



WORK RIGHTS CENTRE - EVIDENCE SUBMISSION

LOW PAY COMMISSION CONSULTATION 2024

JUNE 2024

ABOUT WORK RIGHTS CENTRE

Work Rights Centre is a registered charity dedicated to supporting migrants to access employment justice and improve their social mobility. We do this by providing free and confidential advice in the areas of employment, immigration, and social security, and by mobilising frontline intelligence to address the systemic causes of migrants' inequality. The charity was founded in 2016. Ever since, we have advised over 6,000 people, helped recover over £300,000 in unpaid wages and fees, and supported hundreds more to make job applications and secure their immigration status.

CONTACT

For any queries or for further information relating to this submission, please contact research@workrightscentre.org.

Contents

SECTION 1 – ABOUT THE WORK RIGHTS CENTRE	3
SECTION 2 – SUBSTANTIVE QUESTIONS	4
The National Living Wage	4
Experience of those on low pay over the last year.....	10
Compliance and enforcement.....	15
Accommodation Offset	21
Economic outlook.....	22

SECTION 1 – ABOUT THE WORK RIGHTS CENTRE

Work Rights Centre is a registered charity dedicated to supporting migrants and disadvantaged British citizens to access employment justice and improve their social mobility. Founded in 2016 in the London borough of Brent, the charity pursues its charitable mission by providing free and confidential advice in the areas of employment, immigration, and social security, and by mobilising frontline intelligence to address the systemic causes of migrant's inequality.

Since its inception, the charity has had great success in achieving positive outcomes for its clients and beneficiaries. For example, the charity has advised over 6,000 members of the public, helping to recover over £300,000 in unpaid wages and fees while also supporting hundreds more to make job applications and secure their immigration status.

Our frontline service consists of two multilingual teams of advisers who operate in London (5 days a week) and Manchester (on Saturdays). Together, the advice team assists an average of 20 beneficiaries a week, with issues which range from non-payment of wages, insecure immigration status, and career advice.

In recent times, the Work Rights Centre has developed its advocacy functions by using data from our frontline cases to inform policymakers and policy recommendations. This has allowed the organisation to play a crucial role in various policy areas including the UK's response to the humanitarian crisis in Ukraine, the welfare of migrant seasonal workers arriving under the Seasonal Worker visa scheme, the welfare of migrant workers generally under the UK's post-Brexit immigration regime, as well as matters related to labour exploitation and modern slavery in the UK.

Given our experience as a frontline organisation and that many of our advisers are embedded into the communities that they represent and advocate for, our focus in this consultation response has been to address the Commission's questions with a specific focus on the experiences of migrant workers in the UK. In particular, we have addressed how the specific features of the post-Brexit immigration system, the UK's current labour market enforcement apparatus and the experiences of migrant workers in recruitment to and arrival in the UK combine, and how these features interact with the National Living Wage (NLW) rates.

SECTION 2 – SUBSTANTIVE QUESTIONS

The National Living Wage

To what extent has the NLW affected different groups of workers, particularly those with protected characteristics (for example women, ethnic minorities and those with disabilities) and migrant workers?

As an organisation predominantly assisting migrant workers, we were happy to see that the National Living Wage increased to £11.44 an hour on 1 April 2024. However, the extent to which this and other NLW increases have been generally 'felt' by migrant workers in the UK remains to be seen.

The work-sponsorship model

Different migrant workers have different experiences in the labour market, and a big part of this is driven by their own relationship to the UK's migration apparatus. For example, millions of EU citizens have regularised their status in the UK over the last few years under the EU Settlement Scheme.¹ Those with Pre-Settled or Settled Status under the Scheme are able to work freely and without restriction, meaning that they enjoy a certain degree of job mobility and freedom to assert their rights. This is in great contrast to migrant workers who have arrived in the UK more recently under our system of sponsorship or 'tied' visas, where both their employment and importantly, immigration status, is conditional upon their employer, severely limiting their ability to assert their rights.

Sponsored migrant workers can only work full time for the employer linked to their visa. Should they need to leave that employer (for instance, due to under-payment), they would have to find another job from a relatively small pool of businesses authorised by the Home Office to employ migrant workers, then pay a significant fee for a new visa application. They would also be ineligible to claim public funds. We refer to this as the 'work-sponsorship model' throughout this submission.²

The conditionality inherent in work-sponsorship, and nuances related to the UK's limited system of labour market enforcement and the specific sectors that migrants work in, has also affected the extent to which sponsored migrant workers experience the full benefit of NLW increases, alongside other basic employment rights. In summary, sponsored workers find it harder to enjoy the benefits of higher minimum wage, because they face significant barriers to accessing their employment rights overall. Systemic difficulties with securing continuous lawful employment for the duration of their visa, coupled with high costs of recruitment to the UK and exclusion from public funds generate, in turn, a pressure on migrants to survive by taking on cash in hand jobs, where underpayment is endemic and exploitation is rife. Sector-specific dynamics also apply, for instance the use of piece rates under the Seasonal Worker visa, and recruitment clauses used in the social care sector.

Below, we examine some of the most problematic visa categories operating under the work-sponsorship model to illustrate the impact on migrant workers. We unpack the nuances related to the UK's labour market enforcement system separately.

The Seasonal Worker visa ('SWV')

In 2019, a pilot scheme was opened for migrant workers to come to the UK on the Seasonal Worker visa to work in the UK's edible and ornamental horticulture sector.³ Each worker under the visa is tied to a single labour provider ('Scheme Operator') and restricted to work in either poultry for up to three months, or horticulture for up to six months. The UK has expanded the scheme from just 2,500 visas in 2019, to up to 47,000 visas in 2024 (including poultry). On 9 May 2024, the government announced the scheme would be extended for another five years from 2025 to 2029.⁴

Both government and independent reviews of the scheme have highlighted that as currently designed, the visa puts workers at risk of serious exploitation and abuse. On pay specifically, workers under the SWV must in theory be paid at least the NLW.⁵ However, this general position is complicated by the use of **piece rates**, a payment methodology where workers are paid by their output rather than for the hours they have worked. As a result, organisations including ourselves and Land Workers Alliance have reported payslips not matching actual hours worked, and in some cases picking bonuses not being added onto payslips.⁶

The productive output of seasonal workers drives the labour process. For example, in 2024 the Worker Support Centre in Scotland noted that 50% of workers surveyed about their pay said that their pay related to how much they picked, with 40% saying that they were penalised if they did not pick enough.⁷ Low productivity has also been associated with poor treatment under the SWV, with workers noting the use of dismissal warning letters by farms in a bid to increase productivity rates. Workers have little redress in these circumstances, again linking back to weak enforcement and grievance mechanisms. For example, the Department for Environment, Food and Rural Affairs (DEFRA) latest SWV worker survey found that nearly 30% of workers do not know how to raise a complaint when one arises. Of those that had submitted a complaint in the past, 42% reported their complaints not being followed up.⁸

Access to the full benefit of NLW rates for workers is also diminished by financial burdens that workers otherwise take on when entering the scheme. This includes:

- **Lack of work throughout the full six-month term of the visa** - though workers are granted a visa for 6 months and are meant to be guaranteed 32 hours of paid employment per week, this is not guaranteed for the full duration of their visa. Frontline organisations routinely speak to workers who are told after a few months that there is no work left and that they must return home, dismayed and indebted. DEFRA's latest SWV worker survey indicates that as many as 40% of workers miss out on a month's work during their stay in the UK, while 20% miss out on at least 2 months' work.⁹ According to frontline charities, the insufficient provision of legal work is the leading cause of seasonal workers turning to exploitative black-market work – all in an attempt to recoup the costs of traveling to the UK (see more below).
- **Payment of illegal recruitment fees and the incurring of high debts, resulting in circumstances akin to debt bondage** - It has been commonly reported that some workers arriving under the UK have been subjected to deception at the point of recruitment, leading to workers unnecessarily paying thousands of pounds in agent and job finding fees. Recent research by Focus on Labour Exploitation (FLEX) also indicates that as many as 72% of workers previously took out loans to cover the costs of coming to the UK, paying up to £5,500 before even earning a wage.¹⁰ Similarly, the

Business and Human Rights Resource Centre recently published a news article reporting that the head of the recruitment agency Davri Istiqlol Company had been arrested for charging 150 Tajik workers recruitment fees for seasonal worker jobs in the UK that did not exist, with each worker allegedly being charged over \$1,500 each.¹¹

These circumstances mean that, even if workers get a placement and receive NLW rates for the full 6-month term of their visa, they will be spending their time in the UK working to pay off debts, rather than earning and saving for the future.

- **Payment of other scheme costs** - for example, workers currently must pay a fee of £298 to apply for the SWV (increased from £259 in October 2023).¹² This is despite the administrative processing cost to the Home Office only being £137.¹³ Workers also must pay the cost of their flight tickets to the UK. Since most workers are currently recruited from territories such as Central and Southeast Asia, the cost of flight tickets alone can be hundreds of pounds. Finally, workers are also charged the Accommodation Offset - please see our response under the section heading 'Accommodation Offset' for further information on this specific issue.

Workers are not currently compensated for the costs of recruitment, including visa, travel and ancillary costs. This is contrary to the ILO general principles and operational guidelines for fair recruitment, which state that 'no recruitment fees or related costs should be charged to, or otherwise borne by workers or jobseekers'.¹⁴ Similarly, the Employer Pays Principle (EPP), a recognised standard that commits companies carrying out responsible recruitment to pay for the full costs of recruitment, is therefore also not currently being implemented in full.¹⁵ Notably, migrant seasonal workers have to pay income tax, NI, and pension contributions, despite it being unlikely that they will ever have a chance to access the benefits of those contributions.

Taken together, these factors mean that migrant workers arriving under the SWV face significant hurdles in meaningfully accessing the NLW rates.

CASE STUDY

This year, we have assisted a Nepalese seasonal worker client, Sapana Pangeni, in making a landmark employment tribunal claim against her employer, EU Plants Ltd. As documented in several media publications online, Sapana alleges that she was underpaid, worked six-day weeks and had to buy her own protective equipment while working on a farm in the UK. In particular, she alleges that the hours on her payslip did not reflect the hours that she had worked, and that this caused her to have difficulties in paying for groceries and other living expenses. Though Sapana was transferred to another farm, she alleges that she was not compensated for the money that she was owed.¹⁶

The Health and Care Worker visa

The Health and Care Worker ('HCW') visa was introduced in August 2020, allowing medical professionals to come or stay in the UK to work with the NHS, an NHS supplier or in adult social care.¹⁷ In December 2021, the visa was expanded to allow care workers, care assistants and home care workers under its remit.¹⁸

An increase to NLW rates has been particularly welcome in the care sector owing to the longstanding underpayment of workers in the sector. In 2022/23, Skills for Care reported that the average hourly pay for a carer working at an independent care provider in England was £10.34, barely above the National Living Wage of £9.50 when the data was collected.¹⁹ In our experience many migrant care workers opt to work for the additional 20 hours a week that is permitted under the HCW visa to supplement their income, and many often need their partner's income to match the cost of living in the UK.

However, the experience of migrant workers under the HCW visa has dampened the ability for workers to take the full benefit of the NLW increases. For example:

1. **Payment of illegal recruitment fees and the incurring of high debts, resulting in circumstances akin to debt bondage** - similar to workers on the SWV, migrants under the HCW visa have incurred substantial costs due to deception at the recruitment phase. Costs have been significantly higher though, with workers paying tens of thousands of pounds in some cases. For example, in late 2023 our Service Provision team advised a client who had been sponsored by a UK care provider. The client, along with other individuals sponsored by the same care provider, had paid recruitment fees (approximately £20,000) to an overseas recruiter in India to secure their visa. The client was offered no work placements and wasn't paid despite being promised work placements on several occasions and signing an employment contract stating a minimum level of working hours. Having reviewed the initial documentation and evidence, it was clear that the client and other workers had been victims of a scam. Upon complaining about the lack of work offered, the care provider terminated the client's employment with them. Other clients have received work, but they are in effect working to pay off these substantial debts, rather than earning and saving separately.
2. **Repayment clauses** - through our own casework and through anecdotal evidence in the sector, we have been made aware of workers having repayment clauses included in their contracts of employment. Repayment clauses allow employers to recover some of the upfront costs that the employer has invested in recruiting the worker if they leave within a given period. Under the Code of Practice for the international recruitment of health and social care personnel in England (the "Code of Practice"), it is made clear that any repayment clause must abide by the four principles of transparency, proportionality, timing and flexibility.²⁰

In the cases dealt with by our Service Provision team, we have seen the following examples of malpractice:

- a. Sponsors seeking to enforce repayment clauses in cases where the worker has been unfairly dismissed, rather than the worker choosing to leave independently;
- b. Sponsors seeking to enforce repayment clauses in circumstances where the worker has chosen to leave/communicated a desire to leave because of poor working conditions. The Code of Practice makes it clear that this is an example of a situation where the repayment clause in question should be waived;
- c. Sponsors not providing an itemised list of costs pertaining to the claimed amount. Similarly, the claimed amount is often not included within the employment contract and is in any case exorbitant or disproportionate to the employer's actual costs; and

- d. Sponsors charging workers for costs that the employer is liable to pay during the recruitment process. Excluding the Immigration Skills Charge, this includes costs that are not permitted in the Code of Practice, like the sponsor licence fee and the Certificate of Sponsorship.

The sum effect of these clauses is that workers either acquiesce to exploitative conditions under the threat of a looming but uncrystallised debt, or they are left with a very limited amount of pay at the end of the month because the repayment amount is partially recouped directly through monthly payslips. **The effect of the NLW and recent increases are therefore wiped out through their operation.**

Though guidance on repayment clauses is contained within the Code of Practice, the enforceability of repayment clauses is largely governed by case law, in particular that which relates to the rule against penalty clauses. Through a Freedom of Information request that we submitted earlier this year, we found that the Code of Practice is enforced by NHS Employers, but seemingly only as against organisations contained on the NHS Ethical Recruiters List.²¹ This means that the rules around repayment clauses in the Code of Practice are not proactively being enforced against the large number of actual care providers (rather than recruitment organisations) that have licences to sponsor migrant workers. In 2023, the CQC put this figure at 2,700 care providers.²² This is significant because it means that the only way for workers to definitively challenge repayment clauses contained in their contracts of employment is to seek redress at the Employment Tribunal. That is a problem of itself, given the well documented barriers that migrant workers face in accessing the Employment Tribunal.

3. **Lack of remuneration for travel time and issues with fuel allowance** - through our casework and the interim findings of our scheduled report on migrant care workers, some workers are not being remunerated at all for time spent travelling between different homes and shifts. This is despite the fact that HMRC's rules on Mileage Allowance Payments permits employers to pay their employees up to 45p per mile for business journeys without having to report this (25p per mile after 10,000 miles have been reached in the year).²³ The issue is particularly bad for domiciliary care workers, who can spend as much as 1/5 of their working day travelling between clients' homes.²⁴ The lack of remuneration can mean that migrant workers can spend the whole day 'working', but only receive a few hours of pay due to limited contact time with clients. For example, one respondent noted that they could only earn around £30 on a 'bad day' where travel reduces contact time with clients.

Even where workers were partially subsidised for travel, workers noted that this did not cover the costs of servicing their cars over an extended period, including warranty and insurance costs. Another problem highlighted was the allowance being tied to distance rather than time spent travelling, meaning that workers who found themselves stuck in traffic between homes were particularly worse off. Despite the seemingly arbitrary way in which decisions were made about both the availability and amount of mileage allowance, workers felt they had no choice but to acquiesce to the situation.

The Overseas Domestic Worker visa ('ODW' visa)

The ODW visa allows migrant workers to come to the UK to work in a private domestic household. Though not a 'sponsored' route, eligible workers need to have worked for their prospective employer for at least one year already, and they are only permitted to visit the UK for 6 months before being required to leave.²⁵ Approximately 20,000 workers arrive in the UK each year under the ODW visa.²⁶

Concerns²⁷ have been raised that, due to a lack of visa extension possibilities and the inability to *practically* change employer, migrants who want to escape exploitative working situations, including where they have been paid below the NLW, risk falling into irregular or undocumented immigration status, which itself perpetuates a cycle of exploitation by rogue employers in the long term.²⁸

Despite the government reforming the route in April 2016, to allow workers to change employers during the validity of their visa, the benefits of the change are limited because workers do not generally choose when they arrive in the UK, meaning that they will often have significantly less than 6 months remaining on their visa when they arrive. When exploitation arises and workers have to flee, they may only have weeks remaining before their visas expire, rendering the change of employer rule of little practical significance without the ability to new the visa alongside this.²⁹ Despite sustained calls for reform over a number of years, the government has not made any fundamental reforms to the structure of the ODW visa to address the exploitation that domestic workers face.

As the Commission will know, perhaps even more problematic for migrant workers under the ODW visa was the 'Family Worker Exemption' previously contained in Regulation 57 of the National Minimum Wage Regulations 2015. It exempted domestic workers from the NLW or any wage at all if they lived in their employer's household and were 'treated as a member of the family'. This was frequently used by exploitative employers as a defence to underpayment, including in cases that were subject to litigation.³⁰ Despite accepting the Commission's recommendation to remove the Family Worker Exemption in its entirety on 10 March 2022, the Government only legislated to remove the Exemption two years later, with the introduction of the National Minimum Wage (Amendment) Regulations 2024 that came into force on 1 April 2024.³¹ The delay in reforming the Family Worker Exemption, by a simple statutory instrument no less, is an unfortunate reflection of the wider deprioritisation of the circumstances facing migrant domestic workers in the UK.

Ensuring that domestic workers can access the NLW and other labour rights is complicated by the presence of other exemptions and the lack of leadership by the UK on this issue. For example, section 19 of the Working Time Regulations 1998 excludes some crucial working time protections for workers employed as domestic servants in private households e.g. the permitted length and difficulty of night work.³² Similarly, the UK has refused to ratify the International Labour Organisation's (ILO) Convention 189 on the rights of domestic workers which, among other things, requires the effective promotion and protection of the human rights of all domestic workers, as well as ensuring that domestic workers enjoy fair terms of employment as well as decent working conditions.³³

Enforcement of the NLW, along with other basic labour standards is also complicated by the UK's current labour enforcement apparatus. Please see our response under the heading 'Compliance and Enforcement' for further information on this specific point.

Summary

The factors discussed above often serve to wipe out the increase to pay and NLW rates that workers are supposed to benefit from. This has particularly been the case over the last few years, considering inflation and general cost of living pressures in the UK. Perhaps more worryingly, there is an inability amongst workers to safely report and seek redress for these matters where earnings are reduced. For more information on this, please see our response under the section titled 'Compliance and Enforcement'.

Experience of those on low pay over the last year

How has the cost-of-living affected workers on or close to the NMW and NLW and how, if at all, has this affected worker needs and expectations from their employment and pay?

The cost-of-living crisis has had a dramatic effect on our migrant worker clients. In the last few years, clients have increasingly sought food vouchers from our team and have had to take tough financial decisions about meeting different living costs like food, utilities and childcare. Though there has been a clear need for continuous employment and increased pay during this period, this demand has not always been met. Indeed, over the 2022-2023 period in particular, clients sought information about their possible entitlement to various benefits to help supplement their earnings. Again, this was not always possible, either due to resource constraints within the organisation, limitations on workers' eligibility to claim public benefits and in some cases unexplained suspensions by the Department for Work and Pensions (including in cases where clients were in theory eligible for payments).³⁴

The negative effect of the cost-of-living crisis has been exacerbated by the underlying financial precarity that many of our clients face. For example, between the 31 May 2023 - 31 May 2024:

- 614 new enquiries (89%) reported having only 0-2 months of savings. The top 5 nationalities represented were Romania, the UK, Ukraine, Poland and Bulgaria.
- 37 enquiries (5%) reported having between 3-5 months of savings. The top 5 nationalities represented were the UK, Italy, India, Spain and Brazil. UK nationals alone constituted about 1/6 of the total here.
- 37 enquiries (5%) reported having 6 months or more of savings. The top 5 nationalities represented were the UK, Italy, India, Spain and Brazil. UK nationals alone constituted about 1/4 of the total here.

In the same period, the average monthly pay for our non-UK male employment clients was around £1,983, while the average pay for non-UK female employment clients was £1,533. From these figures, the average annual salaries for men and women were £23,796 and £18,396 respectively. According to the Living Wage Foundation, the annual salary of someone earning the current UK Living Wage for a working week of 37.5 hours is around £23,400, with the London Living Wage calculation coming in slightly higher at £25,642.50.³⁵

This is by no means a precise comparison, because there are many factors that can increase or decrease average earnings for our clients, such as whether they have contracted hours, a regular work schedule and the impact of their immigration status. Similarly, the latest Living Wage Foundation rates were only released on 24th October 2023. However, what these figures do tell us is that, over the last year or so, our migrant worker clients are either barely earning

above the living wage (men) or they are earning significantly below the living wage rates (women).

It is important not to forget the gendered impact of work and minimum wage rates. Indeed, these findings align with the Commission's own findings that suggest women remain more likely than men to be minimum wage earners.³⁶ There are many factors that can influence this, including contracts and working hours, which in turn are shaped by socially constructed expectations that women would absorb the lion's share of caring responsibilities. For example, in our sample above, women were more than twice as likely (15%) to be working part-time than men (7%). On the flip side, men were more than twice as likely (11%) to be working on the black market than women (5%) and were less likely to have written terms of work (37% of men did not have written terms of work, compared to 23% for women).

What has happened to quality of work recently? For example, have workers experienced changes in contract types, flexibility, workplace harassment and work intensification (e.g. greater expectations for workers to work more flexibly, with greater effort, to higher standard etc).

Evidence from our clients suggests that, as the UK transitioned from free movement to sponsorship, the experience of migrant workers is becoming significantly more precarious. Over the past year alone, third sector organisations, journalists, and the Independent Chief Inspector of Borders and Immigration (ICIBI) have all flagged widespread instances of exploitation of sponsored migrant workers, particularly in the social care and horticultural sector. Our response under the heading "The National Living Wage" details the ways in which the system of sponsorship has deteriorated the quality of migrants' work, by putting employers in a position of incredible power, with very limited scrutiny.

Other dynamics apply across the labour market. A report by the TUC in July 2023 suggested that work is intensifying. Polling commissioned by the TUC in August 2022 revealed that 60% of workers feel exhausted at the end of most working days, while 55% of workers feel that work is getting more intense and demanding over time. Work-related activity outside of contracted hours was also examined, with the findings showing that 36% of workers are spending more time outside of contracted hours reading, sending and answering emails, while 32% of workers are spending more time outside of contracted hours, doing core work activities.³⁷

Insights from frontline organisations corroborate that picture. The pressure of productivity is particularly acute in the horticultural sector, where the use of piece rate payments means that workers who fail to meet targets can end up earning below NMW or being dismissed. Beyond the SWS, our organisational impact statistics for 2023 showed that around 13% of Work Rights Centre clients worked more than the '48 hours per week' limit stipulated by the Working Time Regulations. While this does not constitute an illegality as long as workers' consent is obtained, and some workers actively choose this schedule, working overtime can have a negative effect upon workers' physical and mental health, family life, as well as the ability to socialise, relax or learn new skills.³⁸ On workplace harassment, discrimination remains the 4th most commonly cited employment issue with our frontline Service Provision team, lagging only behind issues related to deductions from wages, dismissal and holiday entitlements.

The interim findings of our report into the experiences of migrant workers in England's adult social care sector suggest that work quality is generally unsatisfactory. Workers reported

having a lack of stability owing to constant shifting of rotas, leading to a lack of consistency both for clients and for workers. When given the choice of optimum contractual arrangements, workers preferred to have a contract with fixed hours, allowing them to plan their personal and working arrangements ahead of time. There were only a few exceptions to this general rule who preferred having a zero-hours contract for flexibility. Bullying and harassment were noted as a frequent occurrence, with migrant workers being on the receiving end of verbal abuse and shouting, belittling conduct and even racism. This abuse was reported as being perpetrated by management, other colleagues in the sector alongside individual, problematic clients.

What are the barriers preventing workers from moving to a new job, particularly one that is better paid?

Particularly after the UK's departure from the European Union, migrant workers arriving to the UK face significant challenges in moving jobs because of the work-sponsorship model. By definition, sponsorship acts to inhibit the right of workers to withdraw their labour from an individual employer and move elsewhere. This acts as a practical barrier to what we consider is a fundamental right.

Given the priority which the Commission places on understanding the barriers to worker mobility and how this intersects with NLW compliance, it is important to say that, for migrant workers, this cannot be understood without appreciating the significance of their current immigration status. Though there has been some increased appreciation for this in particular contexts (e.g. the Seasonal Worker Scheme and the experiences of migrants under the Health and Care Worker visa), our view is that policymakers often do not appreciate how state-sanctioned rules on immigration can restrict worker mobility and facilitate exploitative practices. Similarly, attempts to remedy the situation for workers are often dealt with through discrete proposals that often ignore restrictions that workers face. For example, to tackle the exploitation of care workers, the previous Conservative government opted to make Care Quality Commission registration a condition for employers in social care to become visa sponsors, but did nothing to enhance worker mobility under the terms of the visa (and stakeholders like the ICIBI have noted potential workarounds to the government's proposals anyway).³⁹

Barriers under the work-sponsorship model and potential solutions

Under the work-sponsorship model, workers are 'tied' to their sponsoring employer (known as the sponsor). Employers can obtain a sponsor licence by applying to the Home Office and confirming, among other things, that they will comply with all relevant legislation, including cornerstone employment legislation. Workers' immigration status is bound to the specific role that they have with a specific sponsor. If a sponsor cancels a worker's visa or if a sponsor loses their licence, workers only have a maximum of 60 days in which to find another job with another registered sponsor and make, pay for, and obtain and a new visa application to regularise their stay, otherwise they will be forced to leave the UK.

Sponsors are using this power imbalance to exploit workers and to coerce them into remaining in exploitative work situations, knowing they can threaten to withdraw workers' sponsorship and plunge their status into jeopardy if they dare to complain. According to the

GLAA's latest intelligence picture, sponsorship is currently the most common vulnerability factor among potential victims of forced labour in the UK.⁴⁰

Changing jobs in this position is very difficult. There is no central register of licenced sponsors filtered by industry, location or available vacancies, meaning workers have to 'hit and hope' that a prospective employer will sponsor them. Workers have No Recourse to Public Funds, meaning they have no financial safety net during this period. Many are saddled with debts incurred due to having been tricked into paying recruitment fees by overseas agents – our team has seen these fees range between several hundred pounds and as much as £25,000. Even if workers find a new sponsor, our frontline team have frequently seen sponsors refusing to provide references, entrapping workers further. And if workers get past all this, they must undertake the administratively difficult and costly task of submitting a new visa application for themselves and any dependant family members, inevitably costing thousands of pounds.

Matters are being made worse by the lack of oversight of sponsors by the Home Office. In a recent report by the outgoing ICIBI into the care sector, it was found that the Home Office only has one sponsor compliance officer for every 1,600 licensed sponsors. Worryingly, senior Home Office staff told the Inspector's team that, when prospective sponsors apply for their licences, Home Office guidance is not sufficiently stringent to enable refusals where significant concerns had existed. The report noted examples of serious failures, including licences being given out to imposter employers, and '16 pages worth' of sponsors all using the same registered address.⁴¹

In our view, workers are not only impeded from accessing other jobs under the work-sponsorship model, but the model is facilitating exploitation. In our recently published report, the Systemic Drivers of Migrant Worker Exploitation in the UK, we argued that the cleanest way to end the exploitation of migrant workers would be to end the system of sponsorship and give migrants the freedom to work across the labour market.

Failing that more radical change, we identified several practical recommendations that could be implemented to give workers greater flexibility and mobility. These include:

- **Giving all sponsored migrant workers more time to change employers** – by increasing the current 60-day limit to 180 days. Countries like Australia have announced similar measures, in the recognition that 60 days is simply too short for workers to restart employment with another sponsor and submit another visa application.⁴²
- **Removing the requirement for sponsored migrant workers to make an application to update their visa when they change employers** – previous research has identified that this is a policy change that would provide workers with greater freedom.⁴³ It could also be implemented with minimal administrative effort from the Home Office.
- **Improve the register of licenced sponsors** – to make it easier for workers to search for prospective employers. The register needs to include filters such as industry, licence rating, location and vacancies available for it to be usable by workers.
- **Giving sponsored migrant workers the flexibility to access public funds** – to empower them to leave exploitative jobs without the fear of falling into debt or becoming destitute. We have argued that it cannot be right for migrant workers to be denied access to state benefits where they were exploited by a sponsor who was only in this

position of power because of a licencing decision by the Home Office, itself a department of the state.

- **Giving 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** – several countries like Canada, New Zealand, the Republic of Ireland and Finland operate similar schemes to empower workers to leave exploitative sponsors, free from the fear of financial precarity that comes with unemployment.⁴⁴
- **Strengthening the Home Office’s sponsor compliance activities, including by bolstering its guidance around employment law** – by spelling out sponsors’ specific duties as employers, raising awareness of unlawful deductions and clamping down on restrictive contractual clauses, like repayment clauses, that are used to prevent workers from leaving exploitative employment. The latter should preferably be reformed by legislation so that it applies across the board, rather than to any one particular sector.

What opportunities are there for progression to better paid work for low paid workers and how common is promotion?

We do not have a plethora of data on this point in the context of our frontline work. However, specifically in relation to the care sector, the interim findings from our research into the experiences of migrant carers suggests that career progression is significantly lacking. As part of this research, we interviewed 21 migrant care workers in England, 9 of whom were currently on the HCW visa and 12 of whom were not. Many of these workers reported never being promoted. Worse still, many did not know whether promotion was even possible, what the criteria for possible promotion were, and in some cases were actively prevented from career development opportunities (in one case, a worker wanted to pursue a free NVQ qualification through the care home they were working at but were refused). Other respondents recognised that promotion was possible, but that it was informal in nature, and often only involved taking on additional responsibilities or being shadowed by new care worker colleagues.

In light of this, there was widespread support for a national career progression framework for carers. The possibility of professional growth and having a structure for development in place was attractive to interviewees who had entered the sector with varying levels of preexisting skills, interest and passion in care as a career path. Interviewees mentioned that any prospective framework would need to be accessible, clearly structured and inclusive. However, workers also reported the potential difficulties in implementing a national framework, including whether alignment with the framework would be discretionary for employers.

The previous Conservative government recently made some attempts to develop career progression standards in the care sector. On 10 January 2024, a care workforce pathway was introduced, a national career structure for the adult social care workforce. Further funds were allocated for the creation of a new qualification and more apprenticeships and subsidised training places.⁴⁵ In parallel, Skills for Care are developing a workforce strategy to identify the

need for staff over the next 15 years and to ensure this need is met with appropriately skilled individuals.⁴⁶

However, the opportunity for better paid work in the care sector is limited due to poor pay progression. On average in England, carers with five or more years of experience earn only around 6p more per hour than carers with less than a year's experience.⁴⁷ The impact of low pay has also been sharper due to recent economic turbulence - some providers are struggling to pay staff in England a wage in line with inflation, while others are having to support staff with access to basics like food, fuel and toiletries. Pay rules are not the same across the UK and both Wales and Scotland have a slightly more generous system, where pay for social care staff is normally aligned with real living wage rates, while both devolved regions also provided lump sum payments to carers in the height of the Covid-19 pandemic. Despite this, the government has refused to set any specific pay levels or conditions in the sector in England as recently as October 2023.⁴⁸ It is therefore clear that increasing pay in the sector needs to be a priority alongside a more developed framework for promotions.

Compliance and enforcement

What issues are there with compliance with the minimum wage and what could be done to address these?

Despite the importance of complying with the minimum wage, we routinely see workers being underpaid. In this section we highlight what is a complex tapestry of issues that has made compliance and enforcement of minimum wage rules evasive. This includes, among other things, the low level of penalties applied to wrongful actors, low levels of detection and an inadequately resourced enforcement system.

We are concerned that employers are not incentivised to comply with minimum wage requirements owing to the low level of penalties applied for non-compliance. For example, the Resolution Foundation has previously noted that financial penalties are too low to act as a meaningful deterrent to rogue actors in the labour market. In their report "Enforce for Good", the example is given of the penalties applied for a firm found to have underpaid the worker the National Minimum Wage. The report notes that in these cases, the penalty imposed is either equivalent to the sum of arrears in the first instance and double the arrears in the event of there being a late payment.

The level of penalty imposed as against the level of arrears is lower than the UK's international partners, including France, Ireland, Netherlands, Australia and Norway. Analysis by the Foundation suggests that the current penalty level in the NMW context would have to be accompanied with a detection rate of 1 in 3 for it to act as a meaningful deterrent to first considering underpaying their workers.⁴⁹ Given the lack of additional resourcing that the UK's main enforcement bodies have suffered from in recent years (which we discuss below), firms are unlikely to be deterred as the risk of being caught is too low.

In our evidence to the Director of Labour Market Enforcement for the UK's enforcement strategy for 2024/25, we noted that a culture change is similarly required. A presumption that most firms want to comply with relevant legislation affects how enforcement bodies deal with non-compliance when it is discovered. What is striking is that this leniency is not replicated in other areas where employers have serious legal responsibilities. The two most obvious examples cited include laws on taxation and right to work check responsibilities under the UK's immigration framework (which we note is hostile to migrant communities).⁵⁰

From an employer perspective, there are a combination of additional factors that have meant that some sponsors can act with impunity and get away with flouting minimum wage requirements:

1. **Sponsors control workers' immigration status in the UK under the work-sponsorship model** - for more information about the precarity workers face under the work-sponsorship model, see our response under the heading "Experience of those on low pay over the last year". As long as the UK continues to utilise a system of employee to employer dependency under the sponsorship system, migrant workers will by definition continue to find their power in a tight labour market restricted, particularly those in low-paid sectors.
2. **A lack of safe reporting channels** - migrant workers, particularly those with undocumented status, are at risk of immigration enforcement if they report non-compliance. This is because data sharing practices between the police, labour inspectorates and immigration enforcement are common, meaning that labour market non-compliance can and often does happen within a wider framework of immigration control. This is counterintuitive and at odds with the approach of other nations, who have recognised that preventing information from being shared about a worker's immigration status is key to identifying and preventing abuse.⁵¹ We submit that a lack of safe reporting channels is the most pressing reason that enforcement bodies have lacked 'upstream' intelligence from migrant workers in recent years. When taken together with the relationship of dependency that sponsorship causes, migrant workers are simply not incentivised to report their circumstances. This isn't an abstract risk, nor is it limited exclusively to minimum wage issues. For example, a report from the Domestic Abuse Commissioner published on 9 November 2023 revealed that between April 2020 and March 2023, every single police force across England and Wales referred victims of domestic abuse to Immigration Enforcement, meaning that there was nowhere that victims could safely report matters to the police without fear of immigration action.⁵²
3. **Lax oversight of sponsors by the Home Office** - as discussed on page 13.

One issue that has persistently been raised by our Service Provision team in recent times has been the prevalence of 'phoenixing', and the ability for those flouting minimum wage regulations and other employment obligations to simply disappear once a complaint is raised, leaving workers without money and without access to redress. Despite the passage of the Economic Crime and Corporate Transparency Act, which provides in particular Companies House with a range of new powers to deal with those engaged in suspicious or fraudulent activity when setting up a company, dissolving it and more, phoenixing remains an issue for clients.⁵³ Much of this stems from the inability to in practice prevent a relevant employer from running out of or moving funds that could otherwise be frozen or used to pay back workers who were underpaid or not paid at all. This means that solutions like objecting to a company strike-off at Companies House have very little effect in terms of redress for our migrant worker clients (and in any case our Service Provision team has reported that objections can take a while to be actioned) because individual actors cannot be held accountable.

In our view, it is also problematic that the Insolvency Service considers the non-payment of an employee's wages 'an individual commercial dispute',⁵⁴ while the Financial Conduct Authority cannot assist in individual cases between employees and phoenix companies.⁵⁵ Though we do not think it is prudent for the labour market enforcement landscape in the UK to be

fragmented further, this messaging does little to instil confidence that enforcement of the minimum wage is seen not only as an individual good, but a 'public' good that benefits other employees and compliant businesses alike.

Recommendations to address these issues

1. **Increase penalties for non-compliance** - for example, by increasing fines that are issued for underpaying the minimum wage, to act as a proper deterrent against non-compliance. Current penalties are too low, and employers frequently get away without real punishment or fines because of a culture of 'self-correction'. The Low Pay Commission has previously identified the issue with delayed naming rounds that identify those companies found to have underpaid their workers. Our view is that these should of course be timely and regular, to maximise the public attention and scrutiny applied to non-compliant actors.
2. **Continue to properly fund the HMRC NMW Enforcement team, while also bringing the funding of other labour market enforcement agencies up as well** - notwithstanding the possible harmonisation of the labour market enforcement agencies through a Single Enforcement Body (SEB) (see Recommendation 4 below), there must be more investment in the NMW team and across the other agencies. We would also recommend that the Home Office invests significantly in its sponsor compliance activities so that rogue sponsors can be prevented from getting a licence in the first place, and so prevention activity can take place at the earliest possible opportunity.
3. **Introduce safe reporting channels for workers** - This would entail several measures to ensure that migrant workers feel confident in reporting minimum wage and other encroachments to the authorities:
 - a. Ending data sharing between the police and labour inspectorates with immigration enforcement, to ensure that workers are not put off reporting by fears of immigration enforcement.
 - b. Ending the practice of simultaneous or coordinated operations with immigration authorities, including workplace raids, to ensure that workers can safely report exploitation, to ensure labour inspectorates can do their job properly, thereby protecting pay and conditions for all workers.
 - c. Introducing guidance for labour enforcement agencies and local authorities, to prevent them enquiring about workers' immigration status, and support them to build a culture of trust and accountability. Namely, the Home Office and Ministry of justice should issue joint statutory guidance, making it clear that public authorities involved in labour enforcement should:
 - i. not actively enquire about immigration status or carry out checks for immigration enforcement purposes, including during visits and investigation
 - ii. not seek out matters of concern to immigration enforcement bodies
 - iii. not report information on people who have experienced abuse and exploitation, victims and witnesses of crime for immigration enforcement purposes
 - iv. not conduct simultaneous operations with immigration authorities
 - v. appoint a single point of contact (SPOC) in every force to oversee compliance with guidance

- vi. ensure that migrants are referred to specialist services, including ‘by and for’ migrant, Black and minoritised organisations, which can support them to resolve their immigration status
- vii. work with migrant and community organisations to build trust with the community, and ensure migrants are aware they can securely report abuse and exploitation without fear of facing negative immigration consequences as a result.

4. Introduce a Single Enforcement Body - Preventing labour exploitation requires strong labour market enforcement. A SEB that incorporates the labour market enforcement functions of the six current labour market enforcement authorities would make it easier for workers to navigate and protect their rights, while levelling the playing field for employers. This body should be accessible to workers in practice, provide fair and efficient remediation and have safe reporting pathways in place, to ensure migrant workers can safely report abuse and exploitation without fear of losing their right to remain, detention or removal.

For it to be successful, a SEB must also be independent of the activities of the Home Office and pursue enforcement of labour standards as a value in its own right, rather than being subsidiary to policy goals related to immigration control. We agree with the Commission’s previous remarks about there being a ‘host of interconnected conditions’ that limit worker confidence in asserting their rights. This sort of independence would better allow for a SEB to, in the Commission’s words, “think about workers’ power, their mobility and their willingness to assert rights - and identify the barriers to each of these”.

As mentioned in recommendation 2 above, this new body will need to be financed appropriately to consider its various remits and to cover initial teething costs. This could include initial restructuring costs, merging existing IT systems and ancillary processes while also reinforcing a new organisational culture. Similar reforms internationally have, after initial hurdles, resulted in increased performance across key indicators such as unpaid wages recovered for workers. In the Republic of Ireland for example, two years after the establishment of the Workplace Relations Commission in 2015, it oversaw a significant increase in adjudication hearings, adjudication decisions and recovery in unpaid wages.⁵⁶

5. Make it easier for workers to practically secure redress for NLW and other employment breaches – in the context of phoenixing, our frontline team have made the case that workers should be able to sue individual directors at the Employment Tribunal. Though this is in theory already permitted, the Tribunal typically doesn’t allow this to happen, instead making it conditional on showing that the worker was directly employed by the exploitative director themselves. There has been some case law outside of the Employment Tribunal suggesting that company directors can be held personally liable in the case of employment breaches, though liability here has been conceptualised through the director’s responsibilities and duties towards the company, rather than to the worker specifically.⁵⁷ Leading on from this approach that would target individuals, Dr Caroline Emberson of the Nottingham Rights Lab has previously suggested that the UK could follow a similar approach to that of Brazil, where the state maintains a list that sanctions individuals who are engaged in

exploitative practices, rather than companies themselves, to prevent the phoenixing phenomenon.⁵⁸ Similarly, on the topic of enforcement, we would suggest removing the current fees that workers have to pay in order to get an enforcement officer (£71) or County Court bailiff (£83) to force a respondent to pay a compensation award secured through successful litigation.

What comments do you have on HMRC's enforcement work?

The work of HMRC's NMW enforcement team is of vital importance to our clients. Though many of our clients experience an interconnected set of employment issues when they come to us, meaning formal employment law advice is more appropriate than simply reporting, getting redress through the Employment Tribunal system can be challenging. For example, workers generally have 3 months minus 1 day from the date the work issue started to bring a claim in the Employment Tribunal. They then must navigate a complex process involving ACAS and procedural/substantive hearings. This isn't always suitable for migrant workers, many of whom are in the UK for a short period of time or are forced to leave because of an issue that arises with their immigration status. This is why the activity of the NMW enforcement team is so important - even if there is no direct intervention in one of our clients' cases, the deterrent effect of its work in driving compliance raises standards across the board.

We agree with the Low Pay Commission's previous observations regarding transparency of HMRC's work. It would be helpful to receive non-disclosive information on activity in particular sectors or locations as this could help to inform our own outreach, prioritisation and the deployment of frontline resources. It would also better allow us to confirm trends and patterns, rather than having to scope and discuss this with sector colleagues who have differing levels of resources and data capture to hand. This is not just about stakeholders in the sector having a 'stake' in the enforcement process - we believe it would be mutually beneficial for our operations and those of HMRC.

On actionable intelligence, not knowing what information is required to trigger an investigation or what is considered relevant enough to be 'actionable' can be frustrating. While much of the information we receive can be informal and lacking in documentary evidence, this is not always an indication that an issue does not exist, rather an opportunity for proactive investigation and, if necessary, enforcement. While we understand the need to keep evidential requirements flexible on a case-by-case basis, it would be useful to have some case studies or anonymised examples that frontline advisers could use when considering reporting.

Similarly, we consider that setting a standard for providing prompt and regular feedback to third parties such as charities and frontline advisers is of vital importance. As the Commission has identified, disillusionment among frontline organisations is a real problem in the advice sector. This is especially so when advisers have had to overcome hurdles in communicating relevant client information in the first place e.g. carrying out a risk assessment to ensure that reporting will do no harm to the client and getting free, prior and informed consent from the individual affected. When updates are not received, clients' view of our organisation (along with HMRC or another agency) can be impacted negatively, which in turn affects our ability to be a trusted destination for migrant workers to confidentially report grievances to.

Given, in our view, the necessity of the above steps, this is why we also endorse a social partnership model to enforcement that the Commission has previously identified. For

example, a model of 'super-complaints' has been identified by the Resolution Foundation as being a potential process through which worker representatives could be able to flag more systemic issues. Putting aside the well-documented investigations flowing from Operation Tacit in the Leicester garment industry, in recent years a system like this would have also allowed for more timely and efficient scrutiny in other sectors featuring migrant workers, including horticulture and social care. Without this collaboration and engagement, it is unlikely that HMRC or any other enforcement agency is going to see a significant and timely increase in positive enforcement outcomes for migrant workers as a distinct group in the labour market.

Separately, we agree with the Commission's view on the length of the enforcement process and its saliency for workers. In fact, this point is even more salient for migrant workers, particularly those who are working in the UK under the sponsorship-model. As previously referenced, workers only have a maximum of 60 days to change jobs in the UK once their sponsorship has been curtailed. Understandably, if 40% of HMRC's caseload takes between 120-365 days to close, this may come too late for workers who become undocumented or who end up returning home and are no longer within reach. Similarly, migrant workers under the sponsorship model generally have No Recourse to Public Funds, meaning they cannot access most public benefits. If closing a case and wage recovery takes too long, workers may fall into destitution before they receive any compensation. This not only hampers their ability to get on with their lives, but in some cases makes them more susceptible to graver forms of exploitation like forced labour and modern slavery.

Finally, a big concern for our organisation is the extent to which HMRC can continue to be as effective in its work moving forward. For example, on resourcing, it is well documented that the UK's labour market enforcement system is underfunded and lags behind other OECD countries, with only 0.29 inspectors per 10,000 workers. This is below the ILO's recommended minimum of 1 inspector per 10,000.⁵⁹ However, the HMRC NMW Enforcement team has been a historical outlier in this overall picture. For example, the Resolution Foundation notes that, between 2010 and 2022, budget allocations for the team grew significantly over time.⁶⁰ Between 2016/16, and 2019/20, the team's budget doubled from £13.2m to £26.3m. The government's previous evidence on NMW compliance and enforcement suggests that this increase has been to "account for the increasing number of workers brought within scope of increasing minimum wage rates, to promote recent changes in minimum wage legislation and to further enhance compliance".⁶¹

We support the historical funding allocations to the HMRC NMW Enforcement team and, in the absence of a SEB yet to be created, it is also important that the other labour market enforcement agencies are funded so that workers do not experience a two-tier system when it comes to successful enforcement of different labour rights and standards. As the Low Pay Commission has found, underpayment of the minimum wage remains a constant issue, with more than one in five minimum wage workers being underpaid, so it is vital for resourcing to keep pace.

Accommodation Offset

What impact does the offset have on workers? What are the hours, pay and working conditions of workers for whom the offset is deducted?

Are there particular issues created by the current design of the offset?

Last year we recommended that a quality standard and suitable enforcement regime are put into place as soon as possible. This would need to be implemented before we could recommend further significant changes to the offset. What would the impact of this policy be for employers and how would it affect the accommodation they provide?

We also recommended a minimum hours requirement before accommodation costs can be deducted. If implemented what would the effect of this policy be and what should be considered when setting a minimum hour's requirement?

Our response to this section is limited to how the Accommodation Offset applies in respect of migrant workers under the Seasonal Worker Visa scheme, as this is the portion of our client base that is most affected by the Offset. We are aware that the Commission has received previous representations from other civil society organisations and workers themselves about the Offset and how it can negatively impact the experience of workers, particularly its effect of pushing some workers into situations of low or no pay. We do not wish to repeat these arguments, but we do share concerns that the Accommodation Offset can and often is used to suppress workers' earnings. Under the SWS, the accommodation offset represents yet another cost/deduction/financial burden that encumbers workers, alongside the other factors mentioned earlier in this submission.

We endorse the Commission's previous conclusions regarding accommodation standards. Workers under the SWS have frequently complained of being placed in poorly insulated caravans which are cold and far away from kitchen and toilet facilities. Safeguarding issues have also arisen in some cases, including women being placed in male-only caravans.

Standards of accommodation are very vague in Home Office guidance to scheme operators - workers are required to be "housed in hygienic and safe accommodation that is in a good state of repair".⁶² The Home Office also says that accommodation is ultimately the remit of local government but there is little that councils can do in practice, particularly around licencing. Under Schedule 1, paragraph 7 of the Caravan Sites and Control of Development Act 1960, a site licence is not required for caravan sites on agricultural land if it is being used to accommodate persons employed in farming operation on the land. However, Schedule 1 also permits local authorities to apply to the relevant Minister to have this and other similar exemptions contained in Schedule 1 withdrawn, allowing them to licence sites. After submitting a Freedom of Information Request to the Department of Housing, Levelling Up and Communities, it was disclosed that the department did not hold any information to suggest that any local authority across England had Wales had made such an application.⁶³ In Scotland, we are aware that only Angus Council has applied for and been granted a relevant order which took effect from 15 September 2008.

The Commission's conclusions around accommodation standards are therefore highly relevant in tackling what is effectively an unregulated area. The effect on employers in

regulating this area is simple - more would have to be invested in ensuring that accommodation standards are brought up to the level that we submit they should already be at.

We also endorse the Commission's conclusion around introducing a minimum hours requirement before the Offset applies. Though migrant workers under the SWV are already required to be provided with 32 hours of paid employment each week on the scheme, this would nonetheless be a welcome guarantee of their rights. Further clarity and guarantees covering different scenarios that seasonal workers face would also be beneficial, for example preventing the Offset from being applied at all in cases where workers are injured or in situations where workers are waiting to be transferred to a different farm.

When setting a minimum hours requirement, it is important to consider the issues that could be associated with this policy. The first and most obvious point relates to the enforcement of any new rules, in particular considering the capacity of current labour market enforcement agencies and the fact that hours worked are commonly disputed as between workers and individual farms. As referred to in our response under the heading 'Compliance and enforcement', more resources need to be directed towards the activities of the labour market enforcement agencies to proactively investigate workplaces, including farms, to ensure compliance with these new rules.

Separately, there may also be some reticence from individual farms to provide accommodation without charge in situations where workers have not met the minimum hours requirement. However, our position is that this is currently a fair compromise for the financial risk that workers on the SWV otherwise take on when working in the UK. Despite ILO best practice and internationally recognised principles like the EPP, workers still bear the main costs of the recruitment process. If for example EPP were to be implemented properly and/or workers had a practical income guarantee during their time in the UK, workers may be in a better position to pay the Offset. Until then, it represents another unhelpful deduction to their earning capacity.

Economic outlook

To what extent have employers been affected by other major trends in the economy and labour market: for example, inflation, Brexit, the shift to homeworking or changes in the numbers of migrant workers in the UK?

In the context of migrant workers, employers have been affected greatly by Brexit and a switch in emphasis under the immigration system to sponsored work routes.

As we noted in our report last year, the EU was the major source of work-related migration to the UK. Citizens of countries that were part of the European Economic Area and their family members could enter the UK freely and, for the most part, take up any job in the UK, in line with the bloc's central principle of free movement. As a result, by 2021, an estimated 6.9% of people employed in the UK were EU born, according to the Migration Observatory. EU workers have been 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. In 2020, EU born workers filled one in every seven jobs in factory and machine operations, one in seven jobs in food preparation, and one in eight jobs in low-skilled cleaning, warehousing, and other services.⁶⁴

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 under a work-sponsorship model. In many ways, this key principle underlying the new system is not 'new' at all. 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.⁶⁵ However, the scale of the expansion of the sponsorship system merits renewed attention.

Under the current Points Based System of Immigration, 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 licenced and is given an A rating by the Home Office, they can 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. In summary, this is primarily a sponsorship-based system, where migrants and employers incur substantial costs in obtaining a visa and, respectively, a licence.

Under this new system, the number of sponsored work visas issued to main applicants has grown dramatically. For example, there were 337,240 work visas granted to main applicants in 2023, 26% higher than in 2022 and almost two and a half times more (146%) than prior to the Covid-19 pandemic, in 2019.⁶⁶ At the same time, the number of organisations that have registered to be sponsors with the Home Office has grown exponentially - in 2020, this figure was around 30,000 but by the end of 2023, this had grown to approximately 85,000 organisations.⁶⁷

We suggest that the new system premised on sponsorship has thus far been a bad deal for all involved:

For employers - an increasing number of organisations now must invest additional time and resources into complying with Home Office rules and processes regarding their migrant workforce. For example, through what is known as the sponsor management system, sponsors have key reporting obligations, meaning they must notify the Home Office each time there is an important change in a worker's circumstances or employment or to the organisation itself. This includes things such as continuous absences, changes to core job duties and work locations. Comprehensive records in relation to sponsored workers must also be kept.

There are Home Office fees to be paid by employers too. For example, a sponsor that is deemed to be of medium or large size sponsoring a worker for a period of 5 years could end up paying up to £5,000 in what is known as the Immigration Skills Charge.⁶⁸ Therefore, unlike when the UK was part of the EU and employers were able to source a substantial portion of their migrant workforce with relative ease and minimal cost, the new system places significant administrative and cost burdens on sponsors. This is particularly poignant in sectors where migrant workers have and continue to make up a higher share of the overall workforce, such as in adult social care.

For workers - as we have discussed, the current system of sponsorship results in a lopsided relationship of dependency between workers and their employers. The lack of flexibility that workers have to switch jobs means they are in a more precarious position as compared to British nationals and even other settled migrant workers who are not subject to the same

immigration restrictions. It is our view that the sponsorship system encroaches on the fundamental rights of workers to withdraw their labour. Though additional safeguards could be built into the system, which would have a great practical impact on worker power and mobility, by definition the system is problematic because it ties workers' immigration status to their employer. It is no surprise that some comparisons have been made between the current system that workers face and the 'kafala' system that has been used in Gulf Arab nations, which has historically been criticised for its role in facilitating abuse and substandard labour conditions.⁶⁹

For the Home Office - a substantial increase in the number of registered sponsors has resulted in an increased compliance burden for the Home Office. However, recent analysis suggests that the Home Office is not equipped to deal with the number of businesses that it is now meant to oversee and enforce its own rules against. For example, while the number of suspensions and revocations of sponsor licences by the Home Office increased slightly in the first quarter of 2024 relative to annual totals for the previous couple of years, this compliance activity has dropped significantly since before the Brexit referendum.⁷⁰ At the same time, the number of sponsors has effectively tripled. This regulatory impotence was emphasised in the ICIBI's recent report on social care, which found that the Home Office only has one compliance officer for every 1,600 licenced sponsors. In the context of the UK's fragmented labour market enforcement apparatus, there has also been serious confusion between the Home Office and other bodies about who 'owns' different issues concerning worker welfare.

For any queries or for further information relating to this submission, please contact research@workrightscentre.org.

ENDNOTES:

¹ Home Office, “Home Office confirms changes to the EU Settlement Scheme”, published 21 May 2024, available at: <https://www.gov.uk/government/news/home-office-confirms-changes-to-the-eu-settlement-scheme#:~:text=The%20EU%20Settlement%20Scheme%20has,3.7%20million%20holding%20settled%20status.>

² Sehic, A. and Vicol, D. (2023), Systemic drivers of migrant worker exploitation. Work Rights Centre, available at: www.workrightscentre.org/news/report-the-systemicdrivers-of-migrant-worker-exploitation-in-the-uk

³ McKinney, Coe & Stewart, ‘Seasonal Worker visas and UK agriculture’, House of Commons Library, 4 November 2022, available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9665/CBP-9665.pdf>

⁴ Department for Environment, Food and Rural Affairs, “Independent review into labour shortages in the food supply chain: government response”, published 9 May 2024, available at: <https://www.gov.uk/government/publications/independent-review-into-labour-shortages-in-the-food-supply-chain-government-response/independent-review-into-labour-shortages-in-the-food-supply-chain-government-response#recruitment-and-retention>

⁵ UK Visas and Immigration, “Guidance, Workers and Temporary Workers: guidance for sponsors: sponsor a seasonal worker”, updated 4 April 2024, available at: <https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker-accessible-version>

⁶ McAndrew, Fisher, McAllister & Jaccarini, Debt, Migration, and Exploitation: The Seasonal Worker Visa and the Degradation of Working Conditions in UK Horticulture, published 10 July 2023, available at: https://staging.landworkersalliance.org.uk/wp-content/uploads/2018/10/LWA-Debt-Migration-and-Exploitation-2023.pdf?_gl=1*1qxextq*_ga*MjAxMTYyNjI5LjE3MTU2MTQ5NTE.*_ga_ZDW3NFY5G0*MTcxNTYxNDk1MC4xLjAuMTcxNTYxNDk1MC4wLjAuMA..*_ga_HGZDP7MC4L*MTcxNTYxNDk1MC4xLjAuMTcxNTYxNDk1MC4wLjAuMA..

⁷ Worker Support Centre, Annual report 2023, published 29 January 2024, available at: <https://workersupportcentre.org.uk/largest-independent-study-ever-published-on-treatment-of-seasonal-agricultural-workers-finds-worker-welfare-and-safeguarding-concerns/>

⁸ Department for Environment, Food and Rural Affairs, “Seasonal workers survey results 2022”, updated 25 January 2024, available at: <https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-survey-results-2022#:~:text=The%20seasonal%20workers%20survey%20is,run%20each%20year%20since%202019.>

⁹ Ibid.

¹⁰ Focus on Labour Exploitation. 2024. Bearing fruit: Making recruitment fairer for migrant workers, available at: <https://labourexploitation.org/app/uploads/2024/04/Flex-Report-Final.pdf>

¹¹ Business and Human Rights Resource Centre, “UK: Tajik migrants charged over 1500 USD each for non-existent seasonal farm jobs by recruitment co. Davri Istiqloq; incl. co. non-response”, published 30 May 2024, available at: <https://www.business-humanrights.org/en/latest-news/uk-tajikistani-migrants-charged-tsj-18000-each-for-non-existent-seasonal-farm-jobs-by-recruitment-co-davri-istiqloq-incl-co-non-response/>

¹² See GOV.uk website on the Seasonal Worker visa here: <https://www.gov.uk/seasonal-worker-visa>

¹³ UK Visas and Immigration, Visa fees transparency data, published 6 March 2019 (last updated 10 April 2024), available at: <https://www.gov.uk/government/publications/visa-fees-transparency-data>

¹⁴ International Labour Organisation, General principles and guidelines for fair recruitment and definition of recruitment fees and related costs (2019), available at: https://webapps.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--migrant/documents/publication/wcms_703485.pdf

¹⁵ Institute for Human Rights & Business, The Employer Pays Principle, available at: <https://www.ihrb.org/employerpays/the-employer-pays-principle>

¹⁶ Mellino, 'Migrant fruit picker who 'struggled to buy food after being underpaid by British farm' sues employers', published 2 December 2023, available at: <https://www.independent.co.uk/news/uk/home-news/migrant-worker-sues-british-farm-b2456864.html>

¹⁷ Department of Health and Social Care, Home Office, 'Government launches Health and Care Visa to ensure UK health and care services have access to the best global talent', 14 July 2020, available at: <https://www.gov.uk/government/news/government-launches-health-and-care-visa-to-ensure-uk-health-and-care-services-have-access-to-the-best-global-talent>

¹⁸ Department of Health and Social Care, Home Office, 'Biggest visa boost for social care as Health and Care Visa scheme expanded', 24 December 2021, available at : <https://www.gov.uk/government/news/biggest-visa-boost-for-social-care-as-health-and-care-visa-scheme-expanded>

¹⁹ Skills for Care, The state of the adult social care sector and workforce in England, 2023 (Leeds, 2023), available at: <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-State-of-the-Adult-Social-Care-Sector-and-Workforce-2023.pdf>

²⁰ Department of Health & Social Care, "Code of Practice for the international recruitment of health and social care personnel in England", updated 23 August 2023, available at: <https://www.gov.uk/government/publications/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel/code-of-practice-for-the-international-recruitment-of-health-and-social-care-personnel-in-england>

²¹ See FOI results here: https://www.whatdotheyknow.com/request/monitoring_of_nhs_ethical_recruiting_incoming-2562645

²² Care Quality Commission, "The state of health and adult social care in England 2022/23", 2023, available at: https://www.cqc.org.uk/sites/default/files/2023-10/20231030_stateofcare2223_print.pdf

²³ See GOV.uk website on mileage allowance payments here: <https://www.gov.uk/expenses-and-benefits-business-travel-mileage/rules-for-tax>

²⁴ UNISON, "Majority of homecare staff are unpaid for travel between visits", 15 June 2023, available at: <https://www.unison.org.uk/news/2023/06/majority-of-homecare-staff-are-unpaid-for-travel-between-visits-says-unison/>

²⁵ For more information, see GOV.uk website on the Overseas Domestic Worker Visa here: <https://www.gov.uk/overseas-domestic-worker-visa>

²⁶ V Mantouvalou and N Sedacca, 'Trapped in Cycles of Exploitation: The UK Overseas Domestic Worker Visa 10 Years On,' UK Labour Law Blog, 6 April 2022, available at:

<https://uklabourlawblog.com/2022/04/06/trapped-in-cycles-of-exploitation-the-uk-overseas-domestic-worker-visa-10-years-on-by-virginia-mantouvalou-and-natalie-sedacca/>

²⁷ The ODW visa has attracted much criticism in the last decade and beyond. In 2012, the Government reformed the route, meaning that workers could no longer change their employers during the 6 month visa period and the route would no longer allow for extension or for a path to settlement in the UK (workers who applied on or before 5 April 2012 could still extend their visa or apply to settle, if eligible). Worker welfare organisations have been vocal in their criticism of these changes. In 2014, Kalayaan, an organisation that focuses specifically on migrant domestic workers, found that under the new regime 60% reported a pay of less than £50 a week, compared to 36% still under the pre-2012 system.

²⁸ V Mantouvalou and N Sedacca, 'Trapped in Cycles of Exploitation: The UK Overseas Domestic Worker Visa 10 Years On,' UK Labour Law Blog, 6 April 2022, available at:

<https://uklabourlawblog.com/2022/04/06/trapped-in-cycles-of-exploitation-the-uk-overseas-domestic-worker-visa-10-years-on-by-virginia-mantouvalou-and-natalie-sedacca/>

²⁹ Kalayaan & The Voice of Domestic Workers, written evidence to the Modern Slavery Act 2015 Committee, published 14 May 2024, available at:

<https://committees.parliament.uk/writtenevidence/129561/pdf/>

³⁰ N Sedacca, 'The family worker exemption revisited: a sustained campaign against the devaluation of domestic work' UK Labour Law Blog, 17 November 2023 available at:

<https://uklabourlawblog.com/2023/11/17/the-family-worker-exemption-revisited-a-sustained-campaign-against-the-devaluation-of-domestic-work-by-natalie-sedacca/>

³¹ The National Minimum Wage (Amendment) Regulations 2024, available at:

<https://www.legislation.gov.uk/uksi/2024/75/made/data.pdf>

³² The Working Time Regulations 1998, regulation 19, available at:

<https://www.legislation.gov.uk/uksi/1998/1833/regulation/19>

³³ International Labour Organisation Convention 189 (Domestic Workers Convention, 2011), available at: https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189

³⁴ Amelia Gentleman, "MP raises concern over Bulgarian nationals' UK benefit suspensions", The Guardian, published 6 December 2021, available at:

<https://www.theguardian.com/society/2021/dec/06/mp-raises-concern-over-bulgarian-nationals-uk-benefit-suspensions>

³⁵ Living Wage Foundation, "What is the Living Wage as an annual salary?", available at:

<https://livingwage.org.uk/node/29657>

³⁶ Low Pay Commission, National Minimum Wage Low Pay Commission Report 2023, published March 2024, available at:

https://assets.publishing.service.gov.uk/media/65e0b1f93f6945001103601d/E03071356_NMW_LPC_Report_2023_Accessible.pdf

³⁷ Trades Union Congress, "Work intensification, the impact on workers and trade union strategies to tackle work intensification", published 25 July 2023, available at:

<https://www.tuc.org.uk/sites/default/files/2023-07/WorkIntensificationrReportJuly2023.pdf>

³⁸ See our Impact statistics here: <https://www.workrightscentre.org/impact/our-clients-issues>

³⁹ Independent Chief Inspector of Borders and Immigration, "An inspection of the immigration system as it relates to the social care sector, August 2023- November 2023", published 26 March 2024, available at:

https://assets.publishing.service.gov.uk/media/6602a6b765ca2fa78e7da854/An_inspection_of_the_immigration_system_as_it_relates_to_the_social_care_sector_August_2023_to_November_2023.pdf

⁴⁰ Gangmasters and Labour Abuse Authority, GLAA Intelligence Picture Q4 (October – December 2023), available at: <https://www.gla.gov.uk/our-impact/intelligence-picture/glaa-intelligence-picture-q4-october-december-2023/>

⁴¹ Independent Chief Inspector of Borders and Immigration, “An inspection of the immigration system as it relates to the social care sector, August 2023- November 2023”, published 26 March 2024, available at: https://assets.publishing.service.gov.uk/media/6602a6b765ca2fa78e7da854/An_inspection_of_the_immigration_system_as_it_relates_to_the_social_care_sector_August_2023_to_November_2023.pdf

⁴² See a summary of the immigration changes proposed in Australia here: <https://hallandwilcox.com.au/thinking/anticipating-changes-australias-visa-program-in-2024/#:~:text=Currently%2C%20sponsored%20employees%20are%20only,to%20locate%20skilled%20workers%20quickly.>

⁴³ Meri Ahlberg, Caroline Emberson, Lucila Granada, Shereen Hussein and Agnes Turnpenny (2022) 'The vulnerability of paid, migrant, live-in care workers in London to modern slavery', Rights Lab University of Nottingham. Available at: <https://www.nottingham.ac.uk/Research/Beacons-of-Excellence/Rights-Lab/resources/reports-and-briefings/2022/July/The-vulnerability-of-paid-migrant-live-in-care-workers-in-London-to-modern-slavery.pdf>

⁴⁴ For example, read more about the Republic of Ireland’s Reactivation Permit here: https://picum.org/wp-content/uploads/2023/08/Labour-migration-policies_Case-study-series_Ireland_EN.pdf

⁴⁵ Department of Health & Social Care, “Care Workforce pathway for adult social care: overview”, published 10 January 2024, available at: <https://www.gov.uk/government/publications/care-workforce-pathway-for-adult-social-care/care-workforce-pathway-for-adult-social-care-overview>

⁴⁶ Samuel, “Skills for Care to develop social care workforce strategy”, Community Care, published 12 October 2023, available at: <https://www.communitycare.co.uk/2023/10/12/skills-for-care-to-develop-social-care-workforce-strategy/>

⁴⁷ Skills for Care, The state of the adult social care sector and workforce in England, 2023 (Leeds, 2023), available at: <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-State-of-the-Adult-Social-Care-Sector-and-Workforce-2023.pdf>

⁴⁸ PQ 200474 on Care Workers: Conditions of Employment and Pay, 19 September 2023, available at: <https://questions-statements.parliament.uk/written-questions/detail/2023-09-19/200474>

⁴⁹ Judge & Slaughter, ‘Enforce for Good, effectively enforcing labour market rights in the 2020s and beyond’. The Resolution Foundation, published 25 April 2023, available at: <https://www.resolutionfoundation.org/app/uploads/2023/04/Enforce-for-good.pdf>

⁵⁰ Work Rights Centre, Evidence submission to the DLME’s Call for Evidence on the Labour Market Enforcement Strategy 2024/25, available at: <https://www.workrightscentre.org/media/1330/september-2023-worc-evidence-dlme-enforcement-strategy-2024-25-1.pdf>

⁵¹ Labour Exploitation Advisory Group, “Safety for Migrant Workers: the case for safe reporting mechanisms”, published December 2022, available at: https://labourexploitation.org/app/uploads/2023/01/Firewalls-Policy-Briefing-November-2022_JCWI-FLEX-LAWRS-SUMW.pdf

-
- ⁵² Domestic Abuse Commissioner, “Police report victims of domestic abuse to Immigration Enforcement, ‘empowering abusers’”, published 9 November 2023, available at: <https://domesticabusecommissioner.uk/police-report-victims-of-domestic-abuse-to-immigration-enforcement-empowering-abusers/>
- ⁵³ Home Office, Serious Fraud Office, HM Treasury, Department for Business and Trade, Ministry of Justice, Companies House, “Economic Crime and Corporate Transparency Act: overarching factsheet”, published 29 February 2024 (last updated 1 March 2024), available at: <https://assets.publishing.service.gov.uk/media/65df57cfcf7eb1e5f4f57fdf/01.+ECCT+Bill+Overarching+Fact+Sheet.pdf>
- ⁵⁴ The Insolvency Service, “Phoenix companies and the role of the Insolvency Service”, updated 24 March 2017, available at: <https://www.gov.uk/government/publications/phoenix-companies-and-the-role-of-the-insolvency-service/phoenix-companies-and-the-role-of-the-insolvency-service>
- ⁵⁵ Action Fraud, Phoenix company fraud, available at: <https://www.actionfraud.police.uk/a-z-of-fraud/phoenix-company-fraud>
- ⁵⁶ Workplace Relations Commission, Annual Report 2017, available at: https://www.workplacerelations.ie/en/publications_forms/workplace_relations_commission_-_annual_report_2017.pdf
- ⁵⁷ For example, see *Antuzis v DJ Houghton Catching Services Ltd* [2019] EWHC 843 (QB) (08 April 2019), available at: <https://knyvet.bailii.org/ew/cases/EWHC/QB/2019/843.html>
- ⁵⁸ Modern Slavery Act 2015 Committee, oral evidence on the Modern Slavery Act 2015 on Monday 25 March 2024, available at: <https://committees.parliament.uk/oralevidence/14714/pdf/>
- ⁵⁹ International Labour Organisation, “ILO calls for strengthening labour inspection worldwide”, published 16 November 2006, available at: <https://www.ilo.org/resource/news/ilo-calls-strengthening-labour-inspection-worldwide>
- ⁶⁰ Judge & Slaughter, ‘Enforce for Good, effectively enforcing labour market rights in the 2020s and beyond’. The Resolution Foundation, published 25 April 2023, available at: <https://www.resolutionfoundation.org/app/uploads/2023/04/Enforce-for-good.pdf>
- ⁶¹ Department for Business and Trade, “National Living Wage and National Minimum Wage: government evidence on compliance and enforcement 2019 to 2020”, published 24 February 2021, available at: <https://www.gov.uk/government/publications/national-living-wage-and-national-minimum-wage-government-evidence-on-compliance-and-enforcement-201920/national-living-wage-and-national-minimum-wage-government-evidence-on-compliance-and-enforcement-201920-web>
- ⁶² UK Visas and Immigration, “Guidance, Workers and Temporary Workers: guidance for sponsors: sponsor a seasonal worker”, updated 4 April 2024, available at: <https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker/workers-and-temporary-workers-guidance-for-sponsors-sponsor-a-seasonal-worker-accessible-version>
- ⁶³ See FOI results here: https://www.whatdotheyknow.com/request/number_of_local_authorities_in_e/response/2676027/attach/3/EIR%20No%20info%20held%20EIR2024%2012462.pdf?cookie_passthrough=1
- ⁶⁴ Sehic, A. and Vicol, D. (2023), Systemic drivers of migrant worker exploitation. Work Rights Centre, available at: www.workrightscentre.org/news/report-the-systemicdrivers-of-migrant-worker-exploitation-in-the-uk
- ⁶⁵ Ibid.

⁶⁶ Home Office, “Why do people come to the UK? To work”, published 29 February 2024, available at: <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2023/why-do-people-come-to-the-uk-to-work>

⁶⁷ Ibid.

⁶⁸ See GOV.uk website for more information on the Immigration Skills Charge here: <https://www.gov.uk/uk-visa-sponsorship-employers/immigration-skills-charge>

⁶⁹ Robinson, “What is the Kafala System?”, Council of Foreign Relations, updated 18 November 2022, available at: <https://www.cfr.org/backgrounder/what-kafala-system>

⁷⁰ Savitski, “Why exploitation of care workers is likely to persist, despite plunge in numbers”, Work Rights Centre, published 3 June 2024, available at: <https://www.workrightscentre.org/news/why-exploitation-of-care-workers-is-likely-to-persist-despite-plunge-in-visa-numbers>