380; GLAA 19-20 27; HSE 201910343; HMRC NMW 2019 02181.

⁶⁴ Information acquired through Freedom of Information request to HSE 201910343.

The Metropolitan Police was the only agency passively sharing information through advice or information channels. Police officers make use of the Immigration Enforcement National Command and Control Unit, a 24/7 point of contact for UK police forces to enquire about individuals' immigration status (see section 3.5), which can be used to support victims' NRM referral, for example. However, the Home Office confirmed that information gathered during these calls is used for immigration enforcement action.⁶⁵ While the HMRC also has access to this unit, the National Minimum Wage team does not currently use this service.⁶⁶

All labour market enforcement agencies' databases are independent and not accessible by Immigration Enforcement. The Metropolitan Police uses the Police National Computer (PNC), which consists of several law enforcement databases that provide information on local and national related matters to facilitate information sharing and investigations.⁶⁷ While individuals' immigration statuses are not normally recorded on the PNC, "immigration can update PNC to indicate if the subject has been deported" or to indicate that individuals' have been issued an "Executive Deportation Order, which makes the subject liable to arrest if found in the UK."⁶⁸ This suggests that the Home Office has access to, and is able to input information into, the PNC. However, it appears that police do not update the database to alert the Home Office of people with insecure or undocumented immigration status.

None of the agencies currently have seconded or embedded immigration officers. Between 2017 and 2018 eight police Operational Command Units in London have had embedded immigration officers. The Metropolitan Police explained that "up until January 2019, immigration officers were embedded with the Metropolitan Police Service" but that "following a review by the Home Office Immigration Service, a decision was made to remove these officers".⁶⁹

All agencies described referring vulnerable workers and potential victims of exploitation to the GLAA and/or police for specialist support. Since both the GLAA and police provide information to the Home Office for immigration enforcement purposes, cases of chain referral were identified by all agencies.

The following section explores these findings in the context of each agency's specific role, their current practices and its impact on workers' willingness to report cases of labour abuse and exploitation in the UK. It builds on examples of good practices adopted by police forces and labour inspectorates in different countries and highlights the importance of secure reporting systems to tackle labour exploitation.

⁶⁵ UK Parliament, [UK Border Agency: Written Question – 7744](#), 04 November 2019.

⁶⁶ Information acquired through Freedom of Information request to HMRC NMW 2020/00173.

⁶⁷ College of Policing, [PNC – Police National Computer](#).

⁶⁸ Information acquired through Freedom of Information request to NPCC 024/20; UK Parliament, [Police National Computer: Immigration: Written Question – 7745](#), 05 November 2019.

⁶⁹ Information acquired through Freedom of Information request to the Metropolitan Police 01/FOI/19/011979.



3. OBSTACLES AND OPPORTUNITIES: ESTABLISHING SECURE REPORTING IN THE UK

Building on the framework presented in Section 2, this section explores how each agency provides information to Immigration Enforcement, detailing their current practice, how it affects their primary duties and its impact on migrant workers' willingness to seek support when experiencing abuse and exploitation.

It also provides international examples of practices adopted by labour inspectorates and police forces to encourage migrant workers to disclose cases of abuse and exploitation, as well as to identify and prosecute exploitative employers.

3.1 HER MAJESTY'S REVENUE AND CUSTOMS NATIONAL MINIMUM WAGE TEAM (HMRC NMW)

The HMRC NMW team is responsible for enforcing national minimum and living wages throughout the UK, as described in the National Minimum Wage Act 1998.⁷⁰ The agency works on behalf of the Department of Business, Energy and Industrial Strategy (BEIS).

While the HMRC NMW does not have a legal requirement to notify the Home Office of workers in breach of the illegal working offence, the agency confirmed they "legally share information with other government departments during the course of National Minimum Wage compliance. This includes providing personal data to the Home Office for immigration enforcement purposes".⁷¹ In response to a Freedom of Information request, the agency

⁷⁰ National Minimum Wage Act 1998.

⁷¹ Information acquired through Freedom of Information request to HMRC NMW 2019 02182.

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The HMRC NMW conducts a high number of simultaneous operations with Immigration Enforcement averaging 26% of all their simultaneous inspections between April 2017 to October 2019. This equates to 446 workplace visits in which Immigration Enforcement officers were present to check workers' documentation, the highest among all four UK labour inspectorates.”

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Some employers were willing to take a chance on underpaying their workers as they believed the rewards from non-compliance were higher than the risk of being caught.”

clarified that “Section 19 of the Anti-terrorism, Crime and Security Act 2001 allows us to share information with outside agencies in relation to criminal matters”⁷², which since July 2016 includes individuals in breach of the ‘illegal working’ offence.

Information is shared via intelligence reports, which provide personal data related to immigration offences and potential risk of ‘illegal working’. While in the financial year 2017-18 the HMRC NMW did not report anyone with insecure status, between April 2018 and October 2019, the agency shared 12 reports with the Home Office. Each report contained information about one or more individuals, for the purpose of immigration enforcement, and were provided on receipt of Home Office requests.⁷³

The agency has conducted a high number of simultaneous operations with Immigration Enforcement averaging 26% of all their simultaneous inspections between April 2017 to October 2019. This equates to 446 workplace visits in which Immigration Enforcement officers were present to check workers' documentation, the highest among all four UK labour inspectorates.⁷⁴

TACKLING UNDERPAYMENT BY EMPOWERING MIGRANT WORKERS: OPPORTUNITIES FOR THE HMRC NMW

A recent report by the Resolution Foundation uncovered that the HMRC had only identified 13% of an estimated 11,000 firms that failed to pay minimum wage in 2018-19, affecting 365,000 workers.⁷⁵ In 2014, the Low Pay Commission estimated that 11.3% of migrant workers are paid at or below the minimum wage⁷⁶, while the 2014 Migration Advisory Committee report ‘Migrants in low-skilled work’ found that some employers were willing to take a chance on underpaying their workers as they believed the rewards from non-compliance were higher than the risk of being caught.⁷⁷ Sadly, ongoing under-resourcing of the HMRC NMW means that “the average employer can expect an inspection around once every 500 years”.⁷⁸ These low levels of identification make information provided by workers all the more vital to support the HMRC NMW in tackling underpayment in the UK economy.

Migrants supported by LEAG members highlighted that many unscrupulous employers target workers with insecure and undocumented status because they are unlikely to report underpayment to the authorities, making it unrealistic that exploitative employers would be caught. Renata, a Brazilian woman with insecure immigration status, told FLEX:

“I started working in cleaning through a job I found on Facebook. These types of cleaning jobs are very complicated, they are very sketchy here in the UK. It works like this: someone will set up a company. This company gets really expensive houses to clean – like really expensive houses, like the owner of [multinational food company] or [multinational telecommunications company], only billionaires. The boss will establish

⁷² *Ibid.*

⁷³ Information acquired through Freedom of Information request to HMRC NMW 2019 02181.

⁷⁴ *Ibid.*

⁷⁵ Resolution Foundation, [Under the wage floor: Exploring firms' incentives to comply with the minimum wage](#), January 2020; Robert Booth, [HMRC catches only 13% of firms paying below minimum wage](#), The Guardian, 09 January 2020.

⁷⁶ Low Pay Commission, [National Minimum Wage](#), March 2014.

⁷⁷ Migration Advisory Committee, [Migrants in low-skilled work: The growth of EU and non-EU labour in low-skilled jobs and its impact on the UK](#), July 2014.

⁷⁸ HM Government, [United Kingdom Labour Market Enforcement Strategy 2018/19](#), May 2018, p.52.

a contract with the house owner and then hire undocumented people to clean [for less than minimum wage].”⁷⁹

She described working for another cleaning company that targeted undocumented migrants and being severely underpaid:

“Last Saturday my sister and I found this woman online that has a cleaning company- we found her on a WhatsApp group. She said: ‘I need someone to clean for the day, as part of a test [to become a regular cleaner]’. The house owners hire this woman who has insurance, etc, and instead of hiring documented people, which would cost her much more, she hires undocumented people to clean these really fancy homes.”

She continued:

“At the end of the day she gave my sister and I £75 to share but we had worked from before 7.20am to 8pm and were only paid £37.50 (£2.80/hour) each. We couldn’t believe it. My sister asked: ‘How many hours did she pay us for?’ I texted her and asked. She said: ‘Four and a half hours each’. We cleaned six mansions and were only paid for four hours.”

She spoke about not accepting jobs from this employer again but that her sister, who has recently arrived in the UK, was working for another cleaning company under similar conditions. Neither of them wanted to report their employers for fear of coming to the attention of the Home Office.

Amanda, a Brazilian woman with dual European citizenship, described a similar experience at another cleaning company demonstrating how power imbalances render workers unable to move on from exploitative conditions:

“It was my first job here and I didn’t have that much experience, so I went to work there. What I realised is that the woman [that ran the cleaning company]- it wasn’t that she manipulated people, but she used them. If you don’t have a permit, where else are you going to work? It wasn’t exactly slavery... but people weren’t treated correctly there.”

This worker’s comment reflects LEAG’s concern that current migration deterrence policies have created a vacuum of employment rights enforcement for undocumented workers. This makes them unable to address underpayment unless their case is so severe that it is covered by offences under the UK Modern Slavery Act 2015. This creates an unseen tier of exploitation that sits below the threshold for that Act but causes huge harm to workers and undermines the health of our labour market.

Former UK Secretary of State for Business, Innovation and Skills, Sajid Javid, has rightfully noted that:

“The idea of employers paying a fair day’s wage in return for a fair day’s work has been the basis of our economic system for generations. [...] However, too many [employers] still think they can get away with ignoring the rules, breaking the law, and taking advantage of hard-working men and women who want nothing more than an honest job.”⁸⁰

Sajid Javid, former UK Secretary of State for Business, Innovation and Skills

Yet, instead of achieving compliance with national minimum wage legislation, ‘hostile environment’ policies, coupled with a critical under-resourcing of the HMRC NMW, are pushing workers further underground, preventing

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Current migration deterrence policies have created a vacuum of employment rights enforcement for undocumented workers. This creates an unseen tier of exploitation that sits below the threshold for Modern Slavery Act but causes huge harm to workers and undermines the health of our labour market.”

⁷⁹ The government national living wage rate in 2018 was £7.83/hour for 25 years old and over, when she was paid £7/hour; workers were being paid £8/hour in 2019, when the minimum wage was £8.21/hour.

⁸⁰ Department for Business Innovation & Skills and Home Office, [Tackling Exploitation in the Labour Market: Government Response](#), January 2016, p.3.

them from raising issues of underpayment and allowing non-compliant employers to continue benefiting from this lack of enforcement, which, in turn, propagates an unlevel playing field in the UK economy to the detriment of fair employers and all workers, documented or not.

By adopting secure reporting systems that allow migrant workers to disclose underpayment, the HMRC NMW has the opportunity to increase compliance with minimum wage legislation, while identifying abusive employers and ensuring the collection of related taxes.

A FAIR DAY'S WAGE, FOR A FAIR DAY'S WORK: ENSURING MIGRANT WORKERS' ACCESS TO MINIMUM WAGE

Aware of the negative effect of underpayment in the whole economy, some countries have been adopting strategies to ensure migrant workers are able to securely report pay-related issues, allowing inspectorates to identify non-compliant employers and recover what is owed to workers.

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We've always had this policy: 'if you work, you're entitled to your pay' no matter what immigration status you have.”

United States senior civil servant

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This is not an amnesty – it's a strategic move. First because it's the right thing to do and second because allowing them to report to us helps us take down this commercial enterprise that benefits from underpaying and exploiting workers.”

United States senior civil servant

UNITED STATES: UNDOCUMENTED WORKERS' RIGHT TO RECOVER UNPAID WAGES AND CHALLENGE UNDERPAYMENT

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.⁸¹

“We've always had this policy: 'if you work, you're entitled to your pay' no matter what immigration status you have. Workers can complain federally or at state level without fear of being deported, and we'll help them recover their wages. [...] This is not an amnesty – it's a strategic move. First because it's the right thing to do and second because allowing them to report to us helps us take down this commercial enterprise that benefits from underpaying and exploiting workers.”⁸²

United States senior civil servant

In 2011, the US Department of Labor and the Department of Homeland Security established a Memorandum of Understanding⁸³ to “reiterate the national policy goal that immigration enforcement will not interfere with employment and labour rights enforcement in the workplace.”⁸⁴ 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 immigration⁸⁵ should not undertake enforcement visits in workplaces with an active labour dispute to allow inspectorates 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”.

⁸¹ FLEX interview with United States senior civil servant, December 2019.

⁸² *Ibid.*

⁸³ United States Department of Homeland Security and Department of Labor, [Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites](#), n.d.

⁸⁴ National Employment Law Project and National Immigration Law Center, [Immigration and Labor Enforcement in the Workplace: The Revised Labor Agency-DHS Memorandum of Understanding](#), May 2016, p.1.

⁸⁵ The Homeland Security Investigations, the team is responsible for conducting worksite enforcement of immigration-related matters, receive training on labour rights, forced labour and human trafficking with the aim that they identify workers experiencing abuse or exploitation and refer them to the Department of Labor for support.

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The United States has developed a system in which labour inspectors do not actively or passively share information about workers' immigration status to immigration authorities.”

United States senior civil servant

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The concept of “professional secrecy” removes labour inspectorate's duty to report undocumented migrants to immigration authorities.”

Since it recognises that “effective enforcement of labour law is essential to ensure proper wages and working conditions for all workers regardless of immigration status”, the United States has developed a system in which labour inspectors do not actively or passively share information about workers' immigration status to immigration authorities, while also working with migrant communities to ensure workers know it is safe for them to report problems at work.

At the European level, countries have committed to an important provision to ensure migrant workers are able to report underpayment. The 2009 ‘Employer Sanctions Directive’ established basic labour rights for undocumented workers in all European Union Member States, except Denmark, Ireland and the UK who have opted out. It sets out that all migrant workers have the right to access unpaid wages and that, in case of a dispute, the Member State should presume an employment relationship of at least three months and demand backpay for the migrant worker. The Directive also requires Member States to develop secure reporting systems to ensure all workers are able to disclose cases of underpayment without fear of immigration consequences.⁸⁶

BELGIUM: RECOGNISING THE NEED FOR SECURE REPORTING

In Belgium, over 300 workers with undocumented status have reported cases of unpaid wages to labour inspectors without suffering immigration consequences since 2010.⁸⁷ Under the Belgian system, if a worker approaches a labour inspector to report cases of labour abuse, the concept of “professional secrecy” removes labour inspectorate's duty to report undocumented migrants to immigration authorities.

While this system has seen an increase in reports by undocumented migrants, a conflicting government policy creates barriers for inspectors conducting workplace visits. When an inspector identifies someone with undocumented status during a workplace inspection, they are required to inform the police under the justification that they have witnessed a crime (i.e. employment of someone with undocumented status). As the police shares information with immigration authorities, the worker is then made vulnerable to immigration consequences. This is a case of chain referral, where, even though the labour inspectors themselves do not report workers to Immigration, a requirement that they inform the police makes workers unsafe. FAIRWORK Belgium has noted that this policy has stopped some workers, documented and undocumented, from contacting the relevant inspectorate due to a worry that reporting an abusive employer would lead to an inspection that would put their undocumented colleagues at risk.

3.2 GANGMASTERS AND LABOUR ABUSE AUTHORITY (GLAA)

The GLAA (formerly the Gangmasters Licensing Authority) works to prevent, detect and investigate worker exploitation and related modern slavery offences across all labour sectors in England and Wales.⁸⁸ Throughout UK, the GLAA is responsible for licensing and monitoring the gangmasters

⁸⁶ European Union, [Directive 2009/52/EC](#); Jan Knockaert, [The Employers Sanctions Directive – A Law to Address Exploitation of Undocumented Workers?](#), 03 April 2017.

⁸⁷ FLEX interview with FAIRWORK Belgium representative, October 2019.

⁸⁸ Department for Business Innovation & Skills and Home Office, [Tackling Exploitation in the Labour Market: Government Response](#), January 2016.

licensing scheme for suppliers of labour in the UK fresh produce sector and any associated processing and packaging.⁸⁹

THE EXPANSION OF THE GLAA'S REMIT

The former Gangmasters Licensing Authority (GLA) was founded in response to the deaths of 23 Chinese undocumented migrant workers who drowned while harvesting shellfish in Morecambe Bay in 2004. The establishment of the GLA did not grant new labour rights to workers in these sectors or provide the agency with the mandate to ensure workers' rights were enforced, for example by helping them retrieve wages. It focused on licensing labour providers in these industries and monitoring their compliance with the agency's standards, allowing the GLA to revoke licences of non-compliant businesses⁹⁰ in addition to investigating prohibited unlicensed activities.⁹¹

An important feature of the Gangmasters (Licensing) Act 2004 is that it deems workers' immigration status irrelevant, securing protection of all vulnerable workers under its remit, as described in section 26:

"In this Act 'worker' means an individual who does work to which this Act applies. A person is not prevented from being a worker for the purposes of this Act by reason of the fact that he has no right to be, or to work, in the United Kingdom".⁹²

Professor of Law Judy Fudge has noted that, in the early 2010s, the UK coalition government's focus on reducing 'red tape' saw the GLA's focus shift, down-weighting the importance of the licensing model and instead directing it to "target, dismantle and disrupt serious and organised crime/early identification of human trafficking" by focusing on "gross abuse of workers by unscrupulous gangmasters".⁹³ This was followed by a 2014 transfer from the Department for Environment, Food and Rural Affairs (DEFRA) to the Home Office.⁹⁴ The Home Office justified this move explaining that it provided "a natural step towards closer working with law enforcement partners and organisations seeking to eradicate modern slavery".⁹⁵

In 2016, the agency was renamed Gangmasters and Labour Abuse Authority (GLAA) and, in the following year, its powers were extended in England and Wales, authorising the agency to "investigate serious cases of labour market offences across national minimum wage, employment agencies, and modern slavery legislation".⁹⁶ This gives the GLAA a very broad range of aspects of employer compliance with employment legislation and treatment of workers to investigate. Despite a significant increase in its remit from sector-specific licensing to the entire England and Wales labour markets, therefore requiring more staff and resources to undertake its activities, the GLAA saw a only modest increase of £2.5 million to its budget.⁹⁷ The GLAA

⁸⁹ Department for Business, Energy & Industrial Strategy and Home Office, [Good Work Plan: establishing a new Single Enforcement Body for employment rights Consultation](#), July 2019, p.9; Gangmasters and Labour Abuse Authority, [Which activities need a licence?](#).

⁹⁰ Judy Fudge, *Illegal Working, Migrants and Labour Exploitation in the UK*, 2018, *Oxford Journal of Legal Studies*, 38(3), p.557-584.

⁹¹ [Gangmasters \(Licensing\) Act 2004](#).

⁹² Gangmasters (Licensing) Act 2004, [26. Meaning of "worker"](#).

⁹³ Judy Fudge, *Illegal Working, Migrants and Labour Exploitation in the UK*, 2018, *Oxford Journal of Legal Studies*, 38(3), p.578.

⁹⁴ *Ibid.*

⁹⁵ Home Office, [Board members: Gangmasters and Labour Abuse Authority Candidate Pack](#), September 2017, p.3.

⁹⁶ *Ibid.*

⁹⁷ Gangmasters and Labour Abuse Authority, [Business Plan 2017-2018](#), April 2017.

currently operates under the single overarching aim of “working in partnership to protect vulnerable and exploited workers”.⁹⁸

THE GLAA’S RELATIONSHIP WITH THE HOME OFFICE IMMIGRATION ENFORCEMENT TEAM

Prior to its remit expansion, a number of experts expressed concern about sustained or increased information sharing between the GLAA and Immigration Enforcement, explaining that this practice would deter vulnerable workers with undocumented status from raising complaints, and that the government should be careful not to conflate protection of vulnerable workers with its aim to tackle ‘illegal working’.⁹⁹ Despite these concerns, the government responded that it did not “intend that preventing illegal working should be a focus of [...] the labour enforcement strategy” and found that “it is still appropriate for labour market enforcement agencies to work with immigration enforcement to share information about illegal working”.¹⁰⁰

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The GLAA is the only enforcement body sponsored by the Home Office as well as the only one sending regular reports about immigration offences to Immigration Enforcement.”

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The GLAA shared 89 times more reports for immigration enforcement purposes than the Employment Agency Standards Inspectorate, and 7.5 times more than the Health and Safety Executive or HMRC National Minimum Wage team during a similar period.”

The GLAA is the only enforcement body sponsored by the Home Office as well as the only one sending regular reports about immigration offences to Immigration Enforcement, explaining that “where illegal working is identified during the course of investigative activity this is subject to a report to the Home Office Immigration Enforcement (if they were not present at the time the illegal workers were identified).”¹⁰¹ This practice contrasts with other bodies that describe either only sharing information when requested or that make reports much less frequently. For instance, the GLAA shared 89 times more reports for immigration enforcement purposes with the Home Office than the Employment Agency Standards Inspectorate, and 7.5 times more than the Health and Safety Executive or HMRC National Minimum Wage team during a similar period.¹⁰²

While it is concerning that the GLAA reports a much higher number of immigration offences than other labour market enforcement agencies, this can be partly explained by the fact GLAA inspectors are more likely to encounter cases of ‘illegal working’ than other inspectorates because others do not enquire about individuals’ ‘right to work’ entitlements nor do they check if employers have conducted the required immigration checks. The GLAA, on the other hand, is required to check whether licensed businesses have conducted ‘right to work’ checks as part of their licensing standards and therefore is more likely to find cases of non-compliance with immigration policy. Inspection methods are another facet that may account for some differentiation: the GLAA may undertake a higher proportion of face-to-face engagement with workers and employers compared to other agencies that may focus more on examination of records.

Since 2015, the GLAA has actively shared 144 reports to the Home Office for immigration purposes,¹⁰³ each containing information about at least one person. While the agency focuses on reporting *employers* who have not con-

⁹⁸ Information acquired through Freedom of Information request to GLAA DD/LI/02.

⁹⁹ Department for Business Innovation & Skills and Home Office, [Tackling Exploitation in the Labour Market: Government Response](#), January 2016; FLEX, [Parliamentary Briefing: Immigration Bill Lords Committee Stage](#), January 2016; TUC, [Tackling Exploitation in the Labour Market: TUC response to BIS/Home Office consultation](#), n.d.; ILPA, [ILPA response to Department for Business Innovation and Skills Consultation: Tackling Exploitation in the Labour Market](#), December 2015.

¹⁰⁰ Department for Business Innovation & Skills and Home Office, [Tackling Exploitation in the Labour Market: Government Response](#), January 2016, p.25.

¹⁰¹ Information acquired through Freedom of Information request to GLAA DD/LI/02.

¹⁰² Please note, data is not directly comparable as agencies’ data collection format and periods differ slightly. However, this data is still useful to understand the regularity of reporting for immigration enforcement purposes between each agency with the Home Office.

¹⁰³ Information acquired through Freedom of Information request to GLAA 2018-8, 2019-20 27.

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Simultaneous inspections with Immigration Enforcement have steadily increased from one simultaneous inspection in 2016 to 13 in 2019.”

ducted the required ‘right to work’ checks, they do report workers on a case by case basis.¹⁰⁴

Between January 2015 and October 2019, the GLAA conducted 26 simultaneous inspections with Immigration Enforcement. While it represents a very low percentage of their total investigations, numbers have steadily increased from one simultaneous inspection in 2016 to 13 in 2019. This sharp increase may be explained by the fact that the GLAA mainly carries out simultaneous inspections with Immigration Enforcement in unlicensed sectors and across the breadth of the labour market, where there is a higher likelihood of encountering undocumented migrants in comparison with the limited number of licensed sectors, and these have only become part of their remit in 2017.¹⁰⁵ The GLAA also participates in Home Office-led operations, including by Border Force and Immigration Enforcement.

In 2010, the GLAA established an agreement with the Home Office that governs the sharing of worker data for immigration enforcement purposes. LEAG is unaware of the content of this agreement, as it is not available to the public.¹⁰⁶ When asked whether the agency has a legal duty to notify the Home Office of, and/or report, workers in breach of the ‘illegal working offence’, the GLAA clarified that the agency’s focus is “on protecting vulnerable and exploited workers not immigration. However, as a public body we have a duty to report any activities that are of a criminal nature to the relevant authorities and each case will be considered on its own merits if it is right and appropriate to do so.”¹⁰⁷

While the GLAA considers itself to have a legal duty to report undocumented workers to immigration authorities, Professor of Law Judy Fudge interpreted this responsibility as voluntary.¹⁰⁸ Section 19 of the Gangmasters (Licensing) Act 2004 states that the GLAA *may* provide information on employers or workers to other persons.¹⁰⁹ In accordance with the rules of statutory interpretation, such that words in a statute are given their ordinary and natural meaning, this is understood to mean that the Act does not establish a mandatory requirement for the agency to do so¹¹⁰. Equally, section 13(3) of the Immigration Act 2016¹¹¹ clarifies that some civil servants, including law enforcement, can request assistance from the GLAA but the agency has the power to refuse it.¹¹² In addition, the agency’s Licensing Standard 7.2 requires the GLAA to check whether the employer has conducted relevant ‘right to work’ checks to access their entitlements to undertake work in the UK but it does not require the agency to report this information to Immigration Enforcement. Licensing Standard 3.2 instructs GLAA inspectors to ensure that workers’ identification documents or papers are not withheld by the license holder, but it does not require them to check their immigration status or to report findings to the Home Office. The lack of legal requirements for reporting of undocumented workers to Immigration

¹⁰⁴ Information acquired through Freedom of Information request to GLAA DD/LI/02.

¹⁰⁵ Information acquired through Freedom of Information request to GLAA 2018-8, 2019-20 27.

¹⁰⁶ Information acquired through Freedom of Information request to GLAA DD/LI/01. The GLAA is exempt from disclosing its personal data sharing agreement with immigration enforcement under section 31(1)(a) and s31(1)(g) of the Freedom of Information Act, which covers exemptions related to prevention or detection of crime and the exercise of the agencies’ functions related to law enforcement.

¹⁰⁷ Information acquired through Freedom of Information request to GLAA DD/LI/02.

¹⁰⁸ Judy Fudge, *Illegal Working, Migrants and Labour Exploitation in the UK*, 2018, *Oxford Journal of Legal Studies*, 38(3), p.557-584.

¹⁰⁹ Gangmasters (Licensing) Act 2004, [19. Information relating to gangmasters](#).

¹¹⁰ Nicola Laver LLB, [Statutory Interpretation](#), In Brief, n.d.

¹¹¹ Immigration Act 2016, PART 1, CHAPTER 1, Gangmasters and Labour Abuse Authority, [13. Relationship with other agencies: requests for assistance](#).

¹¹² Judy Fudge, *Illegal Working, Migrants and Labour Exploitation in the UK*, 2018, *Oxford Journal of Legal Studies*, 38(3), p.557-584.

Enforcement shows a voluntary implementation of hostile environment policies by the GLAA.¹¹³

The GLAA may feel a sense of responsibility in reporting identified cases of ‘illegal working’ but it is not established in law that they must do so. Indeed, this report provides examples of UK law and labour market enforcement agencies choosing not to report such cases, demonstrating that it is not mandatory for statutory agencies to do so.

Following the end of the Brexit transition period, levels of undocumented work are expected to rise, as complex and often expensive pathways to employment in the UK, as well as visa restrictions, will become applicable to a larger portion of the migrant population in the country. Uncertainty around entitlements for those who do not register for the EU Settlement Scheme before the end of the transition period are likely to lead to confusion around immigration status and increase workers’ vulnerability to exploitation.

With Brexit-related changes in mind, and as the GLAA continues to build intelligence on sectors with a higher number of undocumented migrants, such as cleaning, hospitality and domestic work, the agency has a timely opportunity to prevent exploitation by ensuring all workers can benefit from the GLAA’s expertise and support.

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The fact that the GLAA supports the Home Office to enforce immigration policy creates a barrier between them and the vulnerable and undocumented migrant workers that led to the establishment of the agency following the Morecambe Bay tragedy.”

MIGRANT WORKERS’ EXPERIENCE OF EXPLOITATION AND THE NEED FOR SECURE REPORTING SYSTEMS

As discussed in Section 1, addressing labour abuses is a key strategy to prevent them from developing into cases of exploitation. While identifying ‘illegal working’ is not the GLAA’s primary aim, the fact that the GLAA supports the Home Office to enforce immigration policy creates a barrier between them and the vulnerable and undocumented migrant workers that led to the establishment of the agency following the Morecambe Bay tragedy.

Renata, a Brazilian worker with insecure immigration status explained to FLEX that despite experiencing labour exploitation she did not want to report it for fear that she would be removed from the UK as a result, so she chose not to complain:

“I got a job at a hotel. That was a complicated experience. I met another [undocumented] Brazilian woman who had worked in this hotel before. We became friends and she told me: ‘Look, I used to work for these guys... It’s really heavy work but if you really need the money, I can recommend you. I said yes because I needed to work.’”

She continued:

“This guy owned 17 hotels, but the buildings weren’t his. Him and his wife would rent the buildings and run AirBnBs. They would rent a huge house and then sublet the bedrooms. When we had the first chat it seemed like everything was fine. [...] He told me I’d take care of three hotels and be paid £1000 a month (which later totalled £2.15/hour for her 133 hour working week)¹¹⁴. [...] He gave me a room in the hotel – little did I know that was the worst proposal I could’ve gotten in my life. He said ‘You don’t have to pay rent. You work and when you are done you can go to your room’.”

¹¹³ Gangmasters and Labour Abuse Authority, [Licensing Standards](#), January 2020.

¹¹⁴ For wage calculation when employer provides accommodation see UK Government, [National Minimum Wage and Living Wage: accommodation](#).

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She worked from 6am until 1am, totalling 19 working hours per day seven days a week, with no breaks, days off or holidays under precarious health and safety conditions.”

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“I would raise a complaint if I was protected in some way against deportation.”

Migrant worker with insecure immigration status

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When migrants feel unsupported to report, there is a risk that exploitation will go unidentified, preventing migrants from accessing support through the NRM.”

Her chores were to supervise and manage the three hotels but after her first day the cleaner stopped showing up and her workload increased significantly, as she was also made responsible for cleaning 27 bedrooms and 12 bathrooms in three different locations every day. She worked from 6am until 1am, totalling 19 working hours per day seven days a week, with no breaks, days off or holidays under precarious health and safety conditions – at one point, a bedroom ceiling collapsed and the bathroom sunk in hurting two construction workers who rented the room. The hotel owner blamed her and refused to support her, ignoring her calls when she would report problems in any of the hotels. She faced death threats and physical violence by hotel guests who were frustrated at the poor conditions. She stayed there for five months until a severe incident with a group of guests made her leave all her belongings behind and run out of this workplace. After reflecting on the experience, she said: “It was good money [...] but it was a life ruining job.” Once she left, her employer asked her to help find someone to take her place:

“I tried [to find someone for them]. There was this older lady who really needed a job. I told her how hard it was – the same things that the friend who recommended me for this job said – I told her ‘This job is awful but if you are in a situation where it’s life or death, you need a roof over your head, you need to eat, if you really need it, they are looking for someone.’”

When asked what it would take for her to report the exploitation she was experiencing at work, she told FLEX: “[I would raise a complaint] if I was protected in some way [...] against deportation”. Renata’s case exemplifies how migrant workers often do not come forward about abuse and exploitation if they believe doing so will put them at risk of arrest, detention or removal.

When migrants feel unsupported to report, there is a risk that exploitation will go unidentified, preventing migrants from accessing support through the NRM. This lack of secure reporting systems also provide opportunity for exploitative employers to hold other workers into abusive conditions (see Section 3.5) and further entrenching exploitation in the UK’s economy. Renata’s case also shows that when migrant workers with insecure status are more concerned about the consequences of reporting to labour market enforcement authorities than they are about continuing to work in exploitative jobs, the GLAA will be hampered in achieving its aim to support vulnerable and exploited workers.

STRENGTHENING THE GLAA BY BUILDING ON INTERNATIONAL EXAMPLES

The GLAA plays a vital role in identifying labour abuse and exploitation along the continuum. As the agency moves into unlicensed sectors, building knowledge of the issues workers are experiencing and how exploitation develops in each labour sector is essential to inform its work. The international examples set out below provide a starting point for the GLAA’s adoption of secure reporting systems, to support all workers and to gather intelligence to tackle and prevent exploitation.

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We believe the separation between labour inspection and immigration enforcement was essential to counter precarity at the workplace and promote better working conditions.”

Brazilian senior labour inspector

BRAZIL: LABOUR INSPECTORS ADVOCATED FOR SECURE WORKPLACE INSPECTIONS

After identifying that Federal Police officers were treating labour exploitation of undocumented migrant workers 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.¹¹⁵

“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

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 guidelines¹¹⁶ for inter-institutional use which clearly indicated best practices in supporting undocumented migrant workers.

“We believed the separation between labour inspection and immigration enforcement was essential to counter precarity at the workplace and promote better working conditions. [...] Today these procedures are relatively solidified, despite constant protest from xenophobic groups who perceive migrants as threats or less deserving of support. [...] While this is not an easy journey, it is an essential one in the fight against labour exploitation.”

Brazilian senior labour inspector

UNITED STATES: ADDRESSING LABOUR ABUSES TO TACKLE HUMAN TRAFFICKING

In the United States, labour inspectors described working to address labour abuses as a strategy to combat severe forms of exploitation, such as forced labour and human trafficking.

“The more we learn about human trafficking, about how it works, the more it becomes clear to us that human trafficking is a commercial enterprise - a business model that profits from taking advantage of workers, underpaying them, denying them rights that they are entitled to. So it's important for us to help workers get the wages they are owed and address poor employment practices, because that's how we'll deal with the unfair advantage that this commercial enterprise creates in their supply chain.”¹¹⁷

United States senior civil servant

¹¹⁵ Renato Bignami, [Labour rights or immigration enforcement? The case of labour inspections in Brazil](#), 26 October 2017.

¹¹⁶ Secretaria de Direitos Humanos, [Manual de recomendações de rotinas de prevenção e combate ao trabalho escravo de imigrantes](#), 2013.

¹¹⁷ FLEX interview with United States senior civil servant, December 2019.

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If you hold the victims accountable by reporting them to immigration authorities, you empower the traffickers, the criminals.”

United States senior civil servant

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.”¹¹⁸

United States senior civil servant

3.3 EMPLOYMENT AGENCY STANDARDS INSPECTORATE (EAS)

The EAS works with employment agencies, employers and workers to ensure compliance with employment agency legislation, particularly for vulnerable workers. The agency is responsible for investigating complaints about employment agencies and employment businesses which fall within the remit of the Employment Agencies Act 1973 and the associated Conduct of Employment Agencies and Employment Business Regulations 2003 in England, Wales and Scotland. EAS also carry out targeted inspections in geographical or occupation sectors based on an analysis of risk. The EAS is part of the Department of Business, Energy and Industrial Strategy (BEIS).¹¹⁹

In its role investigating complaints from agency workers, the EAS has the mandate to recover unpaid wages or money owed to temporary workers and unlawful fees charged to workers;¹²⁰ identify agency workers at risk of exploitation; take enforcement action through prosecution and, following a conviction of the Courts, can impose unlimited fines. The EAS can apply to the Employment Tribunal to prohibit an individual from establishing or running an employment agency or business as a result of previous non-compliance with employment agency legislation. The maximum period of a prohibition is ten years.¹²¹

GOOD PRACTICES IN SUPPORTING MIGRANT WORKERS

The EAS demonstrated good practice in supporting migrant workers, explaining that workers can report cases anonymously which the agency may investigate. Since they do not actively report individuals to the Home Office, workers are less likely to experience immigration consequences after seeking support, although there is no policy stating they *will not* share information for immigration purposes.

At the time of writing this report, the last time the EAS reported information about workers to immigration enforcement was in 2017 when they made one report following a complaint about an agency allegedly employing and supplying undocumented workers.¹²² The agency does not actively enquire about workers’ immigration status. This shows that the EAS separates its primary responsibility of enforcing employment agency legislation from immigration legislation, leaving the latter for the Home Office, the department responsible for these matters, demonstrating another example of good practice.

¹¹⁸ *Ibid.*

¹¹⁹ Migration Advisory Committee, [Migrants in low-skilled work: The growth of EU and non-EU labour in low-skilled jobs and its impact on the UK](#), July 2014.

¹²⁰ While the EAS has this mandate, they do not have the legal power to enforce refunds.

¹²¹ [Employment Agencies Act 1973](#).

¹²² Information acquired through Freedom of Information request to EAS 2019/20380, 2019/21797.

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The EAS separates its primary responsibility of enforcing employment agency legislation from immigration legislation, leaving the latter for the Home Office.”

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During Operation Magnify, 108 potential victims of human trafficking were arrested prior to their identification, and from those, 97 were only identified after being arrested and subsequently detained for immigration offences, showing how this conflict between safeguarding and enforcing immigration negatively affects victims.”

In 2014, the Migration Advisory Committee (MAC) estimated that only 8-9% of complaints received by EAS are from foreign nationals, partly due to migrant workers' lack of awareness of the agency and some migrants' preference to deal with these issues within their own communities or via mainstream services at local law centres, Citizens Advice Bureau or Acas.¹²³ Although, from LEAG's experience, undocumented migrants are less likely to rely on mainstream services to resolve workplace issues due to unawareness of these services and a belief they have no rights due to their immigration status.

CAUTION: MOVING CLOSER TO IMMIGRATION ENFORCEMENT

While the agency has demonstrated different examples of good practice, LEAG has also identified a few concerning ones. The EAS was part of Operation Magnify, a Home Office enforcement campaign operational since 2015 and that aims at “rooting out ‘illegal working’” by “specifically [targeting] businesses which are employing *and* exploiting illegal migrant workers”.¹²⁴ Operations such as Magnify have a fundamental flaw in that their aims are contradictory: when a safeguarding operation (i.e. identify and support potential victims of exploitation) is done through an immigration lens (i.e. “root out ‘illegal working’”), officers risk harming migrants experiencing exploitation, even if inadvertently.

During Operation Magnify, 108 potential victims of human trafficking were arrested prior to their identification, and from those, 97 were only identified after being arrested and subsequently detained for immigration offences¹²⁵, showing how this conflict between safeguarding and enforcing immigration negatively affects victims. LEAG's 2019 report ‘Detaining Victims: human trafficking and the UK immigration detention system’ showed the negative impact detention has on victims' National Referral Mechanism (NRM) decisions as well as their mental and physical health, with some victims experiencing Post-Traumatic Stress Disorder (PTSD) linked to their time in detention many years after being released.¹²⁶

Workers often do not self-identify as “exploited” or as victims, so instead of providing them with a chance to come forward, these operations make them fearful and less likely to speak about these issues. While some agencies adopt practices that aim at creating safer spaces for workers to come forward, such as providing them with a separate place to speak to police or inspectors, or working in partnership with the voluntary sector to address workers' immediate needs, from LEAG's experience workers are still unlikely to disclose unless they feel able to trust the agency with which they are speaking.

Another point of concern is that, despite best practice between April 2016 and March 2019, where Immigration Enforcement was excluded from all targeted operations conducted by the EAS, in 2019, the EAS started inviting Immigration Enforcement to its targeted inspections. From April to October 2019 immigration officers were present in 30 inspections in the construction sector, 17% of the EAS's targeted inspections during this period,¹²⁷ signalling a worrying move towards carrying out simultaneous operations with conflicting priorities.

¹²³ Migration Advisory Committee, [Migrants in low-skilled work: The growth of EU and non-EU labour in low-skilled jobs and its impact on the UK](#), July 2014, p.154.

¹²⁴ Emphasis added. Home Office, [Campaign to tackle illegal working in construction begins](#), 14 October 2015.

¹²⁵ Information acquired through Freedom of Information request to Home Office 2019/55965 data covers the period from January 2015 to November 2019.

¹²⁶ LEAG/FLEX, [Detaining Victims: Human Trafficking and the UK Immigration System](#), July 2019, p.36-48.

¹²⁷ Information acquired through Freedom of Information request to EAS 2019/20380.

With an employment agency estimated to expect an EAS inspection once every 20 years,¹²⁸ workers' trust in the inspectorate is vital for the EAS to achieve their goal to "protect the rights of agency workers by ensuring that employment agencies and businesses treat their workers fairly".¹²⁹ Therefore, continuing the agency's current practice of not actively sharing information with Immigration Enforcement while addressing these points of concern, and working with migrant community organisations to disseminate this secure service, would likely see an increase in migrants' engagement with the agency and consequently, better working conditions for agency workers.

3.4 HEALTH AND SAFETY EXECUTIVE (HSE)

The HSE works to prevent work-related death, injury and ill health by providing businesses with support to manage risks, helping workers adopt safe working practices and investigating workplace accidents, where needed, based on the Health and Safety Act 1974¹³⁰ and the Working Time Regulations 1998¹³¹ for issues around work shifts and its impact on workers' health. Its remit covers England, Wales and Scotland.

The agency focuses on the most serious risks, targeting industries with the greatest hazards, and sectors with the worst risk management record.¹³² The HSE Vulnerable Workers team focuses on health and safety of lone workers, young people, older people, temporary workers, agency workers, gig economy, among others who are seen to be at higher risk.

ALL WORKERS ARE ENTITLED TO PROTECTION, BUT CHALLENGES FOR MIGRANT WORKERS REMAIN

Positively, for the HSE "all workers are entitled to the same level of health and safety protection irrespective of their immigration or employment status". Evidence shows that workers who are new to a workplace are at higher risk of accidents in comparison with those who have been in a workplace for a year or more. Migrant workers often fall into this category, together with young workers and workers returning to the labour market.¹³³

Inspectors will act on complaints by making visits to workplaces with reported dangerous activities as well as targeted inspections based on internal intelligence. In the case of an accident at work, the HSE's role is to investigate the accident and identify where the culpability lies, taking criminal action against the employer where needed. The agency does not support a worker with initiating a civil claim for compensation against the employer in the case of an accident.

A worker interviewed by FLEX described an undocumented colleague's experience in cleaning:

"One of my colleagues lost a finger. She was cleaning a window and the window fell on her hand and she lost it. The owner of the house rents really old houses to run as AirBnBs so the conditions are quite poor. She was cleaning and the window's safety lock broke and cut off her finger. They took her to the hospital and paid for it but didn't pay her any restitution for what had happened to her. She's still quite depressed about what happened."

¹²⁸ HM Government, [United Kingdom Labour Market Enforcement Strategy 2018/19](#), May 2018, p.52.

¹²⁹ Employment Agency Standards Inspectorate, [About us](#).

¹³⁰ [Health and Safety at Work Act 1974](#).

¹³¹ Health and Safety Executive, [The Working Time Regulations](#).

¹³² Health and Safety Executive, [The HSE story](#).

¹³³ Health and Safety Executive, [Tackling labour abuse – joint working and intelligence sharing](#), n.d., p.3.

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All workers are entitled to the same level of health and safety protection irrespective of their immigration or employment status.”

When asked whether her colleague was still able to work, she replied:

“Yes! For them! Because when, you know, when you’re illegal here you have no rights so all your employer can do for you is take you to the hospital. Thankfully nothing like this has ever happened to me.”

Since the UK expects workers themselves to actively seek compensation against the employer following an injury, while it criminalises undocumented work and does not prohibit courts from reporting people to immigration authorities,¹³⁴ workers with undocumented status who have accidents at work are not able to access the compensation to which they are entitled.

THE HSE’S GUIDANCE ON TACKLING LABOUR ABUSE

In terms of engagement with others, the HSE’s joint working and intelligence sharing with other government bodies, including Immigration Enforcement, are outlined in the guidance ‘Tackling labour abuse – joint working and intelligence sharing’, which targets HSE staff and local authority inspectors who are responsible for workplace health and safety in lower risk sectors in the whole UK.¹³⁵ The guidance “sets out the approach for inspectors to take, covering the key issues for HSE and the indicators of concern for other agencies” being especially relevant for “temporary and/or migrant workers”,¹³⁶ clarifying that any decision to report information should be proportionate to the intelligence available and whether the agency’s contribution will be relevant and beneficial.

The guidance makes it clear that inspectors “do not actively enquire about workers’ migration status, or actively seek out matters of concern to other enforcement bodies”, which was confirmed by an HSE representative:

“The HSE looks into the person being a worker rather than the criminality of the act [referring to the ‘illegal working’ offence]. The employer is responsible for making sure that someone is safe at work. The inspectors don’t ask whether or not the person is entitled to be working there or not. All workers are treated equally. Our remit is health and safety.”¹³⁷

Health and Safety Executive representative

Between 2017 and 2019, the HSE was the only labour market enforcement body to never invite Immigration Enforcement to join their inspections. All decisions to join operations planned by another agency, including the Home Office, are made by the Single Point of Contact who evaluates whether the agency’s participation is appropriate.

OPPORTUNITIES TO PERFECT THE HSE’S APPROACH

Whereas many cases of good practice have been identified, some points are worth noting as they could make undocumented workers vulnerable to harmful immigration consequences. While the current guidance clarifies that all workers are covered by the HSE, irrespective of their immigration status, it also states that “if [inspectors] have concerns relating to illegal employment of migrant workers [...] or if they are approached with a request to provide data to another agency they should take action” by contacting the HSE’s Single Point of Contact, the Head of Vulnerable Work-

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All workers are treated equally. Our remit is health and safety.”

Health and Safety Executive representative

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Between 2017 and 2019, the HSE was the only labour market enforcement body to never invite Immigration Enforcement to join their inspections.”

¹³⁴ Lea Sitkin, Coordinating internal immigration control in the UK, 2014, International Journal of Migration and Border Studies, 1(1), p.39-56.

¹³⁵ Health and Safety Executive, [Tackling labour abuse – joint working and intelligence sharing](#), n.d.

¹³⁶ *Ibid*, p.3.

¹³⁷ LEAG meeting with an HSE representative, October 2019.

ers' team, who will make a decision on how to proceed.¹³⁸ This instruction opens space for inspectors to share personal details about undocumented workers which could be made available to Immigration Enforcement, characterising a case of incidental identification followed by an active report.

Prior HSE guidance provided an interesting approach, as it protected migrant workers' personal information from being reported for immigration enforcement purposes. The 'Migrant working intervention manual'¹³⁹, which was substituted by the current guidance in 2016, advised HSE and local authority staff on interventions connected to migrant workers and their employers, clearly stating that where 'illegal employment' was suspected inspectors should not provide details of individual workers to the HSE Single Point of Contact, protecting the workers' information from being given to immigration authorities and demonstrating a clear case of good practice.

Since 2017, the HSE has made 12 active reports to immigration enforcement for cases where 'illegal working' was identified. Five of these were made following inspectors' visits to a business while the others were initiated following third party reports to the HSE, demonstrating a practice of reporting cases for immigration purposes. This reduced significantly in 2019, with only one report being made to the Home Office.

Findings suggest that the HSE has developed a system which is used to prevent health and safety issues for *all* workers and, therefore, adopting secure reporting systems is unlikely to require significant changes to the organisation's operations. Putting these systems into practice will encourage migrant workers with insecure immigration status to report unsafe working practices which would trigger higher compliance with health and safety standards, preventing injuries and accidents, particularly in high-risk sectors where migrant workers are over-represented.

3.5 METROPOLITAN POLICE ("MET")

The Metropolitan Police is the law enforcement body responsible for 32 boroughs within Greater London, excluding the City of London which is policed by the City of London Police.¹⁴⁰ The agency also has responsibilities that go beyond policing in London, including counterterrorism and support to national policing. The Met is held to account by the Mayor of London and the Home Secretary, with operational policing being the responsibility of the Metropolitan Police Commissioner while performance, budget and strategic direction are set by the Mayor's Office for Policing and Crime (MOPAC).¹⁴¹

Three operational priorities currently guide the Met's work to "keep London safe for everyone"¹⁴²: tackle violent crime; work with partners and communities to keep them safe and support them in preventing crime, especially by working to build trust with young people and ethnic minority communities; and uphold the rule of law and ensure victims receive the best possible outcome by catching offenders and supporting victims.¹⁴³

¹³⁸ Health and Safety Executive, [Tackling labour abuse – joint working and intelligence sharing](#), n.d., p.4.

¹³⁹ Health and Safety Executive, [Migrant working intervention manual](#), n.d., p.7.

¹⁴⁰ Metropolitan Police, [Jurisdiction](#).

¹⁴¹ Metropolitan Police, [Governance](#); Mayor's Office for Policing and Crime, [Metropolitan Police Service](#).

¹⁴² Metropolitan Police, [Vision and values](#); Metropolitan Police, [Keeping London Safe: The Met's Direction: Our Strategy 2018-2025](#).

¹⁴³ Metropolitan Police, [The Met Direction](#).

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The main reason our clients don't report to the police is fear that information about their immigration status will be shared with the Home Office. The word spreads fast within migrant communities, so if someone has a bad experience – if they report and get arrested, or if the case is not properly investigated – it creates a domino effect which stops other victims from reporting.”

Kalayaan

Twelve Basic Command Units (BCU) comprised of two to three London boroughs deliver daily policing while the Central Specialist Crime (CSC) department is responsible for high level investigations and working collaboratively with partners and communities. The Met is reviewing its current Modern Slavery Action Plan to ensure continual improvement: it is supporting frontline officers by ensuring there are “Modern Slavery Leads” in each BCU and that there is greater access to learning, development and general best practice, and staff are undertaking a short-term Masters’ level qualification with the aim to expand their understanding of victims’ complex needs.¹⁴⁴ The CSC continues to carry out intelligence-building and interventions for complex cases of exploitation in the Greater London area.

POLICE'S FOCUS ON IMMIGRATION OFFENCES LEADING TO VICTIMS' MISTRUST

Despite priorities that aim to build trust and that centre on victims, undocumented victims of modern slavery offences supported by LEAG members disclosed not trusting that police will keep their information safe from immigration authorities and as a result, not wanting to report crimes committed against them.

“The main reason our clients don't report to the police is fear that information about their immigration status will be shared with the Home Office and that they'll end up in jail; that they will report as a victim but will be treated like criminals. And the word spreads fast within migrant communities, so if someone has a bad experience – if they report and get arrested, or if the case is not properly investigated – it creates a domino effect which stops other victims from reporting.”

Kalayaan

“For us, the main reason undocumented women don't report is fear that police will share their data with the Home Office and that will result in them being deported. They tend to believe that they will not receive the support they need because they have no employment rights in this country. They fear not being believed, being discriminated against or not being taken seriously because of their immigration status. The language barrier is also a deterrent, as they wouldn't know how to present their case to the police without help.”

Latin American Women's Rights Service

Victims' wariness of engaging with the police is currently affecting the Met's ability to achieve its operational priorities. In conversations with LEAG, Met officers reported struggling to get victims of labour exploitation to engage with them, both in reporting their own experience and in providing information about their exploiters. While in some cases victims' distrust in police officers is based on their experiences with law enforcement in their origin country, migrants with insecure status supported by LEAG members described fearing that their immigration status would take precedent over their experience of exploitation within the UK, regardless of prior experiences in other contexts.

Far from solely affecting London-based police forces, this close relationship with immigration authorities is seen to affect law enforcement across the UK. Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) undertook an investigation into the police's response to modern slavery and human trafficking in the UK, published in October 2017. This

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In almost all of these cases, the police completely ignored any trafficking indicators and focused on the victims instead as immigration absconders.”

Duncan Lewis Public Law

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Ending up in prison or immigration detention serves only to reaffirm traffickers’ assertions that victims will not be believed by the system. This in turn makes victims less likely to disclose details of their trafficking, which could help the authorities to locate and prosecute their traffickers.”

Duncan Lewis Public Law

found that victim identification was inconsistent and sometimes ineffective with some victims being arrested as offenders due to their immigration status.¹⁴⁵ It also stated that “a focus on immigration status of both victims and offenders has been a recurring theme throughout this inspection”.¹⁴⁶

A March 2019 investigation on this issue conducted by the charity Hestia identified the same problem, with victims, support providers and lawyers describing their experience with cases where the police prioritised immigration enforcement over identification of modern slavery offences and assistance to victims.¹⁴⁷ Findings from this report were submitted as the first ever modern slavery super-complaint, a mechanism designed to draw attention to systemic issues affecting police in England and Wales, which is currently being reviewed by HMICFRS. Karen Staunton, solicitor at Duncan Lewis Public Law explained: “In almost all of these cases, the police completely ignored any trafficking indicators and focused on [the victims] instead as immigration absconders”.¹⁴⁸ She continued:

“In one instance, one of our clients self-reported to a police station saying that he had been trafficked to the UK and forced to work. He was not referred into the National Referral Mechanism [...] but was instead referred to Immigration Enforcement and shipped off to detention the next day.”¹⁴⁹

Karen Staunton, Duncan Lewis Public Law

When police are seen to enforce immigration, or to help the Home Office do so, victims are unlikely to come forward when they experience exploitation, hampering the force’s ability to identify and prosecute offenders. HMICFRS shares this view, having alerted UK police forces that “focus on immigration meant opportunities for gathering intelligence or developing investigations were being missed.”¹⁵⁰ It also plays into the hands of exploiters who often tell victims that no one will believe them if they report and that they will get in trouble.

“Instead of being identified and protected as victims, the vast majority of our clients are treated as immigration offenders. Ending up in prison or immigration detention serves only to reaffirm traffickers’ assertions that victims will not be believed by the system. This in turn makes victims less likely to disclose details of their trafficking, which could help the authorities to locate and prosecute their traffickers. This means that victims are less likely to receive the support and assistance that they need and to which they are entitled and puts them at significantly increased risk of being re-trafficked.”

Ahmed Aydeed, Duncan Lewis Public Law

MISSED OPPORTUNITIES TO IDENTIFY EXPLOITERS AND SUPPORT VICTIMS

Victims rarely self-identify as ‘victims of modern slavery offences’ and in many cases they consider the severity of their situation as a necessary hurdle they must endure in order to continue providing for themselves and

¹⁴⁵ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Stolen freedom: the policing response to modern slavery and human trafficking](#), October 2017, p.5.

¹⁴⁶ *Ibid.*, p.38.

¹⁴⁷ Hestia, [Underground Lives: Police responses to victims of modern slavery](#), March 2019.

¹⁴⁸ Annie Kelly, [First slavery ‘super-complaint’ accuses police of fuelling victims’ trauma](#), 25 March 2019.

¹⁴⁹ *Ibid.*

¹⁵⁰ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Stolen freedom: the policing response to modern slavery and human trafficking](#), October 2017.

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We're treated like lab rats. They trial all these awful ways of working on us because we have no rights here.”

Human trafficking victim with insecure immigration status

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People like me, we're used to suffering. All we want is a job, a job that won't exploit us.”

Human trafficking victim with insecure immigration status

their families.¹⁵¹ For example, despite having described multiple instances of exploitation in cleaning, hospitality and domestic work, a Brazilian woman with insecure status told FLEX she was “not scared of working hard” and that, even though she wanted to seek employment with better conditions, there were no other job opportunities for undocumented people so she had to “put up with it.”

“We're treated like lab rats. They trial all these awful ways of working on us because we have no rights here. They do this because there's nothing we can do about it. We have no rights and they know it.”

After seeking support with the Latin American Women's Rights Service (LAWRS) and learning about her options, this worker spoke again to FLEX:

“This is slavery, you know? I now realise that this was exploitation. My friend [who took her in when she left her exploitative job] had told me that it wasn't right what they were doing. [...] They humiliate you so much that you separate yourself from your own personality. You believe you are no one. That you aren't entitled to anything.”

Reflecting on how her status made her vulnerable to exploitation she stated:

“I don't want government money, I don't want benefits. People like me, we're used to suffering [...] All we want is a job, a job that won't exploit us.”

LEAG has also identified cases in which police were in contact with a victim but failed to identify them due to a prioritisation of the offence of ‘illegal working’. Ana, a Brazilian cleaner with insecure immigration status spoke to FLEX about her friend's experience cleaning private homes in London through an agency:

“One of my friends, she's 19 years old. While she was at work, our employer used to slap her face, she'd humiliate her. She'd ask her to clean inside of the toilets with a toothbrush and then demand that she brushed her teeth with the same toothbrush. She worked with her for three months and was only paid £20-30 per week [while working full-time at least five days a week]. It was humiliating. She once made her hang from the window of a five-floor building to clean. One day when my friend arrived at a client's home the police were there, waiting for her inside of the house. I hadn't heard from her in two weeks so I was concerned and then when I finally heard from her she told me what happened and that she had been detained and deported because our employer had called the police on her.”

Current practices that criminalise undocumented workers allow for an extreme power imbalance between workers and employers which create opportunities for the types of abuse described by this worker. Speaking to FLEX, Ana explained that the same exploitative employer also called the police on her, but she managed to escape. In this case, the Met missed a chance to support a victim of crime, identify a perpetrator, and stop others from being exploited because they are not trusted to believe or help victims.

“I got a job as a cleaner, worked for more than a month and never got paid. She [employer] promised to pay me £7.50 per hour even though she charged the client £18. When I was meant to clean the garden, she forbade me from wearing a coat, even though it was two degrees outside. I had to use a broken ladder to clean the windows from the outside, clean the tiles [...] I would leave my house at 6am and only return at midnight. I thought it was weird that she asked me if I had a toothbrush, which I

¹⁵¹ LEAG/FLEX, [Labour compliance to exploitation and the abuses in between](#), August 2016; Home Office, [Victims of modern slavery – frontline staff guidance](#), version 3.0, March 2016; United States Department of Health & Human Services, [The mindset of a human trafficking victim](#), n.d.; European Institute for Gender Equality, [Gender-specific measures in anti-trafficking actions](#), 2018.

did, and then I understood when she made me clean the floor with it. She said: 'you either do it or I'll call the police'. The house I was cleaning was owned by a public prosecutor, so I was scared. I never told her I was undocumented, but she knew. [...] I finally managed to get her to agree to pay me. We agreed to meet at a train station. I knew she wasn't a good person, so I arrived but started looking for her from afar. I then saw that she had the police with her. She had called the police on me! I was so scared I got into the first train I saw. I had no idea where I was going. I just covered my face with my scarf and ran away."

Another worker interviewed by FLEX described being told by her exploitative employer to hide from the police, since she was working without the required documentation. She was made to work 133 hours per week, being paid £2.15 per hour, under precarious health and safety conditions, while being physically threatened and verbally abused by hotel guests.

"I wasn't allowed to work [in the UK]. The owner said on the first day- he told me 'it doesn't happen very often but if the police comes by, I'll put you in a room in the back [of the house], you jump out of the window, over the fence and disappear. You should only return the next morning.' So when the [hotel] guests threatened to call the police [due to the hotel's grim conditions] I had to hide. When the police arrived, I had to jump out of the window in the rain in the middle of the night and sleep outside until the next morning."

These cases show how workers with undocumented status are often more concerned about the consequences of reporting to police than about remaining with abusive employers. By maintaining a close relationship with immigration authorities, the Met Police are hampering their own objectives of tackling and preventing crime, building trust with ethnic minority communities, prosecuting exploiters and providing victims with support.

LACK OF CLARITY OF THE POLICE'S RESPONSIBILITIES TOWARDS IMMIGRATION ENFORCEMENT

In October 2018, the National Police Chiefs' Council (NPCC) recognised that the "approach to sharing information with immigration enforcement was inconsistent across forces, potentially leading to different responses to and support afforded to victims".¹⁵² This concern led to the introduction of guidance to establish a national position regarding the exchange of information about victims or witnesses to a crime who are suspected to have undocumented immigration status. Positively, the guidance states that anyone reporting a crime in the UK must be treated first and foremost as a victim. It also clarified that police officers should "never check a database only to establish a victim's immigration status" and should "not take immigration enforcement action themselves", confirming that police identification of a victim's immigration status should be incidental rather than intended.¹⁵³ It did not, however, establish that police officers must not inform Immigration Enforcement of a victim's status, allowing them to actively share this data if they become aware of it.

The nature of information flows between police and immigration authorities is more complex than that of labour market enforcement agencies because it is unclear whether law enforcement has a legal duty to report individuals with undocumented status to the Home Office. In 2017, HMICFRS acknowledged that law enforcement has a "duty to refer individuals to immigration

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When the police arrived, I had to jump out of the window in the rain in the middle of the night and sleep outside until the next morning.”

Human trafficking victim with insecure immigration status

¹⁵² National Police Chiefs' Council, [Information Exchange regarding Victims of Crime with No Leave to Remain](#), 03 October 2018.

¹⁵³ National Police Chiefs' Council, [New guidance for officers on sharing information with Immigration Enforcement](#), 07 December 2018.

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When police identify cases of abuse or exploitation that do not meet the criminal threshold, they are able to intervene before the situation worsens, demonstrating one of the ways police can work to prevent exploitation.”

enforcement” but that “the vulnerability of victims should be considered in parallel”.¹⁵⁴ However, the 2018 NPCC guidance does not refer to this practice as a duty but rather as being “wholly *appropriate* that the officer in the case *should* contact immigration enforcement at the appropriate juncture, whilst they are also treated as a victim”, which seems to encourage but not demand that officers take this approach.¹⁵⁵

Yet, the NPCC guidance only applies to victims of crime and, therefore, undocumented workers whose experience of abuse or exploitation does not meet the threshold of a criminal offence,¹⁵⁶ or those whose experience of severe exploitation are not identified at first point of contact with the police, are likely to have their information shared with Immigration Enforcement. This practice ignores the fact that criminal forms of exploitation, such as forced labour, servitude and slavery, are part of a continuum of exploitation which ranges from minor to major labour abuses. When police identify cases of abuse or exploitation that do not meet the criminal threshold, they are able to intervene before the situation worsens, demonstrating one of the ways police can work to prevent exploitation. However, when police officers report workers to immigration authorities if their case does not meet this criminal threshold, instead of being able to prevent severe cases, they actually help to push workers further underground and into harm’s way by stopping them from coming forward.

LEAG also identified this uncertainty while in separate conversations with police officers from different areas of the UK. Responding to what they would do if they believe a person is a victim of modern slavery offences but does not want to enter the National Referral Mechanism (NRM), one officer stated being unable to “turn a blind eye” if someone is in the country without required authorisation but that they would do everything to treat them first as victims and as immigration offenders second. However, if the potential victim “refused to disclose instances of exploitation” during their first encounter with the police, or did not want to enter the NRM, they would need to inform immigration.

An officer from another police force explained that while, in their view, reporting is discretionary, they regularly report information with the Home Office about foreign nationals because it is important for law enforcement agencies to trust one another by reporting information that is relevant to their individual organisational goals. They clarified that when reporting a victim who has entered the NRM to immigration, officers usually ensure no immigration action is taken while police investigate the case. The same is not guaranteed, however, when an undocumented victim chooses not to enter the NRM or not to cooperate with the police.

Another police officer explained that if a potential victim does not want to enter the NRM at first, and is not in immediate danger, their practice is to provide them with information about their rights and to tell them to contact the police once they are ready to disclose. However, if after a few encounters with the same victim they still do not want to engage with the NRM

¹⁵⁴ Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Stolen freedom: the policing response to modern slavery and human trafficking](#), October 2017, p.13.

¹⁵⁵ National Police Chiefs’ Council, [Information Exchange regarding Victims of Crime with No Leave to Remain](#), 03 October 2018, p.4, emphasis added.

¹⁵⁶ While underpayment of minimum wage is considered a criminal offence under section 31(1) of the National Minimum Wage Act 1998, undocumented migrants have faced barriers enforcing this right. Non-compliant employers have used the ‘illegality defence’ to refrain from paying workers what they are owed by arguing that the act of working without required documentation in the UK is considered unlawful and, therefore, the worker should not be able to seek legal remedy. This makes undocumented workers unlikely to report underpayment as a stand-alone offence, despite it being a crime and therefore coming under the NPCC guidance, unless they are experiencing other harms in addition that make the sustainability of their situation impossible.

system or disclose their experience of exploitation, then they may report them to Immigration Enforcement.

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Detention should never be used as a safeguarding measure.”

At different times, in conversation with LEAG, police officers have demonstrated frustration with the fact that there are currently no systems through which police can provide potential victims with safe accommodation when they are perceived to be in immediate danger but are not ready to disclose their experience of exploitation or make a decision on whether they want to engage with the NRM. In the absence of such a system, LEAG members have witnessed cases in which immigration detention was promoted, and used, as a way to ‘protect’ undocumented victims from returning to an exploitative situation and to give them time to reflect on their experience and decide if they would like to disclose.¹⁵⁷ Numerous studies demonstrate the negative impact of immigration detention on mental health, being especially harmful to people who have experienced trauma, causing retraumatisation, PTSD, anxiety, panic attacks and suicidal ideation.¹⁵⁸ Therefore, detention should never be used as a safeguarding measure.

PASSIVE REPORTING CHANNELS: SIMULTANEOUS OPERATIONS AND IMMIGRATION ENFORCEMENT NATIONAL COMMAND AND CONTROL UNIT

LEAG has identified two other ways police make undocumented workers vulnerable to immigration consequences through passive reporting channels, namely via simultaneous operations and through seeking information on someone’s immigration status with the Immigration Enforcement National Command and Control Unit (IE NCCU).

While Met Police officers described not regularly inviting Immigration Enforcement to their ‘modern slavery operations’, evidence suggests that when that does happen, focus tends to shift towards identifying irregularities in potential victims’ and suspected exploiters’ immigration status. A recent media piece covered a Met operation in South East London where 100 police officers, who were joined by immigration officers and only one interpreter per establishment, raided five nail bars suspected of human trafficking. The journalist reported those inside the establishment were told “no one can go until checks have been made on everyone’s immigration status”, demonstrating a conflation of immigration priorities and identification of modern slavery offences.¹⁵⁹

LEAG sought to uncover, via a Freedom of Information request, how many ‘modern slavery operations’ led by the Met were conducted with participation of Immigration Enforcement, but were told that this information is not held by the Met.¹⁶⁰ The Home Office also does not hold this information in a reportable format,¹⁶¹ making it difficult to evaluate the frequency and impact of their simultaneous operations on potential victims.

¹⁵⁷ LEAG/FLEX, [Detaining Victims: Human Trafficking and the UK Immigration System](#), July 2019.

¹⁵⁸ See Mary Bosworth, [Appendix 5: the Mental Health Literature Survey Sub-Review](#) in Stephen Shaw, Review into the welfare in detention of vulnerable persons, January, 2016; Guy Coffey *et al.*, The meaning and mental health consequences of long-term immigration detention for people seeking asylum, *Social Science & Medicine*, 2010, 70, p.2070-2079; Katy Robjant *et al.*, Mental health implications of detaining asylum seekers: systematic review, *The British Journal of Psychiatry*, 2009, 194, p.306–312; Medical Justice, [Mental Health in Immigration Detention Action Group: Initial Report 2013](#), 2013.

¹⁵⁹ Amelia Gentleman, [What does your £10 manicure really cost? The unvarnished truth about nail bars](#), *The Guardian*, 21 January 2020.

¹⁶⁰ Information acquired through Freedom of Information request to Metropolitan Police 01/FOI/19/011964.

¹⁶¹ Information acquired through Freedom of Information request to Home Office 57408.

Finally, the last identified information flow from the police to Immigration Enforcement refers to the use of the IE NCCU which is the 24/7 point of contact for all UK police officers to receive assistance on the immigration status of individuals. The Unit is staffed by immigration officers who, in addition to providing police with advice, use the information collected during these calls to “initiate immigration enforcement action, safeguard vulnerable individuals, refer cases to and signpost police partners to other Home Office teams.”¹⁶² In conversation with LEAG, police officers have described relying on the Unit to provide undocumented victims of modern slavery offences with the most appropriate support by using the person’s immigration history to support their case, including former applications that could contain details of the exploiter or confirm their experience of exploitation. They also praised the Unit’s assistance in helping police to navigate the complexities of the immigration system by using their expertise to translate immigration data into useful information for police officers.

The fact that the Home Office uses information provided by the police to carry out immigration enforcement action raises concerns about the priorities of this Unit. The Home Office stated that this resource serves as a source of information for police officers, a mechanism to safeguard vulnerable individuals and signpost cases to partner agencies, which demonstrates a concern with ensuring potential victims are protected. However, the Home Office creates conflicting responsibilities by placing this resource within the Immigration Enforcement structure and allowing the gathered information to be used for immigration action. Under this system, potential victims who choose not to enter the NRM, decide to withdraw or erroneously receive negative NRM decisions become vulnerable to arrest, detention and removal. Victims experience a number of serious and long-term consequences to their physical and mental health as a result of their arrest and time in detention¹⁶³, which demonstrates the importance of separating immigration priorities from safeguarding systems.

STRENGTHENING THE POLICE’S RELATIONSHIP WITH MIGRANT COMMUNITIES

After noticing the value in building relationships with migrant communities to increase trust in the police and gather valuable intelligence to tackle crime, local police forces in different countries have started adopting secure reporting systems. In working to deliver its aims to tackle violent crime, build trust with ethnic minority communities, prosecute perpetrators and support victims, the Met can use these examples to develop its own secure reporting systems.

AMSTERDAM: BUILDING TRUST BETWEEN THE POLICE AND UNDOCUMENTED COMMUNITIES

In 2006, the Amsterdam police realised they were facing difficulties carrying out their police duties of fighting crime and protecting people in areas of the city with a high number of undocumented migrants, due to the lack of trust these groups had on the police. As a result, police started making contact with the communities in those areas to establish a relationship of trust that would make it possible for undocumented people to report crimes and for the police to gather intelligence from these groups.

Every three to six months, the same police officers would host large meetings where the community could speak freely about their experience with

¹⁶² UK Parliament, [UK Border Agency: Written Question – 7744](#), 04 November 2019.

¹⁶³ LEAG/FLEX, [Detaining Victims: Human Trafficking and the UK Immigration System](#), July 2019.

law enforcement to understand the barriers they faced in engaging with the agency. These meetings served as a way for police officers to reflect on their role and comments were used to identify which strategies should be taken forward. In 2013, this system was expanded across the city of Amsterdam through a pilot called “safe in, safe out”, in which undocumented people could report crime without having the police act upon their immigration status. After a year, the police conducted a review of the pilot to assess if it should be continued, concluding that it should. In 2016, this policy was instated at national level; however, application is inconsistent, with some police officers still acting against it.

UNITED STATES: CITIES PRIORITISING RESIDENTS’ SAFETY OVER IMMIGRATION ENFORCEMENT

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 undocumented migrants’ engagement as witnesses and allow them to come forward when they are victims of a crime.

Studies found that large metropolitan areas that established this separation between policing and immigration enforcement have 65.4% less violent and property crime per 10,000 people than those that work closely with immigration authorities.¹⁶⁴ 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.¹⁶⁵ Secure reporting is also seen to increase integration and engagement amongst residents.

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3.6 WHAT NOW? OPPORTUNITIES TO PROTECT MIGRANT WORKERS FROM EXPLOITATION

Previous sections have explored the ways in which the current information flows between labour inspectorates and police to the Home Office are making workers vulnerable to harmful immigration consequences if they report workplace abuse and exploitation, which is also making them more vulnerable to exploitation. They described how these practices are tarnishing workers’ trust in the agencies that were established to support and protect them.

This report has demonstrated a significant need for the implementation of secure reporting systems which guarantee that workers will not face arrest, detention and removal if they come into contact with agencies whose primary duty is to support them. It also presented international cases of good practice where such systems are in place with positive results.

LEAG has identified key opportunities to improve current practices and strengthen the UK’s response to tackling labour exploitation.

¹⁶⁴ Nicola Delvino, [Safe reporting of crime for victims and witnesses with irregular migration status in the United States](#), September 2019, p.34-36. Tom Wong, [The Effects of Sanctuary Policies on Crime and the Economy](#), 26 January 2017.

¹⁶⁵ Loren Collingwood and Benjamin Gonzalez O’Brien, [Sanctuary Cities: the politics of refuge](#), 2019.

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The UK has the opportunity to establish a system that challenges the current cycle of impunity by making labour inspectors under the SEB responsible for ensuring all workers, documented or not, are secure to report cases of labour abuse and exploitation.”

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This helps build a fairer economy by allowing all workers to access fair wages, decent working conditions and providing businesses with a more level playing field.”

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Police officers should never share information about a potential victim’s status for immigration enforcement purposes without their informed consent.”

SINGLE ENFORCEMENT BODY FOR EMPLOYMENT RIGHTS

In January 2020, the UK government confirmed it will move forward with its plan to establish a Single Enforcement Body (SEB) for employment rights which will bring the agencies under the coordination of the Director of Labour Market Enforcement under the same body. At the time of writing, the SEB is expected to continue working collaboratively with the Health and Safety Executive and the Equalities and Human Rights Commission.

In developing this new body, the UK has the opportunity to establish a system that challenges the current cycle of impunity by making labour inspectors under the SEB responsible for ensuring all workers, documented or not, are secure to report cases of labour abuse and exploitation without being put at risk of immigration enforcement action. By building trust with migrant workers, the SEB can help labour inspectors better identify cases of underpayment, withholding of wages, excessive working hours, and unsafe working conditions that are currently going unchecked. This helps build a fairer economy by allowing all workers to access fair wages, decent working conditions and providing businesses with a more level playing field.

PROTECTING MIGRANT WORKERS FROM EXPLOITATION

The number of workers with insecure immigration status is expected to rise following the end of the UK’s transition period to exit the European Union, as visa restrictions and conditions to employment in the UK will become applicable to a large portion of the country’s migrant population. Current plans to replace freedom of movement as a labour supply method include an expansion of the Seasonal Workers Pilot scheme from 2,500 workers per year to 10,000.¹⁶⁶ This scheme provides short-term work visas for workers in agriculture, with no access to public funds, no ability to renew the visa in-country and no pathways to permanency. Evidence shows that programmes like these place migrant workers at high risk of abuse and exploitation.¹⁶⁷ Therefore, it is essential that the UK responds to this new terrain by ensuring its policies towards migrants and labour rights do not create new, or exacerbate existent, risks.

The current review of the UK’s immigration system provides an opportunity to demonstrate the country’s commitment in tackling labour exploitation. By introducing secure reporting at a minimum, and going further by repealing the ‘illegal working’ offence, the government will help create a safer labour market for all by enabling migrant workers to report exploitative employers and dismantle the current cycles of impunity that allow them to go unpunished.

BUILDING STRONGER COMMUNITIES AND TACKLING CRIME

At the local level, London has the opportunity to lead on this issue by ensuring all Londoners are able report crimes to the police without having their personal information given to the Home Office for immigration enforcement purposes. By developing and enforcing a clear policy establishing that police officers should never share information about a potential victim’s status for immigration enforcement purposes without their informed consent, the Metropolitan Police can start to build trust with undocumented migrant communities, working with them to prevent crime and identify perpetrators.

¹⁶⁶ Home Office and Department for Environment, Food & Rural Affairs, [10,000 workers to boost British farming sector](#), 19 February 2020.

¹⁶⁷ FLEX, [The Risks of Exploitation in Temporary Migration Programmes: A FLEX response to the 2018 Immigration White Paper](#), May 2019.

CONCLUSION

Recognition of precarious and exploitative working conditions has led the UK to adopt a number of strategies aimed at addressing labour abuse and exploitation. The enactment of the UK Modern Slavery Act 2015 established a coherent legal framework to guide responses to criminal cases of exploitation, such as forced labour, human trafficking and domestic servitude. Shortly after, the Director of Labour Market Enforcement was tasked with coordinating labour market enforcement agencies' response along the continuum of exploitation, aiming to increase compliance with employment legislation and identify abusive employers. The Gangmasters and Labour Abuse Authority had its powers extended to investigate serious cases of labour exploitation in England and Wales, and police forces throughout the country worked to identify victims and prosecute their exploitative employers.

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By expanding the 'hostile environment' through the criminalisation of undocumented work, the UK pushed migrants with insecure status into precarious jobs in the informal economy where they are less protected against abusive employment practices.”

However, at the same time the UK was making high profile commitments to tackle exploitation, it introduced several policies that undermined such commitments. These policies increased migrant workers' risk of exploitation while making it more difficult for labour market enforcement agencies to prevent it, and for police officers to support victims and identify their exploiters. By expanding the 'hostile environment' through the criminalisation of undocumented work, the UK pushed migrants with insecure status into precarious jobs in the informal economy where they are less protected against abusive employment practices. This policy has also strengthened one of the main tools exploitative employers use to coerce and control migrants in abusive situations: the threat of reporting them to the authorities. Findings show how migrant workers with insecure status are enduring long periods of abuse and exploitation for fear that seeking support will put them at risk of harmful immigration consequences.

Specialist statutory agencies' close relationship with Immigration Enforcement breaks migrants' trust in these agencies, leading to lower levels of reporting. Despite these problems, labour inspectorates and law enforcement are expected to actively report workers with insecure status to the Home Office, as well as passively through simultaneous operations that aim at safeguarding potential victims and punishing undocumented workers. National and international experts have warned police and labour inspectorates that bringing immigration enforcement tasks into their realm of work, even if indirectly, can reduce their effectiveness and ability to carry out their primary functions to the best of their abilities, which was evidenced in this report.

Prioritisation of immigration offences is also leading victims of modern slavery offences to be arrested, detained and even removed from the UK without access to support, causing re-traumatisation, worsening of physical and mental health conditions, and creating mistrust in the systems that are supposed to safeguard them. Documented migrant workers and British minority groups are also being affected. These groups have reported experiencing increased discrimination and feeling uncertain about their employment rights entitlements.

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Insufficient funds for labour inspectorates to carry out their work coupled with migrants’ fear of reporting have allowed abusive employers to underpay and mistreat their workers, as rewards for non-compliance are higher than the risk of being caught. This cycle of impunity also affects workers in low-income sectors who are pressured to accept worse pay and conditions; and places a burden on fair employers who are unable to compete with businesses that are undercutting the system.

Following the end of the Brexit transition period, the number of workers with insecure status is expected to rise, as a much large portion of the UK’s migrant population will experience restrictions to their ‘right to work’. In the same period as this transition takes place, the UK is introducing a new labour market enforcement regime in the form of the Single Enforcement Body. Both these shifts provide a crucial opportunity to build a healthier labour market by challenging the cycle of impunity described in this report. The UK must adopt policies that protect all workers from criminalisation by introducing secure reporting systems and ending the immigration deterrence policies that are making migrants vulnerable to abuse and exploitation.

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