

## **Focus on Labour Exploitation (FLEX) and the Labour Exploitation Advisory Group (LEAG)**

### **Joint submission to the Independent Chief Inspector of Borders and Immigration**

#### **Response to call for evidence: An inspection of how the Home Office is tackling illegal working**

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#### **About FLEX**

FLEX is a United Kingdom (UK) based charity that works to end human trafficking for labour exploitation, both in the UK and worldwide. To achieve this, FLEX conducts research and policy advocacy to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation.

#### **About LEAG**

In 2015 FLEX established the Labour Exploitation Advisory Group, a group of expert individuals working with actual and potential victims of human trafficking for labour exploitation in the United Kingdom. LEAG members come from organisations<sup>1</sup> working on migrant rights, homelessness, women's rights, labour rights and victim support. LEAG collaborates to ensure that anti-trafficking responses in the UK are guided by the needs and experiences of vulnerable and exploited workers.

#### **Summary**

Focus on Labour Exploitation and the Labour Exploitation Advisory Group (LEAG) welcome the opportunity to contribute to the Independent Chief Inspector of Borders and Immigration's call for evidence in relation to the inspection of how the Home Office is tackling illegal working. This submission describes the experiences of FLEX and LEAG with the Home Office's activities to tackle illegal working and provides illustrative case studies from FLEX and LEAG's work with potential and actual victims of human trafficking for labour exploitation.

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<sup>1</sup> LEAG members are: Focus on Labour Exploitation (Secretariat), Latin American Women's Rights Service (Chair), Kalayaan, Unite the Union, Equality, East European Resource Centre, Ashiana Sheffield, British Red Cross, Praxis Community Projects. For more information see <http://www.labourexploitation.org/about-us/labour-exploitation-advisory-group-leag>

<sup>2</sup> Case study provided by LAWRS

<sup>3</sup> Case study provided by the British Red Cross

<sup>4</sup> Case study provided by Ashiana Sheffield

**Fear of immigration enforcement stopping victims from seeking support.**

Joint-working and information sharing between immigration enforcement and other government bodies are stopping workers from coming forward about exploitation. Even when immigration enforcement officials are not participating directly in the operation/raid, fear that their insecure immigration status will be shared with immigration authorities is preventing workers from disclosing cases of abuse and exploitation, and therefore, preventing labour inspectors, police and support providers from assisting them.

**Case study: fear of immigration repercussions during labour inspection**

L was working as a cleaner. She had insecure immigration status and was working with another person's documents. L was experiencing abuses at work. When she was informed there would be an inspection at her workplace, she decided not to go to work because she was afraid of coming to the attention of immigration authorities.<sup>2</sup>

**Case study: fear of immigration repercussions during police raid**

C and his family were working in a car wash when it was raided by police officers. All were arrested on site then taken to a rest centre. Each were then interviewed separately in relation to their working conditions. Throughout this time, they were all under the impression that they had been arrested for illegal working and were too frightened after this experience to disclose that they had been forced to work. The British Red Cross continued to work with the family following this and faced issues with trust following this experience.<sup>3</sup>

**Focus on immigration offences leading to failure to identify victims.** A focus on identification of immigration offences is having an impact on the identification of victims prior to arrest and detention. This practice is leading to serious consequences to some victims, including victims serving time for crimes related to their exploitation, and worsening of health conditions.

**Case study: consequences of detention on victim**

R worked as a toilet attendant in a nightclub, selling sweets, perfumes and toiletries. She was paid well below the minimum wage. R was arrested during an immigration raid and taken to a detention centre, where she stayed until indicators of trafficking were picked on and she was referred into the NRM. The raid and arrest had a severe impact on R's emotional and physical health, including a severe physical condition that was neglected.<sup>4</sup>

**Welfare/safeguarding checks being used for immigration enforcement purposes.** FLEX and LEAG are increasingly concerned that modern slavery operations aimed at safeguarding victims of modern slavery are resulting in arrests and deportation of workers. A response to a FLEX Freedom of Information request

<sup>2</sup> Case study provided by LAWRS

<sup>3</sup> Case study provided by the British Red Cross

<sup>4</sup> Case study provided by Ashiana Sheffield

showed that all 278 construction workers identified as potential victims of trafficking as part of Operation Magnify, led by the Home Office, had been arrested for immigration offences, including ‘illegal working’, prior to their identification.<sup>5</sup>

Despite claiming to be safeguarding checks, these operations are serving to mask Home Office checks into the illegal working offence and failing to properly identify potential victims of labour exploitation. It is concerning that, in the case below, the deportation of three undocumented Filipino workers is mentioned as a positive outcome of an operation that claims to protect workers in a sector known for rampant labour abuses.<sup>6</sup>

**Operation Aidant: deportation of potential victims**

Between 14-18 May 2018, Border Force and National Crime Agency officers, working with Gangmasters and Labour Abuse Authority and Devon and Cornwall Police, carried out safeguarding checks on a number of maritime vessels in South Devon. The operation aimed at “protecting people from exploitation” and “targeting offenders who exploit people for their labour”.<sup>7</sup>

According to a GLAA/NCA press release following the operation: “on one fishing boat three Filipino men were found to be working illegally without visa documentation. They will be returned home but the boat’s skipper was notified that he faces a potential Home Office fine of up to £60,000.”

**Employers are not equipped to conduct immigration checks**, which is leading to confusion about who is and isn’t allowed to work. In some cases, unscrupulous employers are using this power to exploit both documented and undocumented workers by refusing to pay them or applying arbitrary sanctions.

**Case study: employer refusing NRM positive reasonable grounds as proof of RTW**

K is a domestic worker. She was exploited by her previous employer, who took her passport, and has since entered the NRM and received a positive reasonable grounds decision (+RGD). K’s previous work visa and +RGD gives her permission to work.<sup>8</sup> Yet, her current employer is not satisfied this serves as a proof of right to work, and has used this as a way to make her work excessively long hours and pay her less than what was agreed.<sup>9</sup>

<sup>5</sup> Information acquired through a Freedom of Information request made by FLEX on 28 November 2017. Data covers the period 01 October 2015 to 30 June 2017.

<sup>6</sup> See <https://www.theguardian.com/world/2017/dec/12/uk-police-rescue-nine-suspected-victims-of-slavery-from-british-tractors>

<sup>7</sup> Gangmasters & Labour Abuse Authority <http://www.nationalcrimeagency.gov.uk/www.nationalcrimeagency.gov.uk/news/1357-dozens-of-victims-safeguarded-as-modern-slavery-crackdown-focuses-on-labour-exploitation>

<sup>8</sup> See Immigration (Variation of Leave) Order 2016 for further details:

<http://www.legislation.gov.uk/uksi/2016/948/contents/made>

<sup>9</sup> Case study provided by Kalayaan

**Case study: employer ‘fining’ worker despite right to work**

A received a letter from the Home Office confirming her application and right to work in the UK. However, her employer claims this letter is not enough proof of her right to work, and has decided to ‘fine’ her for not being able to prove she can legally work. Instead of paying her full salary, her employer is deducting two weeks off her monthly pay.<sup>10</sup>

**Case study: employer ‘suspending’ salary due to Home Office delays**

F is an EEA family member with the right to work in the UK. As her current visa was about to expire, she has made an application for permanent residency. F works for a cleaning company. Her employer has informed her that she will not receive payment for the work she is carrying out until she can prove that she has the right to work legally in the UK.

F requested the Home Office to accelerate the process of sending her a letter confirming she has the right to live and work in the UK. F has been waiting for this confirmation for over a month. She has not been paid for 6 weeks. She does not stop working, as she is afraid of losing her job.<sup>11</sup>

**Guilty employers evading sanctions.** The Immigration Act 2016 introduced tougher penalties for employers hiring undocumented workers and brought in the ‘offence of illegal working’ criminalising and penalising those who are working undocumented in the UK. However, employers can evade or reduce sanctions against them if they cooperate with the Home Office. Recent parliamentary answers revealed that over 30% of the employer “civil penalty notices” issued since 2008 have not been paid in full, indicating that employers found guilty are too often able to evade sanctions.<sup>12</sup>

<sup>10</sup> Case study provided by LAWRS

<sup>11</sup> Case study provided by LAWRS

<sup>12</sup> See <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-04-23/137049/>; <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-03-29/135084>