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Systemic drivers of migrant worker exploitation in the UK

THE WORK SPONSORSHIP SYSTEM AND LABOUR ENFORCEMENT

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WoRC
Work Rights Centre

About this series

Migrant workers play a crucial role in the UK economy and social fabric. Yet too often they are overrepresented in precarious work and excluded from employment justice. This series of publications seeks to document and expose these issues, making policy recommendations that can end migrant worker exploitation for good.

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About Work Rights Centre

Work Rights Centre is a registered charity dedicated to supporting migrants and disadvantaged British residents to access employment justice and improve their social mobility. We do this by providing free and confidential advice, and by publishing research which addresses the systemic causes of labour and social injustice.

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Executive summary

Every day in the UK, migrant workers face the risk of labour exploitation. This is harmful for workers, bad for business, and risks tarnishing the UK's human rights record. This report examines why this happens, and what needs to change.

The rise in labour exploitation is not coincidental. In our view, it is the outcome of a system which for too long has prioritised the enforcement of immigration controls at all costs, but has left the enforcement of workers' rights insufficiently supported.

Drawing on over 40 case studies with sponsored workers, interviews with caseworkers, and an analysis of Home Office guidance and annual reports of labour enforcement agencies, we find the following:

The 'new' Points Based immigration system (PBS) introduced after Brexit makes most migrants' right to come to the UK to work contingent upon holding a job offer from an employer licensed by the Home Office. This aspect of the PBS, which we refer to as the 'work sponsorship system', severely limits migrant workers' abilities to change employers, preventing them from reporting labour exploitation, and increasing the risk that they accept precarious work conditions. To illustrate this, we draw on a harrowing case study of four Indian nurses who were scammed into paying over £20,000 each for a Health and Care Worker visa, but who are unable to report the scam for fear that doing so will lead to their visas being curtailed.

The labour enforcement system is also ill-equipped to tackle the problem of migrant worker exploitation. With responsibility divided between several agencies which hold different approaches to investigation, and resourcing that falls far below international standards, the system is currently fragmented and over-reliant on businesses to self-regulate.

RECOMMENDATIONS. To address the problem of migrant worker exploitation, we recommend that the government adopts three key measures.

1. Reform the Points Based Immigration system, to end dependency on sponsors and give migrant workers and businesses the flexibility they need.
2. Strengthen protections for workers, including by introducing a well-resourced Single Enforcement Body with a data sharing firewall between labour and immigration enforcement.
3. Appoint a Migrant Commissioner to lead on the development of a Migrant Worker Welfare Strategy, and coordinate efforts to identify and mitigate the risk of migrant worker exploitation in the long-term.

With the UK's pivot from free movement to a work sponsorship system, it is imperative that migrants' rights advocates, and workers' rights supporters, continue to monitor the ways in which immigration and labour enforcement intersect in practice. Contrary to popular discourse, migrants' rights are not competing with, but reflective of workers' rights more generally. This report is the first in a series of publications, where the Work Rights Centre traces the risks of labour exploitation, and unpacks the approaches needed to mitigate them.

1. Introduction

In the three years since the UK officially left the European Union (EU), ending the free movement of EU workers in favour of a 'new' Points Based Immigration System[i] premised on sponsorship, journalists have uncovered countless reports of migrant worker exploitation. Reporters investigating the Seasonal Worker Visa, a short-term visa category introduced in 2020 to plug labour shortages on British farms and pack houses, found workers living in mould-infested accommodation, struggling with wage deductions, or earning so little they could not even make up travel costs.[1,2] Separate coverage of the Health and Care Worker Visa, introduced that same year to support recruitment in the National Health Service (NHS) and more recently in care homes, found similar issues of work insecurity, underpayment, and crippling debt bondage.[3]

Though tinged by the particularities of each visa scheme, these incidents are not isolated. For every media reveal that grips the public imagination, numerous other reports of exploitation are brought to the attention of labour enforcement agencies, policy makers, academics, and charities every day.

In 2023, as many as 89% of all adult referrals to the UK's National Referral Mechanism (NRM), the framework for identifying and supporting potential victims of Modern Slavery, were in respect of non-UK nationals (Figure 1). Labour exploitation was the most frequently cited reason for referrals, figuring in around 53% of all submissions to the NRM.[4]

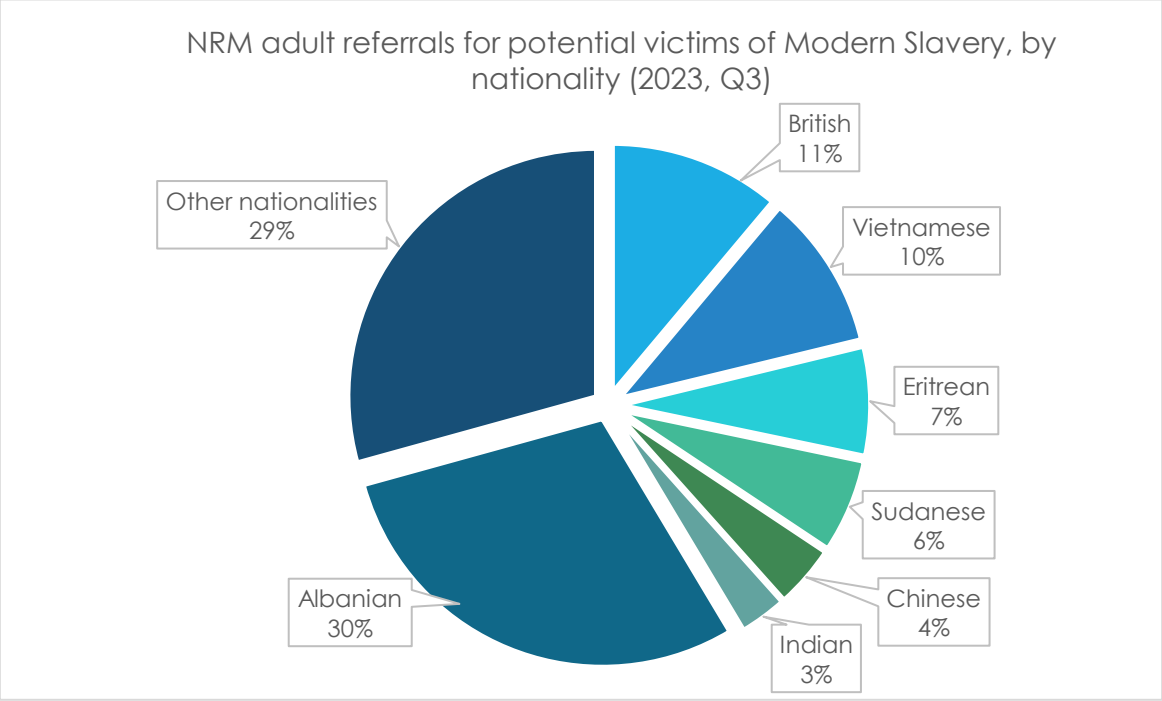


Figure 1: NRM adult referrals for potential victims, by nationality, in Q3 2023. Source: Home Office National Referral Mechanism Statistics, 2023.

[i] The first version of the Points Based System was introduced in 2008.

Migrants have also been over-represented in dangerous industries (Figure 2). In 2022, the Health and Safety Executive (HSE) reported a national average of 4,030 cases of work-related ill health, and 1,650 cases of injury, for every 100,000 workers. Most of the industries that exceeded those rates had a higher share of foreign-born workers compared to the national average (which stood at 19%). Similarly, research on the Covid-19 pandemic found that migrant workers were more likely to be in close contact with the virus, and more likely to be in non-permanent or self-employed roles, which were at higher risk of experiencing income losses.[5]

Figure 2: Share of foreign-born workers in industries with a higher than average rate of workplace accidents or illness. Sources: HSE, Health and safety at work. Summary statistics for Great Britain (2022); ONS, Employment by industry and country of birth (2023).

The exploitation of migrant workers is not coincidental, but the outcome of a system; an inadequate and increasingly hostile national policy environment, which for too long has prioritised enforcing immigration controls, but has left the enforcement of workers' rights insufficiently supported. We believe that this system normalises injustice and needs to be changed.

In this report, we unpack the systemic drivers of migrant worker exploitation. We argue that, in its current configuration, the Points Based System is ill-equipped to mitigate the risk of migrant worker exploitation. The system puts employers in a position of considerable power by limiting migrant workers' abilities to change jobs and take on additional work, and by excluding them from public funds. Notably, this power remains largely unaccountable and unchecked.

The latest compliance data casts doubt on whether the Home Office has the ability to regulate and adequately monitor the increasingly high number of businesses it licenses (see Appendix 1). The risk of exploitation is deepened, in turn, by the fact that currently it is extremely difficult for a migrant worker to report their employer and enforce their rights. The UK's labour enforcement system is fragmented and under-resourced, and relies on businesses to self-regulate. Perhaps most worryingly, quitting employment with an exploitative sponsor carries the risk of having one's immigration permission curtailed, leaving migrants with just 60 days to obtain a job from another sponsor, make another application, and pay a second set of fees before they have the right to work in the UK again.

To end the exploitation of migrant workers, we recommend three key measures. First, a reform of the Points Based System, to end dependency on sponsors, and give migrant workers more flexibility to change employers. Second, strengthening employment protections, including through the introduction of a well-resourced Single Enforcement Body (SEB) that is truly separated from immigration enforcement. Third, the appointment of a Migrant Commissioner, to lead on the development of a Migrant Worker Welfare Strategy, and coordinate efforts to identify and mitigate the risk of migrant worker exploitation in the long-term.

We acknowledge that the systems we examine in this report are not the only things that lead to migrant exploitation. Migrant workers' individual vulnerabilities also play an important role, as do the actions of employers, recruiters, and other actors involved in the 'migration industry',[6] in the UK and in countries of origin. Our focus on work sponsorship and, respectively, the labour enforcement system is not designed to oversimplify the multi-layered issue of exploitation, or absolve employers of their duty to treat migrant workers with dignity. If we focus on systems here, it is because we want policymakers to uphold the same standards.

1.1. Methods

This report draws on a mixed-methods approach which combines a critical analysis of Home Office guidance, annual reports of labour enforcement agencies, and Home Office statistics, alongside a qualitative analysis of interviews with service providers at the Work Rights Centre, and case notes.

Case notes provide a rich and long-term insight into migrant workers' employment issues and the barriers to enforcing them. Every time our colleagues support a client with legal advice and casework, their notes capture the client's legal issue, a history of the employment dispute, but also factors such as level of English and digital literacy, financial precarity and other variables which contribute to the client's vulnerability. Perhaps most interestingly, case notes provide a glimpse into the long process of enforcing employment rights; and indeed, into the moments when migrant workers decide to abandon this process due to cost, fatigue, or other challenges.

In the ten months to October 2023, our charity was contacted by approximately 400 migrant workers who needed help to understand or access their employment rights. This included Seasonal Workers, people on the Health and Care visa and on the Skilled Worker visa, as well as workers who had become undocumented, having fled abusive sponsors (see Table 1). Notably, this data does not include scenarios where one client contacted the charity on behalf of a larger group of migrant workers.

Clients' immigration status	Client numbers
Health and Care Visa	8
Seasonal Worker Visa	22
Skilled Worker Visa (excluding Health and Care)	4
Undocumented	11
Other (eg: EUSS, Homes for Ukraine)	340

Table 1: Employment Rights cases supported by Work Rights Centre advisers, by clients' immigration status. Source: Client Management System, 01 Jan 2023- 08 November 2023.

Limitations. Our findings are not generalisable. The case data we draw on here is not a representative sample of all migrant workers sponsored by employers in the UK, but only of those who experienced labour exploitation *and took the steps to contact* the Work Rights Centre. Relatedly, the relatively small proportion of sponsored workers as a percentage of the charity's total employment caseload should not be interpreted as an absence of issues for sponsored workers. On the contrary, a more likely explanation is that these workers have arrived in the UK more recently, and are less familiar with the support available in the third sector. It is important to note that, while our sample size is too small to be statistically representative of all sponsored workers, it offers an insight into the possible outcomes of a system which, *by design carries the risk of exploitation*.

Our position. As a charity dedicated to supporting migrants and disadvantaged British residents to access employment justice, our mission is not just to evidence labour exploitation, but to use that evidence to advocate for policy change. This also informs our assumptions.

Assumptions. We assume, first and foremost, that no level of labour exploitation is 'normal'. In a society that values fairness, a single case of labour exploitation should prompt a review of labour enforcement mechanisms. We also assume that employment rights are public rights. As Prof Alan Bogg argues,[7] there is a public good in the enforcement of employment rights, because there is a public good in a decent and functioning labour market.[ii] Fundamentally, migrants' rights are also British workers' rights.[8] If employers are falling foul of their obligations in respect of migrant workers, they're likely to also be falling foul of their obligations more widely. In this respect, employment justice should be viewed as an indivisible public good. Finally, we assume that systemic change is practically possible. The recommendations we make here are not developed in isolation, but inspired by systems of immigration and labour enforcement which are already applied in other parts of the world.

[ii] This is notwithstanding that the current statutory framework for employment rights has been modelled with a private law understanding and emphasis in mind.

1.2 Understanding exploitation

When we talk about exploitation, we are referring to **a continuum of situations where employers use their *position of power* to take advantage of workers' vulnerability**.[9] This includes things like withholding payment, insecurity of hours and pay, providing low-quality accommodation or insufficient safety equipment, as well as the more extreme cases of 'Modern Slavery'.

In 2015, the Modern Slavery Act made an important step by consolidating previous legislation which made it a criminal offence to hold someone in slavery or servitude, or to require them to perform forced or compulsory labour. Adults identified as possible victims of labour exploitation by 'first responders' (like the police or local councils), who consent to being referred into the National Referral Mechanism (NRM) for Modern Slavery, can access protections such as a place in a safe house, or temporary protection from immigration enforcement (subject to being recognised as victims by the competent authorities).

However, it is important to highlight the fact that employers use their position of power in ways which cause real harm, without necessarily fitting the definition of labour exploitation used in the NRM (which has in itself been contested).[10] Contrary to the discourse around Modern Slavery and the narrative of victims and offenders,[11] labour exploitation is not simply the outcome of 'bad employers', but the product of a system which makes bad employment possible. In using a broader definition of exploitation, we aim to expose the imbalance of power that allows employers to take advantage of migrant workers, and identify ways of addressing it.

Who counts as a migrant? In this report, we use the word migrant to refer to people who are subject to immigration controls under the Points Based System and who, as a consequence, experience the disadvantage of being tied to their sponsor. This does not include students who are sponsored to study, and who have different work arrangements which fall outside the scope of this paper. There is a rich and nuanced literature unpacking the complexity of the term 'migrant'. To learn more, please see our list of references.[12]

1. The work sponsorship system

For the past couple of decades, the EU was the major source of work-related migration to the UK.[13] Citizens of countries which were part of the European Economic Area (EEA) and their family members could enter freely and, for the most part,[iii] take up any job in the UK, in line with the bloc's principle of free movement.

By 2021, an estimated 6.9% of people employed in the UK were EU born, according to the Migration Observatory.[14] EU workers were particularly key in industries like retail, manufacturing, health and social work, hospitality, and education, where they filled approximately one in every ten positions, and played a crucial role in certain 'low skill' occupations.[15] In 2020, EU born workers filled one in every seven jobs in factory and

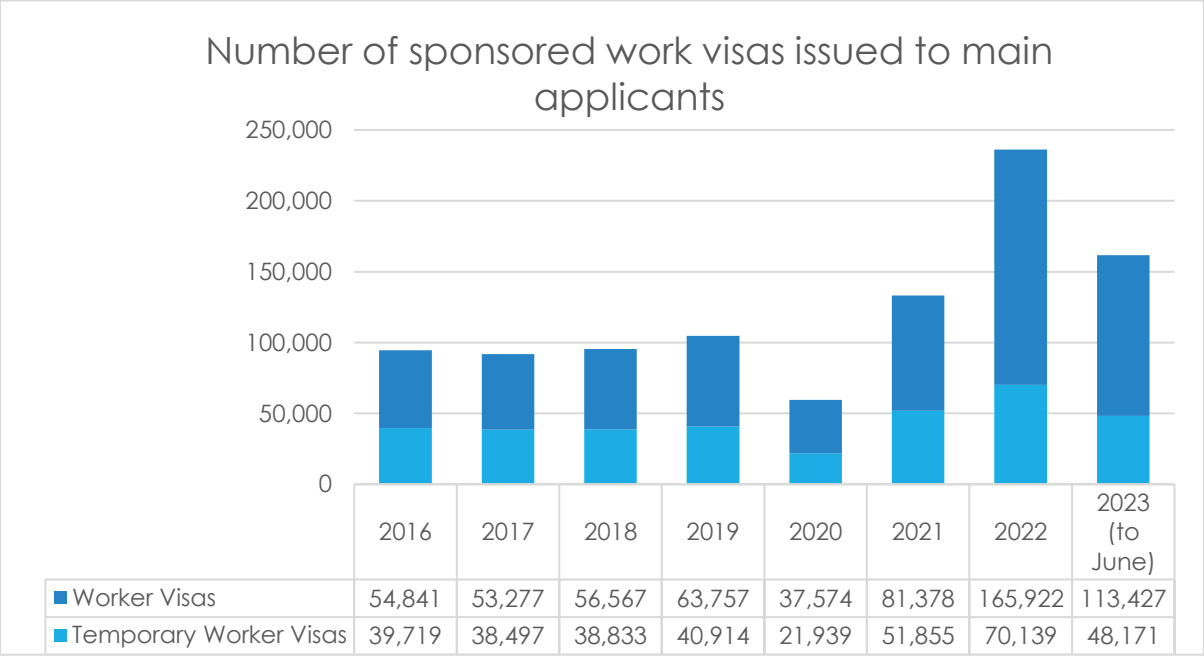
[iii] Between 2007 and 2014, the UK maintained transitional restrictions on the types of work that could be conducted by migrants from Romania and Bulgaria.

machine operations, one in seven jobs in food preparation, and one in eight jobs in low-skilled cleaning, warehousing, and other services.[16]

Brexit shifted the picture of economic migration. From 1st January 2021, all foreign-born nationals seeking to work in the UK, with the exception of Irish citizens, were required to obtain a visa. Fuelled by the political ambition to 'turn off the tap of cheap, foreign low-skilled labour', as the then Home Secretary Priti Patel put it,[17] yet forced to acknowledge the economic reality that British businesses continued to rely on migrant labour, the UK government pivoted, in effect, away from free movement, and to a 'points-based system'.

In many ways, the key principle underlying the system was not new. During the UK's membership of the EU, free movement applied to EEA citizens and their family members, while most other economic migrants required a visa sponsored by an employer. However, the scale of the expansion of the sponsorship system merits renewed attention.

Under the current Points Based System, anyone wishing to come to the UK on a Worker or Temporary Worker visa needs to have a job offer from an employer that is registered as a licensed sponsor with the Home Office. Once that employer is licensed and is given an A rating by the Home Office, they are able to issue a Certificate of Sponsorship (CoS) to job candidates, who will use it, in turn, to apply for their work visa. As the Migration Observatory put it, the points element is largely 'presentational', since having a job offer is a non-negotiable condition of a Worker or Temporary Worker visa.[18] In summary, this is primarily a sponsorship-based system, where migrants and employers incur substantial costs in obtaining a visa and, respectively, a licence.



	2016	2017	2018	2019	2020	2021	2022	2023 (to June)
Worker Visas	54,841	53,277	56,567	63,757	37,574	81,378	165,922	113,427
Temporary Worker Visas	39,719	38,497	38,833	40,914	21,939	51,855	70,139	48,171

Figure 4: Number of sponsored work visas issued to main applicants. Source: Home Office Immigration system statistics quarterly release, Entry Clearance Data Tables, 2023, Q2.

In 2022, the Home Office issued over 236,000 Work and Temporary Work visas to main applicants (Figure 4), and these numbers are projected to grow.[19] Indeed, within that same time frame, the department received over 20,000 applications from businesses

seeking a licence to employ migrants on the Skilled Worker Visa, and just over 700 for those seeking to employ migrants on Temporary Worker visas. Overall, according to the latest Migration Transparency data, over 67,000 businesses were registered to sponsor skilled workers in 2023 (Figure 5).

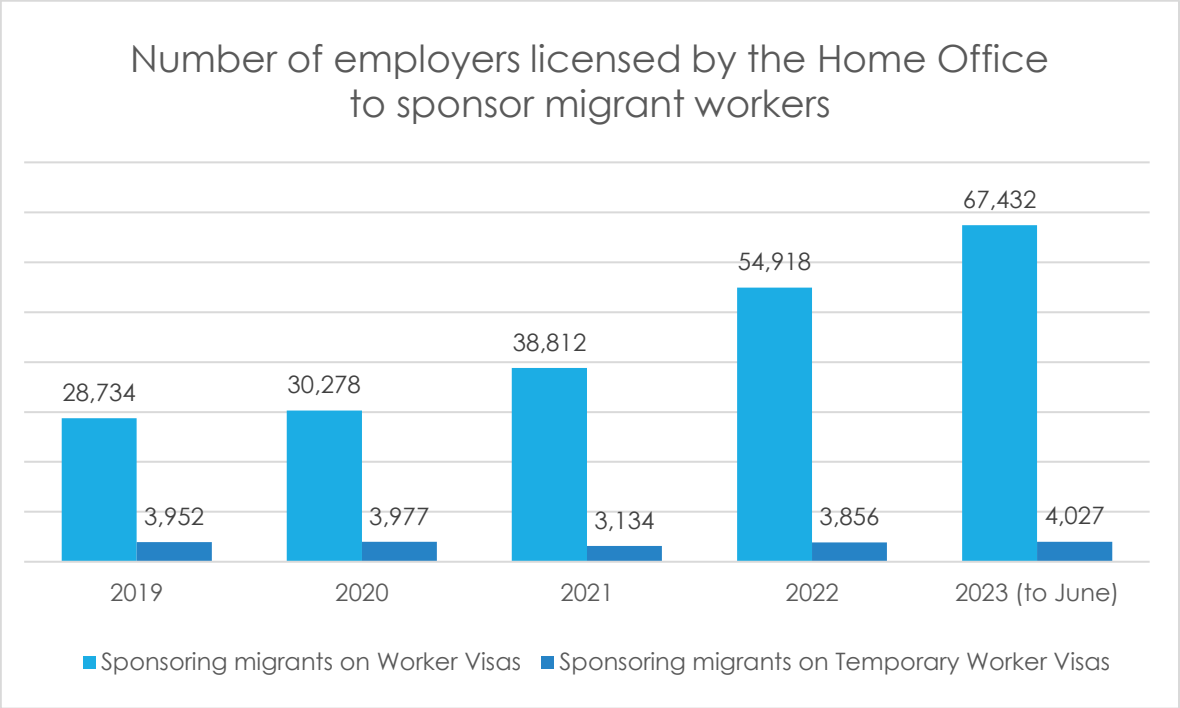


Figure 5: Number of employers licensed to sponsor migrants on Tier 2 visas (Skilled Workers) and Tier 5 visa (Temporary Workers). Source: Home Office Visa and Immigration Transparency Data Q2 2023,

In this chapter, we examine the risks derived from employer-sponsorship, and from the Home Office's failure to adequately check the businesses it entrusts with the recruitment of migrant workers.

2.1. Work visas premised on sponsorship

To fill the labour shortages within the British economy, the government introduced several new work visa categories and widened eligibility for existing ones. This includes, but is not limited to the following categories.

The Seasonal Worker Visa. In 2019 a Seasonal Workers Pilot was launched to plug the gaps in horticultural labour. This entails short-term visas of up to just 6 months, which offer workers no right to settlement and no easy pathway to change operators.[20] Under the SWV a small number of operators are licensed to recruit workers (and issue the Certificates of Sponsorship needed for their visa applications), and place them further for employment on farms and packhouses across the UK. From the time of its introduction, the scheme has grown exponentially, from an initial worker quota of 2,500 in 2019, to a quota of 45,000 in 2023.[21] In the year to date, the Seasonal Worker Visa accounted for 14% of all work visa grants to main applicants (Figure 6).

The Health and Care Visa. Changes were also made to facilitate recruitment of migrants in the social care sector. In 2020, the government launched the Health and Care Visa.[22] Originally targeted at medical professionals working in the NHS and adult

social care, the eligibility criteria were widened just two years later to include applicants willing to work in the adult care industry. To aid recruitment, the Health and Care Visa carries significant concessions, including lower application fees for migrants, and no yearly Immigration Health Surcharge. In 2023, the Health and Care Visa accounted for 40% of all work visas issued to main applicants (Figure 6).

The Skilled Worker Visa. Introduced in 2019, and touted as a cornerstone of the Government's pledge to control migration after Brexit by requiring migrant workers to hold offers of employment, the Skilled Worker visa includes professions ranging from senior officials and chief executives, to plasterers and upholsterers, where the minimal salary threshold can be £26,200 per year[iv] or, for some shortage occupations, £20,960.[23] Over 55,000 Skilled Worker visas were issued to main applicants in 2023 (so far). This amounts to 17% of all work visas granted that year to main applicants.

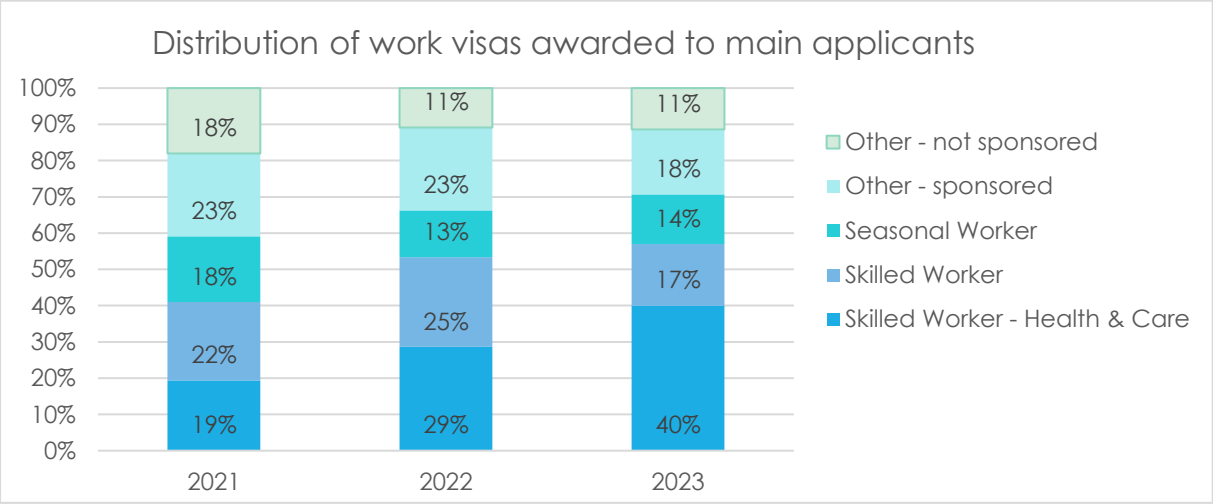


Figure 6: Distribution of work visas awarded to main applicants. Source: Home Office Immigration system statistics quarterly release, Entry Clearance Data Tables, 2023, Q2.

Each visa scheme comes with conditions that specify how applications are made, the fees paid by applicants, and most importantly the conditions of their entry, work, and any rights to settlement. Furthermore, each scheme operates different recruitment practices and, perhaps most interestingly, is popular among different parts of the world. The Seasonal Worker Visa, for instance, attracted a large proportion of Ukrainian, Russian, and Belarussian workers for the first three years, until the invasion of Ukraine prompted visa operators to recruit more from Central Asian countries.[24] The Health and Care visa, by contrast, is most popular with workers from India, Nigeria, Zimbabwe, and the Philippines. Beyond the specificities of each scheme however, what they share is a principle of employer-sponsorship, which entrenches the power imbalance between migrant workers and employers.

[iv] The general salary threshold can be lower than £26,200/year, but not less than £10.75 per hour, if the applicant can score tradeable points. For example, if they work in a shortage occupation, or if they have a PhD that is relevant to their job.

Table 2: Conditions of different work visa categories under the Points Based System.

	Skilled Worker visa	Health & Care Worker visa	Seasonal Worker visa	Creative Worker visa
Duration of visa	Up to 5 years* There is no minimum period of sponsorship for this visa	Up to 5 years* There is no minimum period of sponsorship for this visa	Up to 6 months	Up to 12 months* Can be extended for a further period of up to 12 months
Leads to settlement	Yes	Yes	No	No
Right to change sponsor in-country	Yes	Yes	No	Yes
Right to undertake additional paid employment	Yes – limited* Up to 20 hrs/wk in job on Shortage Occupation List or in the same sector + at same level as main job without need to update the visa	Yes – limited* Up to 20 hrs/wk in job on Shortage Occupation List or in the same sector + at same level as main job without need to update the visa	No	Yes – limited* Up to 20 hrs/wk in job on Shortage Occupation List or in the same sector + at same level as main job
Right to bring dependants	Yes	Yes	No	Yes
Recourse to public funds	No	No	No	No
Direct NHS access (IHS fee)	Yes	Yes	No	Yes
Sponsorship licence fees (standard service) ***other costs apply (Skills Charge, CoS, priority service)***	**Large sponsor:** Holds Temporary Worker (TW) licence - £940 Does not hold TW licence - £1,476 **Small/charitable sponsor:** Holds TW licence - £0 Does not hold TW licence - £536	**Large sponsor:** Holds Temporary (TW) Worker licence - £940 Does not hold TW licence - £1,476 **Small/charitable sponsor:** Holds TW licence - £0 Does not hold TW licence - £536	**Large sponsor:** Holds Temporary Worker (TW) licence - £0 Does not hold worker licence - £536 **Small/charitable sponsor:** Holds worker licence - £0 Does not hold worker licence - £536	**Large sponsor:** Holds Temporary Worker (TW) licence - £0 Does not hold worker licence - £536 **Small/charitable sponsor:** Holds worker licence - £0 Does not hold worker licence - £536
Overseas visa application fees	**CoS for 3+ yrs:** SOL job – £1,084 Non-SOL job – £1,420 **CoS for < 3 yrs:** SOL job – £551 Non-SOL job – £719 **Health Surcharge** £624/year	**CoS for 3+ yrs:** SOL job – £551 Non-SOL job – £551 **CoS for < 3 yrs:** SOL job – £284 Non-SOL job – £284 **Health Surcharge** Not applicable	£298 **Health Surcharge** Not applicable	£298 **Health Surcharge** £624/year
In-country visa application fees	**CoS for 3+ yrs:** SOL job – £1,084 Non-SOL job – £1,500 **CoS for < 3 yrs:** SOL job – £551 Non-SOL job – £827	**CoS for 3+ yrs:** SOL job – £551 Non-SOL job – £551 **CoS for < 3 yrs:** SOL job – £284 Non-SOL job – £284	N/A	£298

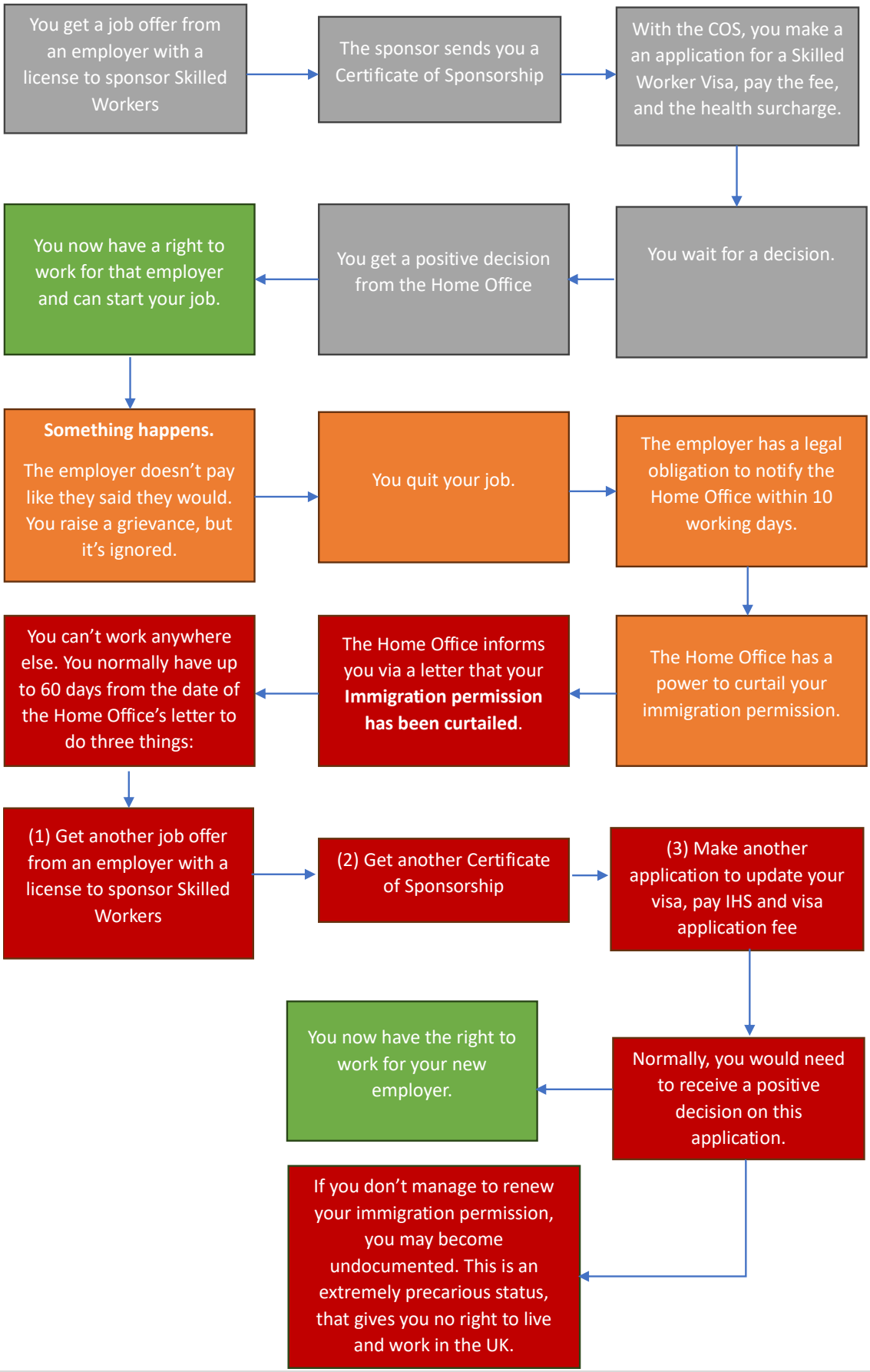
2.3. The risks for migrant workers

Sponsors control migrants' right to be in the UK. A key reason why the sponsorship-based system increases the risk of worker exploitation, is that migrant workers are 'tied' to their employers. If the employer loses their sponsor licence, the worker's Certificate of Sponsorship is cancelled, and their existing visa is limited to 60 days (or the period that is left on the visa if it is already below 60 days).[25] After this time, unless the worker has been able to obtain another work visa (which entails being offered another job with an employer licensed by Home Office), they will be required to leave the UK. The same process applies if the employer unilaterally decides to terminate the worker's employment (something that happens frequently, given that workers in the UK can only bring a claim for ordinary unfair dismissal after they have accumulated two years of continuous service for the same employer). The sponsor is under an obligation to inform the Home Office within 10 working days of the termination,[26] after which the worker should receive a curtailment notice.

Changing employers is difficult and costly. While transfers between licensed employers are possible in theory, this is extremely difficult in practice. Migrant workers under the Seasonal Worker Visa have a right to ask their visa operator to transfer them to a different employer, but operators have the freedom to determine what constitutes a 'reasonable request' for transfer. Our casework indicates that this is highly dependent on the operator, the season, and the work available, and workers have little choice in the matter. Migrants under the Skilled Worker Visa, including Health and Care, can apply for alternative employment, but this is hindered by the fact that the register of licensed employers does not contain a breakdown by industry. Effectively, a worker would have to scroll through tens of thousands of registered businesses operating across dozens of industries. There is also the issue of administrative difficulty and cost. Skilled Workers would have to make a new application to update their existing visa with details of the new sponsor. Currently, the cost of such an application ranges between £827 and £1,500 (see Table 2),[27] and is far above what it costs the government to process it. Overall, in 2022 the government income from immigration and nationality fees stood at £2,2 billion.[28]

No financial safety net. Without access to public funds migrant workers have little choice but to finance the entire period of inactivity between sponsors from personal savings (or, if they have a right to bring a dependant, with their help). This is a daunting prospect. Seasonal workers do not have the right to work in sectors beyond that specified in their Certificate of Sponsorship, so their ability to earn and save is minimal. Skilled Workers may only conduct up to 20 hours of additional work per week (provided it is in the same sector as their main sponsor, or in a shortage occupation). For many of our clients, who had come from low-income countries and incurred substantial debts, supporting themselves for two full months was simply not possible. What was more likely is that they would work 'illegally', in precarious positions where they were vulnerable to further exploitation, or that they would accept their current employment, as the lesser of two evils. This, in turn, exposes migrant workers to the risk that the enforcement of their employment rights will be barred by the illegality doctrine, which can defeat a claim based on a claimant's own illegal conduct.

Table 3: The complex process of changing employers under the Skilled Worker Visa.



'I have had a case where a client on the Seasonal Worker Visa worked for around 2 months, but then he developed some serious health issues. He is now incredibly worried about receiving surgery but also about the fact that his visa might expire before he is able to work again. Workers like this client are left with little choice, they either suffer and work to earn a little bit of money, they go back to their home country, or they start working and are exploited on the black market as they try to pay back debts incurred at the start of the recruitment process.''

Nadiia Yashan, Service Provision Assistant

The system thus places employers in a position where they can threaten workers with the prospect of cancelling their sponsorship, and forcing them to return to home countries. When migrants have already incurred substantial costs to apply for their visa, health surcharge, travel, and basic necessities in the UK, the risk of losing one's job can make it extremely difficult to report exploitation.

Recruitment fees. Several media reports, as well as our own frontline service, have identified cases where migrant workers paid extortionate sums to local agents who claimed to facilitate their access to a UK Certificate of Sponsorship. Often disguised as administrative or training charges, these fees ranged between several hundred and as much as £25,000. We are concerned that indebtedness prompts migrant workers to acquiesce in exploitative work conditions. Notably, we are concerned that, in the absence of either transnational enforcement mechanisms or any form of worker compensation fund in the UK, such abuses remain unpunished.

Repayment clauses. Aside from the illegal fees charged by some unlicensed agents abroad, migrant workers on the Health and Care Visa in particular are vulnerable to a more insidious form of indebtedness, inscribed in the repayment clauses of their employment contracts. Repayment clauses allow an employer to recover some of the upfront costs invested in recruitment, if the worker leaves within a given period. The Code of Practice for the international recruitment of health and social care personnel in England makes it clear that repayment clauses must abide by the four principles of transparency, proportionality, timing and flexibility.[29] However, we have evidence that these clauses have been abused. Our service provision team has come across cases where employers sought to enforce repayment clauses when workers expressed a desire to leave due to poor working conditions, or even when the worker had been dismissed unfairly.

Short-termism. Even if migrant workers find a suitable alternative employer, bringing a claim in the Employment Tribunal, or contacting one of the UK's labour enforcement agencies, is a lengthy and complex process. For migrants who only have a few weeks left on their Certificate of Sponsorship, the prospect of taking action against a rogue employer can be daunting. In a dispiriting reflection of the system, workers often conclude that their only option is to cut their losses.

In October 2023, our Service Provision team was contacted by four Indian nationals, all of whom had arrived in the UK under the Health and Care visa and were sponsored by the same care provider. The workers secured their visas and jobs in the UK through the same rogue recruitment agency in India, which had been recommended by a combination of family, friends and other colleagues. The agency charged the workers an eye-watering £20,000, £22,000 and £25,000 respectively to arrange their visa applications. The workers paid in cash, as demanded by the agency.

Once in the UK, the four workers realised they were part of a wider cohort of care workers invited to take part in an initial induction and 'training'. However, since the induction, none of the workers have been offered any work placements, nor have they been paid, despite work placements being promised on several occasions, and the workers having signed employment contracts stating a minimum level of working hours. The workers claim that they are part of a wider pool of around 100 individuals who are in the same situation. They are now desperate to understand if they can claim any money back from their sponsor, and if they can change their sponsorship and find other work in the UK.

Advisers face an almost impossible task in resolving cases of this kind. The cross-border work involved in finding the rogue recruitment agents makes the recovery of fees almost impossible. Reporting the sponsor to the Home Office is also riddled with challenges – if the Home Office strips the sponsor's licence, that will curtail the workers' visa, and they'll have 60 days to find another job, or leave the UK. If the workers raise a grievance with the employer, the company could retaliate and withdraw sponsorship, which could also trigger the 60 day countdown. Finally, if the workers take up employment outside of the conditions of their visa because they need money to survive, they will likely commit the offence of illegal working, making them liable to imprisonment and/or a fine upon conviction (as well as having serious repercussions for their immigration record, and potentially that of any family members). Another option is for the workers to be referred into the NRM. However, while the NRM could provide shared accommodation in a 'safe house', and temporary protection from immigration enforcement as *victims*, it cannot support the enforcement of their contractual rights as *workers*.

The only way out appears to be for the workers to find another registered sponsor to employ them in the UK, before they bring a claim against the first care agency, This requires time, literacy and, given the NRPF condition, substantial funds. Changing sponsors gets even more complicated if the workers signed an employment contract that contains a repayment clause which forces them to pay back arbitrary or unsubstantiated sums if they leave 'early'.

If the workers manage to weather all of this and secure alternative employment, they would need to apply **again** to update their visas with the Home Office, and pay another fee. The same would be the case for their dependants, if they arrived with a partner or children.

2.3. A broken enforcement system

The risks faced by migrant workers reflect a paradox of the policy configuration which governs the work sponsorship system in the UK. On one level, sponsors are implicitly expected to protect the welfare of migrant workers. The Home Office guidance to sponsors notes that:[30]

> *When a sponsor is granted a licence, significant trust is placed in them. With that trust comes a responsibility for sponsors to act in accordance with our immigration law, all parts of the Worker and Temporary Worker sponsor guidance, wider UK law (such as employment law) and the wider public good.*

Indeed, many businesses, particularly operators of the Seasonal Worker Scheme, have attempted to champion the subject by producing worker-facing literature and audio-visual materials, or by taking an interest in stopping international recruitment fees. However, good enforcement of labour rights cannot rely upon the goodwill of businesses alone.

It is not clear if the Home Office has the ability to regulate the number of sponsors it now licences. In the six years since the Brexit referendum, the number of employers registered to sponsor skilled workers has more than doubled, from 27,000 in 2016, to over 67,000 in 2023 (see Fig 5). Does the department have the capacity to carry out enough compliance visits to match this growth? In August 2023 we sent a Freedom of Information request to the Home Office to work out the total number of compliance visits undertaken since 2020.

The Home Office's response (which can be observed at Appendix 1) indicates a few important points. Firstly, the Home Office does not separate out records of compliance visits and courtesy visits (also referred to as customer service visits), meaning that only a manual check on every individual record would uncover which type of visit was applicable. This would be a lengthy task and above the cost limit, so the Home Office did not provide us with a precise figure for compliance visits. This data gap is unusual, because the Home Office does record the number of sponsor licences revoked or suspended each quarter, but it is problematic nonetheless.

Secondly, the Home Office did provide us with the combined figures of compliance and courtesy visits in each year since 2020. Even if we assume that 100% of all Tier 2 sponsor visits were compliance visits (rather than courtesy visits), this paints a challenging picture for the Home Office's ability to regulate sponsors. For example, in 2022, there were 2,158 visits made to Tier 2 sponsors, and there were 47,951 Tier 2 sponsors registered. That means the Home Office would be paying a compliance visit for 1 in every 22 registered Tier 2 sponsors. If we assume that just 75% of the visits conducted by the Home Office were for compliance purposes, the rate drops to 1 compliance visit for every 30 licensed sponsors.

Another cause for concern is that, even when the Home Office does take action, the department's focus is squarely on immigration enforcement, while the enforcement

of labour rights is overlooked. For instance, the application for sponsorship under the Skilled Worker visa requires businesses to demonstrate an ability to mitigate the risk that workers overstay their visas by implementing processes such as record keeping, monitoring and reporting absences. By contrast, the requirements to *evidence* good employment practices are minimal. Similarly, as we have detailed in this chapter, when the Home Office strips a sponsor of their licence, it does little to compensate the workers who will have lost their jobs and, by extension, their right to be in the UK (and who in some cases will have paid substantial amounts to travel to the UK).

There is a real disparity between the attention paid to immigration enforcement, and that paid to labour enforcement. On the one hand, this is a facet of the Hostile Environment which, seeking to 'control migration' at all costs, criminalised work without permission, and drew employers (as well as landlords, education providers, and providers of public services), into an exercise of everyday bordering. It is unlawful to employ a migrant worker who does not have leave to enter or remain in the UK, if their leave is invalid, or otherwise prevents them from accepting an offer of employment. For employers, the consequences range from civil penalties of up to £20,000 per affected worker (due to rise to £60,000 in 2024), for failure to carry out right to work checks properly, to five years in prison and an unlimited fine, for knowingly employing someone without the right to work.[31] For migrant workers, Section 34 of the Immigration Act 2016 created the offence of illegal working, punishing those who are working unlawfully and either know, or have reasonable cause to believe it.

In this context, workers who come to break the conditions of their immigration permission struggle to bring a claim in the Employment Tribunal, or to the attention of labour enforcement agencies, and are inherently vulnerable to exploitation (with the notable exception of workers who are able to fit the definition of Modern Slavery). The routes to legalisation, in turn, are complex, costly, and minimal, leaving little choice for workers who broke the conditions of their visas, even through no fault of their own. This is something we will explore in depth in a future report.

On the other hand however, the gap between immigration and labour enforcement also goes beyond the Home Office and the Hostile Environment, and reflects the fragmented and underfunded nature of the labour enforcement system more generally. In the next chapter, we examine this complex system of agencies, and how they could be reformed to better protect migrant workers.

2. Labour market enforcement agencies

In this chapter, we lead from the premise that a good enforcement landscape is in all our interests, and particularly in the interests of the most vulnerable workers who bear the highest risk. Starting with a brief overview of the labour enforcement ecosystem, we focus in on its limitations, and where change is needed. We argue that, despite the creation of a Director of Labour Market Enforcement (DLME) in 2016, designed to offer strategic direction and oversight, the UK's labour enforcement ecosystem remains deeply fragmented.[32] This, in turn, creates confusion over different agencies' remits, as well as vastly different resources and approaches to investigation.

a. A complicated system

The enforcement of labour market rights in the UK is a complicated tapestry comprising state actors, agencies, and non-governmental bodies which hold different remits, resources, and approaches to supporting workers.

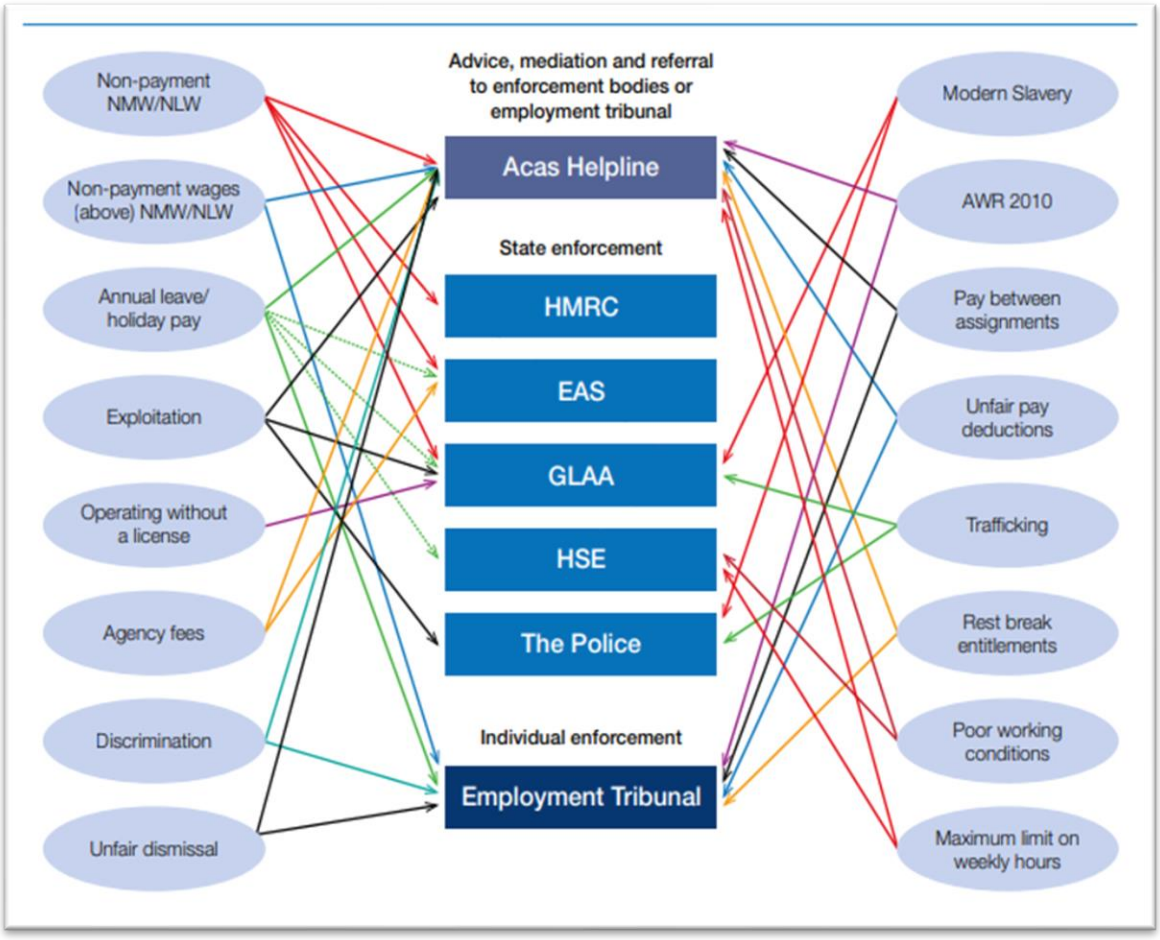


Figure 7: Source: DLME, UK Labour Market Enforcement Strategy 2018/19. ***Note the absence of the Home Office from this diagram****, despite the fact that the department oversees over 60,000 businesses licensed to sponsor migrant workers, and is one of the main first responders for Modern Slavery cases.*

Labour enforcement agencies. Three of the main agencies tasked with protecting the rights of workers in the UK are: the National Minimum Wage (NMW) team at the HMRC, which enforces and investigates matters related to the non-payment of the NMW; the Gangmasters and Labour Abuse Authority (GLAA), which investigates '*reports of worker exploitation and illegal activity such as human trafficking, forced labour and illegal labour provision, as well as offences under the National Minimum Wage and Employment Agencies Acts*';[33] and the Employment Agency Standards Inspectorate (EAS), which regulates '*all employment agencies and employment businesses that provide work-finding services in Great Britain*'.[34]

The three agencies play a crucial role in the UK's labour enforcement system, including the identification of victims and recovery of money. According to government statistics, in 2021/22 the HMRC identified arrears averaging £18,170 per case, and £136 per worker, their highest level in five years.[35] Similarly, the GLAA identified over 6,000 potential victims of labour exploitation and recovered £78,922 for workers.[36] The EAS, in turn, received 2,170 complaints in 2021/22, and recovered approximately £169,230 for individuals who were not paid (a large number of cases involved employment businesses/agencies not paying a worker their wages or earnings).[37] Overall, for the past five years the number of cases reported to these agencies increased substantially (see Figure 8 and Figure 9).

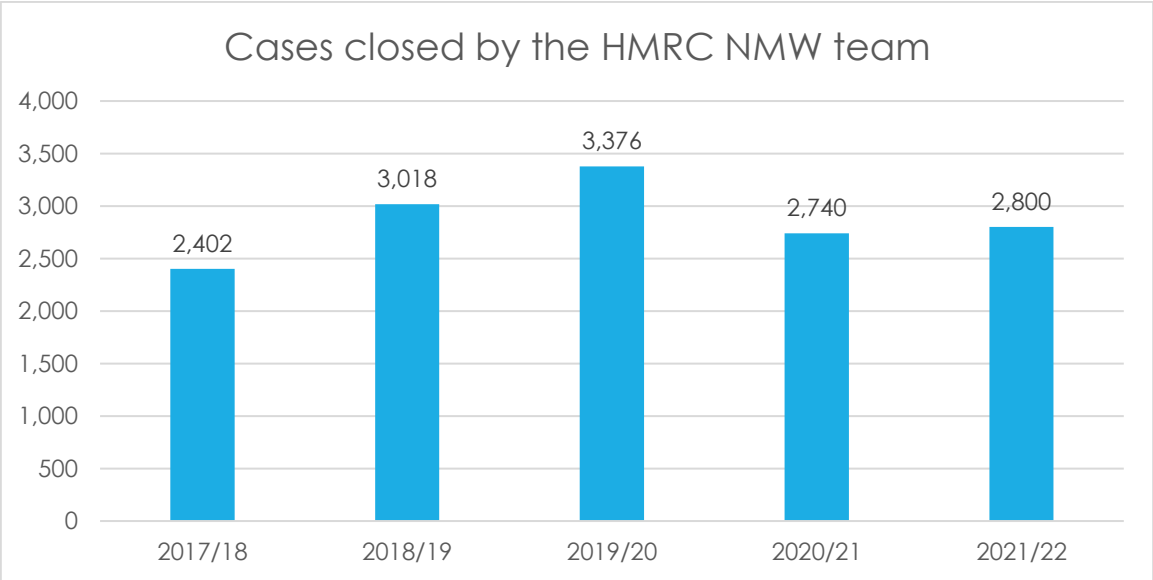


Figure 8: Cases closed by the HMRC NMW team between 2017/18 and 2021/22. Source: Government evidence on NMW enforcement and compliance 2021/22.

Though they are incredibly important, these three bodies are not the only actors with an enforcement remit. The Health and Safety Executive (HSE), the Equality and Human Rights Commission (EHRC), and bodies that regulate particular sectors, such as the Care Quality Commission, all have a role to play.

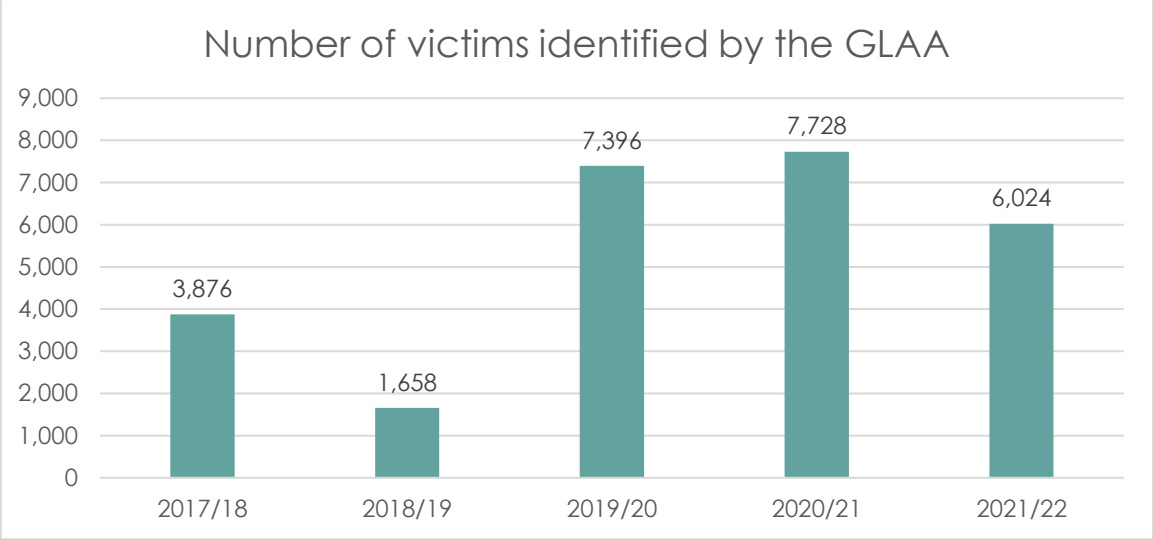


Figure 9: Number of victims identified by the GLAA between 2017/18 and 2021/22. Source: GLAA annual report and accounts 2021/22.

The Employment Tribunal. Parallel to enforcement agencies, workers – and labour enforcement agencies themselves - may seek to address employment disputes by bringing a claim to an Employment Tribunal. All workers, including migrant workers, can contact the Arbitration and Conciliation Service (ACAS) then, if a resolution is still lacking, bring a claim to the Employment Tribunal, provided that they lodge their claim no later than 3 months after the dispute (though some exceptions apply). Certain types of claims can be heard in the civil courts too.

The Employment Tribunal, however, cannot address all the issues that migrant workers face, and the process includes many administrative hurdles. For example, there are differing rules on the ability to give evidence to a UK tribunal if you are outside the country. If you are a citizen or resident of Turkey, you cannot give evidence from Turkey by way of video link for a UK tribunal, either as a witness or when appealing a case. If you are a citizen or resident of Paraguay however, you are allowed to give evidence in this way.[38] This means that some migrant workers, particularly those on temporary visas who are forced to return to their countries of origin, are unlikely to be able to substantiate a claim once they are outside of the UK, unless they are able to travel to a territory from which evidence can be given remotely. Similarly, without swift recourse in the employment tribunal, workers can be dissuaded from whistleblowing for fear of reprisal, thus leaving many risks under-reported.

National Referral Mechanism for victims of Modern Slavery. A different set of actors are tasked with identifying and protecting victims of Modern Slavery, a complex crime which may include human trafficking, servitude, or forced labour. Created in 2009 and extended in 2015, the National Referral Mechanism is a framework for identifying and referring potential victims of Modern Slavery. Several 'first responder' organisations which include the police, the GLAA, a certain part of the Home Office, local authorities, as well as a small number of charities, have the power to refer potential victims of Modern Slavery into the NRM. In 2022, labour exploitation was present in 53% of cases referred into the NRM.[39] Once a referral is made, the

Immigration Enforcement Competent Authority (IECA) which, controversially, is a Home Office department, gets to decide whether there are 'reasonable grounds' that the person is a victim of Modern Slavery.[40] A positive reasonable grounds decision provides the person with the right to receive support through the Government's Modern Slavery Victim Care Contract (MSVCC). Coordinated by The Salvation Army, this includes access to a safe house, a very small weekly stipend, and immigration legal advice. Notably however, the NRM does not include redress from employment rights breaches by default. To receive help with recovering unpaid wages, workers would have to be referred further to one of the labour enforcement agencies. Furthermore, even at this point wages which resulted from the offence of illegal working, may be treated as the proceeds of crime, under the Proceeds of Crime Act 2022.[41]

The result of this criss-crossing of agencies is a tangled system, whereby workers are required to contact different bodies for different sets of issues. In 2016, a Director of Labour Market Enforcement ('DLME') role was created, with a view to bring together the strategic direction for the three main enforcement bodies (HMRC National Minimum Wage team, Gangmasters and Labour Abuse Authority and the Employment Agency Standards Inspectorate), and ensure the annual reporting of both strategy and enforcement activity to the Home Secretary, the Business Secretary, and Parliament. However, even the DLME has acknowledged the confusing nature of the system under its purview, noting that '*workers who need help or who wish to pursue complaints require extensive understanding of the respective remits of the bodies and routes to pursue their claims*'.[42] Figure 7, taken from the DLME's own enforcement strategy, gives a graphic representation of just how confusing the UK's labour enforcement landscape can be to navigate.[43]

b. The limits of labour enforcement agencies

The complicated nature of the labour enforcement ecosystem has resulted in several limitations.

Unclear remits. Article 4 of the ILO Labour Inspection Convention, which is ratified by the UK, makes it clear that where possible, labour inspection should 'be placed under the supervision and control of a central authority'.[44] The first and arguably most obvious limitation of the UK system is that, by involving so many actors, it is not at all clear where workers should report their issue. It is unreasonable to expect workers, particularly migrant workers in lower paid positions, to be acquainted with all the agencies involved. Furthermore, the remits of the agencies are complex to navigate. On the one hand, an issue like the non-payment of wages may be handled by several actors, including the HMRC NMW team, the GLAA, or directly by making a claim at the Employment Tribunal. On the other hand, it is paradoxical that other important workplace issues such as holiday pay, sick pay, and maternity pay, do not sit neatly within the purview of any of the enforcement bodies listed.[45]

Asserting labour rights is even more complicated for migrants on employer-sponsored schemes, where responsibility for labour rights is shared with the Home Office. In December 2022, after an inspection of the Seasonal Worker Visa scheme, the Independent Chief Inspector of Borders and Immigration (ICIBI) found 'contradictory information about the distribution of responsibilities from Home Office staff and other government departments'. Relevant bodies in this area include the Home Office, DEFRA, the GLAA, the HSE and local government, who have overlapping responsibilities on matters that affect worker welfare. Notably, the inspection found 'a lack of clarity about who is holding farmers and scheme operators accountable.' Similar issues crop up under the Health and Care Worker visa. In this case, the Home Office and the UK's main labour inspectorates play a role in regulation, but so does the Care Quality Commission (CQC), who regulates the sector more generally.

Widely different resources. Another outcome of the fragmentation of enforcement is the uneven distribution of resources across the agencies. In 2021 the HMRC NMW team, the largest of the agencies, received £26.4 million in funding, and employed the full-time equivalent of 400 members of staff. By contrast, in the same year the EAS received only a fraction of that budget, £1.5 million, and employed barely 29 members of staff (Table 4). [46]

Table 4: Characteristics of the three main labour enforcement agencies. Source: annual reports 2021/2022

	HMRC NMW team	Gangmasters and Labour Abuse Authority (GLAA)	Employment Agency Standards Inspectorate (EAS)
Funding	£26.4m	£7.2m	£1.5m
Staff	400	119	29
Outcomes	2740 closed cases £16.8m in arrears identified 575 penalties issued at a total value of £14m 24 Labour Market Enforcement Undertakings/Orders	7728 victims identified £15,000 recovered for workers 16 arrests 17 enforcement notices issued 14 warnings issued 5 Labour Market Enforcement Undertakings/ Orders	1800 complaints cleared 177 targeted inspections 900 infringements found 267 warning letters issued

The vast discrepancy in resourcing raises questions about the utility of having this multitude of actors involved in labour enforcement. Indeed, the Resolution Foundation found that while the budget for labour market enforcement has fallen since 2010, some bodies like the HSE and the Equalities and Human Rights Commission (EHRC) were particularly affected, suffering 25% and 68% budget cuts (adjusted for inflation) over the period 2010-2013 respectively.

Inconsistent approaches to investigation. The varied picture of resourcing also belies a more profound distinction in how different agencies approach investigations in practice. The HMRC NMW team is under a duty to investigate each case that gets reported to it. This is in stark contrast with the GLAA, which operates a triage system using national intelligence to deal more promptly with cases deemed most likely to be high risk.[47] Indeed, according to the GLAA's annual report for 2021/22, just under half (49%) of cases led by the GLAA resulted in an outcome.[48] As our Community Research and Data Officer Andrei (previously part of our Service Provision team) describes from his own experiences, interacting with and getting an update from the UK's enforcement bodies about previous reports of non-compliance can be an incredibly frustrating process.

> *'I have only reported a few cases to the GLAA but where I have, they have not been very responsive, let's put it that way. Even where cases do not proceed to an investigation, it would be useful to know what decision was made about pursuing or not pursuing leads and why. Even if this was just a template response, it would help us in communicating what happened to our clients. Next time we could then use this information to inform ourselves about whether prospective cases would likely be investigated. We don't have access to internal guidelines about what cases are selected for investigation.*
>
> *Where I have previously reported matters to the EAS, I have been in long and regular communication with the relevant officer assigned to the matter, but they haven't been able to actually help substantively. For example, in one case they mentioned that they would visit the premises of an agency after the Covid-19 lockdowns, but we were not provided with an update.'*
>
> *Andrei Savitski, Service Provision Officer*

A reliance on businesses to self-regulate. Despite the fragmentation of enforcement, one point of alignment between the bodies is a tacit acknowledgement of their reliance on business and industry to self-regulate. This is apparent in their business plans and reports. For example, even though the HSE has marked agriculture as one of the deadliest sectors in the UK, with news reports during the Covid-19 lockdown documenting the rapid spread of the virus on farms, the HSE conducted zero in-person

inspections on farms during the Covid-19 pandemic.[49] Admittedly, the agency's annual report acknowledged this failing, and committed to increasing inspections. Remarkably however, the strategy proposed to achieve this was not by conducting ad hoc visits, but by inspecting operators who volunteer for health and safety training – in effect, by limiting inspections to a self-selecting sample with a high degree of bias.[50]

Similar examples where enforcement agencies rely on employers apply elsewhere. The HMRC enforces the minimum wage around a 'Promote, Prevent and Respond' strategy.[51] The Promote and Prevent aspects of the strategy involve the dissemination of information to employers and attempts to alter employer behaviour by highlighting the consequences of failing to comply, before targeted enforcement action is taken. However, beyond measuring the number of interactions that HMRC has with workers, employers, and agents through mechanisms such as advisory notices, it is difficult to measure the impact of these engagements.[52]

Self-regulation by industry relies on good practice and alignment with regulation, but as our Service Provision assistant Bethany notes, too often businesses exploit this notion of self-regulation and turn workers' own vulnerability against them.

> *'Clients are vulnerable because of their lack of English language knowledge, their understanding of labour laws in the UK, their employment status and what that means at work for them. In my experience employers are not stupid though, they are aware that clients have these vulnerabilities and they take advantage of that.'*
>
> *Bethany Birdsall, Senior Service Provision Officer*

Reliance on employers to do the right thing is not an adequate substitute for properly funded and functioning labour market enforcement. It is well established by the International Labour Organisation (ILO) that the optimum benchmark for labour inspectors should be around one labour inspector for every 10,000 workers.[53] The UK lags well below the benchmark (0.29 inspectors for every 10,000 workers) and below other developed states including France, Norway, and Japan.[54]

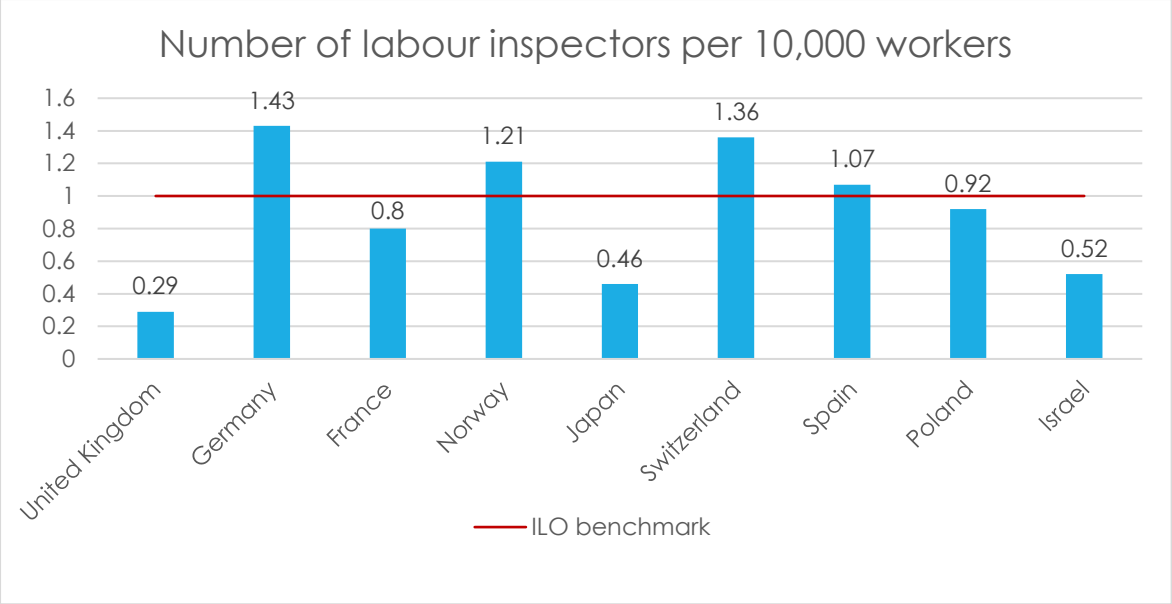


Figure 10: Number of labour inspectors per 10,000 workers. Source: International Labour Organisation Department of Statistics (ILOSTAT), Occupational safety and health indicators, inspectors per 10,000 employed persons (12 July 2023).

Inadequate penalties. Related to the trend of relying on businesses to self-regulate, another limitation of the UK's labour enforcement ecosystem is the minimal nature of penalties applied. Currently, the maximum financial penalty that can be incurred by employers found to be non-compliant with NMW by the HMRC, is just twice the value of arrears owed; this figure is halved if an employer pays up promptly.[55] There is a striking discrepancy between the high penalties applied for employing illegal workers (even unknowingly), and the relatively low penalties applied for underpaying workers (even when this is done systematically, and deliberately). Harsher and more frequently issued penalties are required to ensure that employers, small or large, are deterred from acting in a way that is consistent with workers' rights. Analysis by the Resolution Foundation indicates that, given that the detection rate of NMW underpayment is at just around 13%, penalties would have to be nearly 7 times the size of the arrears before an employer would have an economic case to pay NMW. All in all, if the UK's enforcement bodies are to function with any teeth and utility for migrant workers, their institutional and financial fragmentation has to be resolved as a mattery of urgency. This could involve the introduction of new criminal offences and harsher penalties where there are persistent, systemic or very culpable breaches of workers' rights.

Poor migrant worker representation. Despite the role that migrant workers play in the UK economy, and their well-documented overrepresentation in precarious positions, it is not at all clear at present whether, and if so how, their voice is embedded into the UK's three main enforcement bodies. In their annual reports for 2021/22, the word 'migrant' can only be found on one occasion (in the GLAA report), and that is a reference to external research, rather than an identification of risks pertaining to migrant workers, or any commitment to specific KPIs or to allocating the necessary resources to mitigating them.[56] Furthermore, while the GLAA and HMRC run some form

of stakeholder engagement program, it is unclear to what extent the lessons from migrant worker engagement contributed to institutional strategy and everyday practice. Labour market enforcement 'relies on parallel activity by unions, legal centres, advice services and social organisations'.[57] A weak labour market enforcement apparatus and a lack of migrant worker representation does little to build trust among these actors.

No secure reporting. There is currently no guarantee for employment rights advisers, including at our team, that labour market enforcement agencies will not disclose details of a client's immigration status to immigration enforcement personnel at the Home Office, as part of an investigation into labour exploitation. This has a chilling effect on migrant workers and limits the steps that advisers can take in practice to resolve a client's situation.[58] Minor immigration transgressions, such as working for more hours than allowed on a student visa, or taking up a cleaning job after fleeing a farm, combined with the fear of negative repercussions to immigration status, are enough to dissuade clients from reporting major exploitation. Following a super-complaint submitted by Liberty and Southall Black Sisters in 2018,[59] the Home Office said it would implement an 'Immigration Enforcement Migrant Victims Protocol that would suspend immigration enforcement action while 'investigation and prosecution proceedings are ongoing, and the victim is receiving support and advice to make an application to regularise their stay'.[60] However, this fails entirely to address the fear of reporting, as it merely delays immigration enforcement. [61] In addition, as the Home Office well knows, there are limited routes for workers to regularise their status which are costly and time-consuming. [62]

3. Conclusion and recommendations

Every day in the UK, on farms and packhouses, in care homes, or construction sites, migrant workers are at risk of exploitation. This is the product of a system which focuses on immigration enforcement above all, while leaving the enforcement of labour rights under-resourced, fragmented, and poorly accessible.

As the number of sponsored migrant workers rises every quarter, the issue of migrant labour exploitation is only likely to increase. We urge the government to take action to prevent this from becoming a national crisis.

To tackle the risks identified in this report, we make three sets of recommendations for the government: (1) reform the Points Based System, to give migrant workers and businesses the flexibility they need; (2) increase protections for workers, to ensure they have the rights, and the enforcement mechanisms, to prevent and address exploitation from day one; and (3) implement a Migrant Worker Welfare Strategy, to prevent the problem of labour exploitation in the long term.

These reforms focus on the overall workings of the Work Sponsorship and labour enforcement systems. More granular recommendations could improve conditions within specific visa categories (like the Seasonal Worker Visa, and the Overseas Domestic Worker visa). This is something we will explore in depth in future publications in this series.

4.1 Reform the Points Based System

The ambitious route - where sponsorship ends

Despite the name, the UK's Points-Based System is fundamentally a work sponsorship system. For businesses that wish to recruit migrant workers, this system involves substantial licensing and recruitment costs, delays in onboarding staff, and an ongoing obligation to report changes in staff to the Home Office. For migrant workers, sponsorship involves visa costs but also a lopsided relation of power, where sponsors control not only their work, but also their very right to be in the UK.

At the most ambitious end of the spectrum, a real reform of the Points Based System would end the requirement for employer sponsorship, allowing prospective migrant workers to obtain a Skilled Worker visa based on their levels of English, qualifications, and history of work experience instead. A similar route is already in place in Australia (though it co-exists with sponsored visas). Points could also be awarded for skills identified as key to the UK's industrial strategy, which could, in turn, be reviewed regularly, similar to the ways in which the UK government currently reviews the shortage occupations list.

For employers, switching from sponsorship to direct employment would remove the cost of licensing and increase flexibility in recruitment. Free from the burden of compliance with Home Office sponsorship rules, businesses could focus their efforts on attracting the best workers. Making a job offer to prospective migrants who are

outside the UK, or to those in the UK looking to change visa categories, would be an option for every business. Such an offer could, in turn, support prospective migrants' applications for a visa, without making it a requirement, and workers would have the freedom to change jobs and sectors. This would ensure that the right to exit an employment contract, which is a fundamental right of resident workers, would also be extended to migrant workers in practice.

For the Home Office, such a change would shift focus from regulating employers, which has never been a traditional remit of immigration enforcement, to assessing visa applications. A more granular level of oversight over the ways in which an applicant's age, skills, and work experience amount to visa points would also enable the government to facilitate migration with greater flexibility, thereby addressing shortages and targeting other strategic sectors, without the pressure to implement new sector-specific visa schemes. This, in turn, could reduce the costs, and the risk, of sponsor regulation and administration, allowing the department to channel resources into more pressing priorities.

For migrant workers, replacing the requirement to be sponsored with a system based on their skills, would substantially limit the risk of exploitation. Obtaining a visa based on their skills, work experience, age and qualifications, would empower them to take up work on a more equal footing, knowing that they can report employment rights breaches and, change employers, without fearing that they might lose their right to remain in the UK.

The other option – where sponsorship continues

Ending the sponsorship system in favour of the system we have outlined above would be the most effective way to reconcile the UK's political ambition to control migration with the economic need to plug labour shortages, without placing workers at risk of exploitation, and without increasing the cost of business. Failing that, however, the government should implement the following reforms.

Strengthen the guidance for sponsors, to emphasise the need to comply with employment law. The more than 200 pages long, three-part guidance for sponsors includes just four references to employment law: as a general sponsor 'duty to comply with UK law', and as a 'guiding principle' of compliance checks and monitoring by the Home Office. By contrast, the same guidance makes no fewer than 37 references to sponsors' responsibilities to prevent illegal working. This is a striking imbalance. Considering the evidence of exploitation and systemic risks identified in this paper, the guidance must be much stronger. First, in spelling out sponsors' specific duties as employers, with reference to the relevant employment laws and practical examples of how employment laws may apply. Second, in raising awareness of unlawful deductions from wages for bogus services (such as airport pick-ups or substandard accommodation). Third, in restricting the use of repayment clauses, which can prevent workers from leaving exploitative employment. Fourth, and arguably most

notably, in making it clear that breaches of employment law will result in licence suspension and revocation.

Give migrant workers who were exploited by their sponsor a status that grants them the unconditional right to work for the remaining duration of their visa. The right to work is key to empowering migrant workers to leave exploitative sponsors, free from the fear of financial precarity that comes with unemployment. There are several international examples the UK can draw from. Canada operates an 'Open Work Permit for Vulnerable Workers',[63] which is issued where there are reasonable grounds to believe that the migrant worker is experiencing abuse, or is at risk of abuse, in the context of their employment. Ireland operates a 'Reactivation Employment Permit',[64] which is issued to non-EU citizens who held a work permit but became undocumented through 'no fault of their own', including because they were subjected to labour exploitation. New Zealand operates a 'Migrant Exploitation Protection Work Visa',[65] which allows migrant workers who report exploitation on an employer supported work visa to leave their job and work anywhere in the country for any employer, while the exploitation is being investigated by Employment New Zealand.

The absence of a similar mechanism in the UK is striking. Currently, **being recognized as a victim of Modern Slavery in the UK does not give migrants the right to work** unless, at the time they receive a positive reasonable grounds decision, they already had an immigration status that allowed them to work.[66] The UK government must urgently address this issue. Previous research by Kalayaan, one of a few charities which can directly refer people into the NRM, found a sharp contrast between the outcomes for survivors of Modern Slavery who had the right to work, and who reported feeling more secure and self-sufficient, and those who lacked this right, and were made to survive on destitution-based levels of subsistence.[67]

In implementing a status for migrants who were exploited by their sponsors, coordination with the existing framework for labour enforcement will be key. To really work for vulnerable people, any transitional status must be accessible and easily derived once a labour enforcement agency has established the migrant's status as a victim of exploitation. Without integration with labour enforcement, placing this status behind a complex (or costly) application process would be self-defeating. Appropriate consultation centred on the needs and vulnerabilities of migrant workers would also be necessary, including to connect this status, and the right to work it provides, with employability support.[68] Overall, however, as long as the UK retains an immigration system premised on sponsorship, implementing a transitional status for migrants exploited by their sponsors is a realistic reform that could prevent the re-exploitation of thousands of migrant workers, and bring the UK in line with its allies.

Give all sponsored migrant workers more time to change employers. The 60-day window in which migrant workers can find alternative employment with another registered sponsor simply doesn't allow enough time to practically arrange a move. An extension of the 60 days is required to mitigate the risk that migrant workers slip

unnecessarily into illegality (a status that is extremely difficult to exit). There is precedent for this kind of extension. Earlier this year, the Australian government announced that it would effectively double the time that temporary visa holders have to switch employers to 180 days, giving workers greater flexibility to leave exploitative workplaces and poor conditions of work.[69] The UK should learn from this, and institute a similar change. Notably, while this policy could have a significant impact for migrant workers, it may also be administratively painless for the Home Office to implement.

Remove the requirement for sponsored migrant workers to make an application to update their visa when they change employers. Currently, sponsored migrant workers must make a new application if they change employers, or even if they stay with the same employer but change jobs or core duties. This carries a substantial administrative and financial cost. If you are a migrant worker in the UK looking to change jobs (and the job is not on the shortage occupation list), the fee for making an application to update your visa can be £827 (if the new sponsorship is up to 3 years) or £1,500 (if the sponsorship is longer than 3 years). The fees are lower if you are on the Health and Care Worker visa, at £284 and £551 respectively. Previous research identified this as a policy change that would provide workers with greater freedom.[70] Notably, this is another reform which could make a substantial contribution to workers, with minimal administrative effort from the Home Office. Sponsors are already required to tell the Home Office when a migrant worker enters and exits their employment. The current requirement for migrants to make a new application every time they change jobs is just a costly repetition of information the department already holds.

Improve the register of licensed sponsors, to make it easier for migrant workers to search for prospective employers. Though the register allows any member of the public to see the name of sponsors, their licence, rating, and the town they operate in, there is no breakdown by industry to allow workers to cross reference local job searches against the register. Notably, this is information that the Home Office already holds – and, in fact, makes available in aggregate as part of the quarterly Immigration System Statistics. Small tweaks to integrate sector data with the sponsor register could substantially increase migrant workers' ability to change sponsors. To make the most of this recommendation, a separate piece of work would be required to communicate the changes to the register, and its utility in job searches.

Give migrant workers the flexibility to access public funds. The default position of the Home Office is that migrant workers cannot access public funds such as Universal Credit. However, recent case law has confirmed that the Home Office has a 'wide discretion' to lift the NRPF condition, where there are 'particularly compelling circumstances' to do so.[71] Our recommendation is to widen access to public funds, to empower sponsored workers to leave exploitative jobs without the fear of falling into debt or becoming destitute. In particular, the NRPF condition should be lifted for migrants who have proactively taken the decision to leave their exploitative sponsor, and have provided evidence of exploitation to labour enforcement agencies. It should not take 'particularly compelling circumstances' for workers to have state

support available, where they have been exploited by a sponsor that was assessed for eligibility by the Home Office, itself a department of the state.

4.2. Increase protections for all workers

Migrants' rights are workers' rights. All workers in Britain would benefit from increased protections and stronger labour enforcement. The following measures contribute to the public good by reducing the risk of labour exploitation for all workers, migrants and British citizens alike.

Institute secure reporting – to encourage the reporting of labour exploitation, and help authorities bring unscrupulous employers to justice. The UK is already out of step in this area. In Australia for instance, the Fair Work Ombudsman has an 'Assurance Protocol' in place with the Department of Home Affairs, to ensure that a worker's visa is not cancelled when they report exploitation because of a breach of conditions.[72] The UK can and should go further than this, by instituting a secure reporting environment where all migrant workers, including those undocumented, can disclose labour rights abuses without the fear that their data will be shared with immigration enforcement. Given that migrant workers can fall into undocumented status through no fault of their own, it makes little sense to institute a firewall for specific categories of migrant workers only. A universal firewall between labour and immigration enforcement would free labour inspectors from the administrative burden of conducting immigration status checks, and thus contribute to a much-needed culture of trust. A similar firewall would be necessary between the police, who are often first responders in cases of suspected Modern Slavery, and immigration enforcement.

Give all workers protection from unfair dismissal from day one – to prevent employers from taking advantage of workers with less than two years continuity of service. Currently, employees can only claim unfair dismissal in the UK if they've been in the service of the same employer for a qualifying period of two years (or 1 year, in Northern Ireland). Instituting protection from unfair dismissal from day one would make a substantial contribution to redressing the power imbalance between employers and migrant workers (who can be easily dismissed, but can hardly change sponsors), but would also benefit millions of workers across the UK.

Establish a Single Enforcement Body (SEB) for labour rights - to simplify the reporting of labour exploitation, and widen access to employment justice**.** The piecemeal institutional setup of labour enforcement in the UK has been untenable for several years. Multiple Directors of Labour Market Enforcement have expressed public support for the creation of a SEB, that would bring together the work of the enforcement agencies into a single unit. The creation of a SEB has been described as a '*once-in-a-generation opportunity to bolster existing labour market compliance and enforcement efforts*…'.[73] Yet despite it being a pledge of the Conservative Party manifesto,[74] reaffirmed as part of a public consultation,[75] by December 2022 the government had effectively u-turned on the proposals.[76] At the time of writing, the

Labour Party's New Deal for Working People green paper commits to establish and properly fund a SEB to enforce workers' rights.'[77]

The lack of a SEB makes the UK an outlier as regards international practice in this area. Countries like Ireland, Netherlands, Norway, France and Australia have all sought to harmonise labour enforcement within a single body (though varying carveouts for the enforcement of some rights and/or in certain sectors do exist).[78] Ireland is an interesting example in particular, due to its proximity to the UK, but also because its harmonisation of labour market enforcement occurred relatively recently, in 2015.[v] Despite some teething issues, including creating a single organisational culture and harmonising procedures and processes, by 2017 Ireland experienced a significant increase in adjudication hearings, adjudication decisions, and recovery in unpaid wages.[79]

The introduction of a well-resourced SEB in the UK, that has a public policy commitment to effective enforcement as a public good, would be a game changer. Its success would depend on sufficient labour inspectors and resources, a comprehensive remit and powers, and the protection of migrant workers from immigration enforcement.[80] Notably, as the UK continues to recruit from further away, the work of the SEB would also benefit from international cooperation. Increasingly, the exploitation of migrant workers starts in their home countries, with unscrupulous actors who charge exorbitant recruitment fees, and who trap workers into debt bondage. To rise to the challenge of labour exploitation, the SEB would benefit from an increasingly international approach. Increased criminal penalties for culpable employers would also assist the work of a prospective SEB.

4.3. Implement a Migrant Worker Welfare Strategy

To tackle the systemic issues identified in this report, the UK needs a strategy; an ambitious, careful re-examination of the immigration system and its intersection with labour enforcement, that can join the dots between the numerous agencies which in theory should, but in practice struggle, to safeguard the welfare of migrant workers. To deliver it, we recommend the following.

The publication of an annual strategy document, to properly assess and mitigate the risk of labour exploitation among migrant workers. While the DLME produces a general strategy for the UK's labour enforcement agencies every year, it does not engage with migrant workers' *particular vulnerability* to exploitation in enough detail. In many ways, this is understandable, given the wide remit of the DLME, and the complex and technical nature of migrant worker exploitation. However, it is problematic that

[v] The Workplace Relations Act 2015 in Ireland established the Workplace Relations Commission (WRC), which brough together the roles and functions of previous bodies including the National Employment Rights Authority (NERA), the Equality Tribunal (ET), the Labour Relations Commission (LRC), the Rights Commissioners Service (RCS) and the first-instance (Complaints and Referrals) functions of the Employment Appeals Tribunal (EAT).[v]

migrant workers are excluded from the objectives and performance indicators stated in the annual reports of the three main labour enforcement agencies. This is an important omission, given migrant workers' over-representation in sectors which the DLME itself identifies as high-risk.

A strategy document focused on migrant worker welfare, rooted in a real and up to date understanding of migration and vulnerability, could add precious new direction to outreach, intelligence gathering and data sharing, investigation and resourcing for labour market enforcement, as well as for the creation and promotion of avenues for redress. With explicit recommendations for labour enforcement agencies and the Home Office, the annual Migrant Worker Welfare Strategy could not only improve understanding and coordinate action on migrant labour exploitation, but also create a framework for accountability. Without a doubt, close collaboration with the DLME is key, particularly given the already fragmented labour enforcement system. However, given the complex nature of migrant labour exploitation outlined in this report, it would benefit from separate focus.

The institution of an independent Migrant Commissioner role, to lead on the development of this strategy, and oversee its implementation. The UK has adopted similar positions in recent history that served a purpose, either directly or indirectly, of advocating for the interests of different migrant groups. The Minister for Refugees (a post held previously by Lord Harrington)[81] and the Independent Anti-Slavery Commission are examples of this (though the former was dissolved and responsibilities passed over to the Department for Levelling Up, Housing and Communities, while the latter remained vacant for 18 months until the appointment of Eleanor Lyons).[82] More pertinently, installing a Migrant Commissioner was one of the recommendations (recommendation 9) contained in the Windrush Lessons Learned Review by Wendy Williams,[83] which was initially accepted by the government,[84] before being abandoned.[85] This decision is currently being challenged[86] by way of judicial review, while Labour has committed to instituting the Wendy Williams recommendations in full, including a Migrant Commissioner.

If properly appointed, independent and working closely with the ICIBI, as envisaged by the Wendy Williams report, the Migrant Commissioner could be a champion of migrant workers' rights that advocates for systemic change and works with the ICIBI to hold the government to account in this context. We see this is as a vital first step in addressing the specific concerns of migrant communities in the UK, but we would also welcome the extension of the role such that it covers matters outside of the Home Office's remit too (e.g. the employment justice system in the UK and its effect on migrant workers). The Migrant Commissioner and the ICIBI need to be properly empowered to carry out their work and hold the Home Office to account for measures that negatively impact migrant workers and communities. As identified in the Wendy Williams report, too often the Home Office has failed to address the recommendations of the ICIBI. Without proper powers and levers of accountability, the role and work of the Migrant Commissioner could risk diluting the message of

affected workers and communities, being instead another example of 'performative' engagement.

Appendix 1: Freedom of Information request response

UK Visas & Immigration

Freedom of Information
Central Correspondence Team
Central Operations
PO Box 3468
Sheffield
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Email:
FOIRequests@homeoffice.gov.uk

www.gov.uk/ukvi

Adis Sehic

Email: request-1018996-130586c5@whatdotheyknow.com

FOI Reference: 78341

23 October 2023

Dear Mr. Sehic,

Thank you for your email of 28 August 2023, in which you requested information in respect of the number of sponsor compliance visits conducted since 2020. Your request is being handled as a request for information under the Freedom of Information Act 2000 (FOIA).

Information Requested

Please provide me with the total number of sponsor (Tier 2, 4 and 5) compliance visits undertaken by the Home Office since 2020.

Response

Under Section 16 (Advice and Assistance) of the FOIA, you may find it helpful to know that compliance visits undertaken by the Home Office are not held on a central repository. Therefore, to provide you with the information you have requested can only be undertaken by manually checking each visit to see whether it was a courtesy visit or a compliance visit. The time and resource required to complete this task would exceed the cost limit set by the FOIA.

Please find attached, "**FOI 78341 – Annex 1"** containing data that covers both compliance and customer service visits.

Your attention is drawn to the fact, that in line with published statistics, the data provided is from 01 January 2020 up to 30 June 2023.

Please note, as these figures have been taken from a live operational database, the numbers may change as information on that database is updated.

If you are dissatisfied with this response, you may request an independent internal review of our handling of your request by submitting a complaint within two months to ***foirequests@homeoffice.gov.uk***, quoting reference **78341.** If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request will be reassessed by staff not involved in providing you with this response. If you remain dissatisfied after this internal review, you have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

A link to the Home Office Information Rights Privacy Notice can be found in the following link. This explains how we process your personal information: - ***https://www.gov.uk/government/publications/information-rights-privacy-notice***

Yours sincerely

M Egerton
Central Operations

We value your feedback, please use the link below to access a brief anonymous survey to help us improve our service to you:
http://www.homeofficesurveys.homeoffice.gov.uk/s/108105TAZN

Our records indicate that…

Table 1 - The number of sponsor compliance and customer service visits since Jan 2020

Sponsor Tier	2020	2021	2022	2023	Total Visits
Tier 2	714	575	2158	1281	4728
Tier 4	94	75	73	84	326
Tier 5	12	15	23	11	61
Grand Total	820	665	2254	1376	5115

Table 1 Criteria

Notes
1. These figures have been taken from a live operational database. As such, numbers may change as information on that system is updated.
2. Data extracted on 29/09/2023
3. Data can only be provided up until 30/06/223 in line with published statistics
4. Data is provided between 01/01/2020 and 30/06/2023

Appendix 2: Further case studies

Repayment clauses under the Health and Care Visa

In March 2023, we were contacted by a Zimbabwean national who came to work in the UK as a healthcare assistant, and was living with her young son, who joined her as a defendant. She was on call six days per week between 7AM and 10PM each day, making it a struggle to take care of her son. The worker flagged this issue with her sponsor, as well as the fact that she was not receiving sick pay while on sick leave.

The sponsoring employer refused to negotiate any contractual terms and reminded the worker that she would need to pay the company £6,000 if she chose to resign, even though the agreed sum was far smaller. The sponsor also refused her offer to repay the fee in instalments. As a result, the worker had to choose between a legal dispute over the looming debt, and remaining in a toxic, exploitative work environment. She chose the latter.

Difficulties in changing employers under the Seasonal Worker Visa

In June 2023, we were contacted by a seasonal worker from Tajikistan. They had arrived in the UK in May that same year to pick legumes, but suffered a severe leg laceration in early June, which resulted in their hospitalisation. As per the Seasonal Worker Scheme, they travelled home to Tajikistan to seek further care from their GP. When they told their labour provider that they were ready to return to work, two weeks after going on sick leave, the worker was told that they had actually been dismissed by the farm, and that their visa was curtailed. When we reached out to the labour provider in mid-August, our caseworker was told that no suitable positions were available for the worker. As a result, the worker paid around £1,000 in fees and travel costs for just 1.5 months' worth of work in the UK. At the end of the trip, he had barely earned enough to cover the costs of travel.

Risk of being dismissed and losing the right to be in the UK

Later in the summer of 2023, we had an appointment with a Russian national at our drop-in clinic. They had been working for over two years for a technology company on a Skilled Worker Visa. However, they were then unfairly dismissed, allegedly due to the their public expression of strong opinions against the Russian invasion of Ukraine. Their visa was curtailed, and they had just 60 days from the date of receipt of curtailment letter to apply for another Skilled Worker Visa. The worker was extremely stressed and afraid of political persecution, if they failed to find a new sponsored job and had to return to Russia.

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