



Joint response on migrant workers' risks of exploitation - for MAC's annual report

TUC, JCWI, ILPA, FLEX, Rights of Women, Migrant Voice

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We have focused our response on questions to which we have sufficient knowledge, expertise and data to reply in the short timeframe provided of 14 September 2022 to 23 September 2022. The length of response to any specific questions should not be taken as indicative of the issues which arise in relation to the question.

We would emphasise, at the outset, that our organisations have provided feedback on migrant exploitation to various government departments for a number of years. Therefore, this response should be considered in conjunction with all prior information our organisations have provided to government departments, including to the Home Office, in relation to matters relating to worker, including migrant worker, exploitation over the years.

1. In what ways can migrants be exploited within the current immigration system?

i. We are particularly interested in areas where migrants are comparatively more exploited than UK workers.

- Migrant workers are exploited in the same ways as UK workers e.g. underpayment, forced to work long hours without proper breaks, no access to employment rights etc. However, they are at greater risk of exploitation and less able to report or leave exploitation if it occurs, due to restrictive immigration and hostile environment policies. It is well evidenced that hostile environment policies - including the criminal offence of illegal working, seizing earnings, revocation of driver licenses, 'right to work' checks, restrictions on opening bank accounts - increase migrant workers' risks of exploitation and leave migrant workers at greater risk of exploitation than UK workers in *all* areas / sectors. These policies can be used as a tool to threaten migrant workers, including those with the right to work, and trap them in abusive / exploitative situations due to fear of being reported to immigration enforcement if they speak out, or try to leave.
- Temporary or short term work visas increase risks of exploitation, due to workers on these visas having limited options to change employers, work sectors, or to access employment protections in practice. They also facilitate multiple dependencies on the employer: often including work, accommodation, and immigration status. With the UK's exit from the EU and the end of freedom of movement the use of short

term work visas has increased, with the Seasonal Worker visa in addition to the pre existing Overseas Domestic Worker visa.

- A lack of protections or enforcement in international recruitment supply chains compounds these problems with evidence of workers paying thousands of pounds in illegal recruitment fees with no options for the workers concerned to secure accountability or options for redress. This increases risk of debt bondage and the need to earn as much as possible during their short time in the UK to pay back these fees - often borrowed at high rates of interest using the family home as collateral - and discourages workers from challenging poor conditions of work.
- In informal and precarious sectors there are already higher rates of under-payment of minimum wage, poor working conditions, and low levels of unionisation (eg the gig economy, care, agriculture). These factors combine with hostile environment policies, leaving migrant workers facing 'double risk' of exploitation - exploitation due to the broader conditions of their sector and exploitation due to their vulnerability to hostile environment policies.
- It is well documented that the effect of the hostile environment's criminalisation and penalisation of migrants without leave does not prevent illegal working, it rather displaces it into a shadow economy with a lack of secure reporting mechanisms meaning that workers with insecure status feel unable to raise labour exploitation issues with authorities.
- The sponsorship systems in the Immigration Rules make individuals' right to remain in the UK contingent on their sponsors. In many cases, this is their sponsor in a work context, such as their employer for Skilled Workers or Seasonal Workers. This necessarily gives sponsors power over those they sponsor, leaving migrants vulnerable to exploitation. If, for example, a Skilled Worker were to lose their job, if their employer were to lose or surrender their licence, if they were to be absent from work for an unpaid or reduced pay basis for more than 4 weeks in a calendar year, or if they were paid a lower salary rate, or if a student must withdraw from their course due to inability to pay their course fees, then, with limited exceptions, they would ordinarily have a short period, of 60 days if more than 60 days are remaining of their leave, before their permission is cancelled.¹ This provides a very short time when they must find another basis to remain in the UK, such as an employer willing to sponsor further leave. In order to secure this sponsorship in a short timeframe, a migrant may be more willing to accept less favourable working and/or exploitative conditions, including exploitative relationships, so that they may remain and continue their life in the UK.

2. Are there any features of the current immigration system that unscrupulous employers are able to use to exploit migrants?

- **Hostile Environment policies** in work (including right to work checks, immigration enforcement raids, the criminal offence of illegal working) create a real or imagined fear of deportation / immigration enforcement action which employers can use as a tool to control or threaten migrant workers and trap them in

¹ See, for example, 9.25.1, 9.26.1, 9.27.1, 9.30.1 and 9.31.1. See also Home Office, 'Cancellation and Curtailment of permission' (version 1.0)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1023269/Cancellation_and_Curtailment_of_permission.pdf> accessed 15 September 2021.

exploitative working conditions. There is an urgent need for secure reporting to enable reporting of crime without personal data being automatically shared with immigration enforcement.

- **Digital status** compounds issues with the right to work aspect of the hostile environment. For example, we have heard of reports of migrants on the EUSS defrauded by unscrupulous individuals who assisted EUSS applicants to complete their application forms (often for a fee). The migrants on the EUSS must go back to the individual (and pay them a fee) to access their online account and obtain a share code, as the email address used to create that form and account was that of the unscrupulous individual. Without a share code, they cannot easily prove their right to work, and may thus encounter the same difficulties as migrants without leave.
- **Lack of firewall between labour inspectors / police and immigration enforcement or secure reporting options**
- **Enforcement vacuum**
 - It is unclear which enforcement bodies (if any) are responsible for making sure workers on the Seasonal Worker visa scheme are treated fairly.
 - It is unclear what investigations are underway. DEFRA/HO has published evidence of wage underpayment, poor accommodation conditions and discrimination of workers. There is no public information about what is being done to provide compensation for these workers.
 - It is unclear what (if any) measures are in place to ensure workers on the SWV scheme have access to independent information and legal advice.
 - There is little meaningful communication with stakeholders who represent these workers.
- By their nature **Short term visas** - including agricultural Seasonal Worker visas and the Overseas Domestic Worker visa - increase the likelihood of exploitation for visa holders. It is practically impossible to switch employers where there is mistreatment and a high chance of becoming undocumented once the temporary visa expires. The short time granted to the worker in the UK prevents access to employment rights or other redress. This leaves migrants holding short term visas even more vulnerable to exploitation. Where employers are also the visa sponsor, the threat of withdrawing the visa can also facilitate exploitation.

Overseas Domestic Worker visa:

- Employers attend initial visa meetings with domestic workers, meaning that domestic workers are afraid to raise issues regarding exploitation with the authorities.
- The route to leave exploitation, and obtain two years of leave, is only open to overseas domestic workers that have a positive 'conclusive grounds' letter from the National Referral Mechanism for identifying victims of trafficking (NRM) confirming that they are a victim of modern slavery or human trafficking. This leaves all victims of exploitation who do not have confirmation they are a victim of modern slavery or human trafficking, without a clear safe route to regularisation of status or leaving the exploitation they face. The delays in the NRM mean that those workers who do enter the system face waiting times which can stretch to several years in limbo.

Agricultural Seasonal Worker visa:

- Decisions on the scheme have come with little warning from the Government, creating short timeframes for planning and carrying out due diligence checks in countries of origin. Unsurprisingly, investigative journalists have found workers alleging to have paid recruitment fees (banned under

the scheme) amounting in some cases to over £5,000. Not only is this dire for these workers who may have borrowed the money at high interest rates, there is also immense pressure on them to pay back the debt. This can result in debt bondage where the worker tries to repay the loan through work, but is never able to do so. It also exposes the many gaps around regulation and enforcement in international recruitment with questions around jurisdiction and accountability and options to redress, if any, for workers. We also hear about mismatched expectations, with workers not having previous experience of agricultural work, or not finding the working conditions they'd expected.

- These issues will be intensified for workers entering on the even shorter duration temporary visas which have been opened within the scheme, often again with little notice. For example three and two month visas for poultry workers and HGV drivers. With such a short time to earn in the UK there are risks that workers will not be able to earn enough to even pay back migration costs which are permitted within the scheme.
- **The 'No Recourse to Public Funds' condition** bars most migrant workers from accessing the state safety net and means they are forced to continue working while unwell or remain in abusive or exploitative work environments because they simply cannot afford not to work or to become unemployed due to risk of destitution/homelessness. Avoiding destitution is also a reason for people being re-exploited having left exploitative employment. This is likely to worsen with the current cost of living crisis. Furthermore 'rough sleeping in the UK' is its own ground for refusal of permission to stay in the UK.² A migrant victim of domestic violence who has fled her abusive partner is more likely to remain in an exploitative employment environment because she is concerned about the impact of losing her job and falling into destitution and/or homelessness.
- **Other conditions of leave and restrictive conditions on migrants undertaking other forms of work** impair their ability to obtain safe and legal sources of income. For example, individuals seeking asylum ordinarily have no right to work other than following applying after their application has been pending for 12 months, and even then only in a shortage occupation list role. This is in spite of the fact that persons seeking asylum are expected to survive on as little as £8 a week, or £32 a month, when housed in hotels.
- There is **no formal role for worker representative organisations** in the immigration system. Unions believe that there should be a formal role for unions, so they can meet with workers at risk of exploitation and offer them support and explain the benefits of union organisation. Unions also believe that tri-partite labour market inspections should be carried out - giving workers faith that they can speak to trusted organisations in confidence.
- Issues of **curtailment and cancellation of leave** e.g. due to relationship breakdown or a sponsor no longer sponsoring a migrant. Due to the short period of remaining leave, once cancelled or curtailed, migrants are more likely to accept poor or exploitative working conditions.

² 9.21.1. Permission to stay may be refused where the decision maker is satisfied that a person has been rough sleeping in the UK and has repeatedly refused offers of suitable support and has engaged in persistent anti-social behaviour.

9.21.2. Where the decision maker is satisfied that a person has been rough sleeping in the UK and has repeatedly refused offers of suitable support, and has engaged in persistent anti-social behaviour, any permission held by the person may be cancelled.

- **Numerous other factors make migrants more likely to face the hostile environment and subject to exploitation (as workers have no choice but to continue working in an exploitative environment to earn money):**
 - unaffordability of high visa fees and immigration health surcharges
 - difficulty and complexity of obtaining fee waivers
 - lengthy routes to settlement
 - lack of fee waivers for settlement
 - complexity of requirements of routes, and of the immigration law framework, including the Immigration Rules heightens the risk of migrants inadvertently breaking their lawful residence and becoming undocumented
 - lack of free legal aid advice being adequately available to all migrants who require it and cannot afford to privately pay for legal advice. Furthermore the decimation of legal aid over the years has led to a lack of specialist legal advice even when legal aid is available. These increase the likelihood of failing to apply on time or having an immigration application refused.
- **The visa renewal process and the costs associated with visa renewals** severely impact migrant's vulnerability at work. Migrants who must pay thousands of pounds in fees and associated costs every couple of years work longer hours, often work while sick, and are significantly more vulnerable to employers who exploit their precarious situation. Knowing migrant employees cannot afford the fees for the renewal of their leave if they lose their job, some employers force them to work in unacceptable conditions, such as giving little or no notice of shifts. Similarly, migrants can be compelled to accept lower salaries than their UK counterparts because they cannot afford to be out of employment while they look for a better alternative. A visa renewal application and the mandatory Immigration Health Surcharge can cost around £2,600 per person every 2.5 years (particularly for a person on a private and family life / human rights based route) and, depending on what "route" they are on, people can take five or ten years before they are allowed to settle. Fundamentally, the high fees and risk of not raising the necessary funds creates points every few years where migrants risk falling out of status, or are shifted onto the ten year route to settlement, meaning that migrants find themselves in unstable vulnerable conditions for a decade or more, which makes them liable to exploitation in the long term.
- **Difficulty changing employers while a visa application process is pending:** While migrants in many routes do retain their right to work if their visa expires before a new one is issued (as long as they submit a new valid application in time), many employers do not know about this provision of the law (section 3C of the Immigration Act 1971) or do not believe it. Employers may be unknowledgeable or unwilling to use the Employer Checking Service. Migrants can wait for a new visa for months or even up to and beyond a year, which leaves them effectively at the hands of their employers, no matter how exploitative they may be, who may threaten them with dismissal knowing full well what the consequences would be. We have also heard of cases of employers who wrongly dismissed migrant workers on the grounds that their visas had expired, when in fact the migrant workers had already submitted a new application. The same problem with changing employers and proving one's right to work surfaces in cases where there is a refusal, but a pending administrative review or appeal extends leave by virtue of section 3C, or a further application in accordance with paragraph 39E has been made.
- **There is a lack of routes to regularisation** for those individuals whose stay becomes irregular. For most applicants that fall foul of paragraph 39E of the Immigration Rules they are unable to meet the

requirements of most routes to regularise their status as one method of leaving the exploitation they face. Furthermore, even if they are able to regularise their status, such as through an application outside the rules or made on a human rights basis, their continuous residence is broken and their route to settlement is reset, lengthening their period of vulnerability in the UK.

3. How do other forms of exploitation that migrants experience impact on/lead to exploitation in the labour market?

- Migrant women who are in, or have fled, abusive relationships may be at higher risk of facing exploitation at work because they have less financial freedom and, therefore, less choice about the work they take and less ability to report / leave exploitative work situations.
- Perpetrator partners exhibiting coercive controlling behaviour may leave the migrant victim with no freedom to choose her employer, the type of work that she does as well as the terms and conditions of her employment making her more likely to be exploited by her employer.
- Victims of trafficking (for sexual services, debt bondage or labour exploitation) will be less able to leave exploitative employment situations as they may have large debts to pay off, be at risk of destitution, or controlled by another person and unable to leave. The National Referral Mechanism for identifying victims of trafficking (NRM) has long delays in decision making. The prospect of waiting for years for a decision which does not necessarily lead to a grant of leave means that many trafficked people cannot consent to an NRM referral.
- The domestic violence (DV) rule enables migrant victims of domestic violence to apply for indefinite leave to remain if their relationship breaks down permanently due to DV. The DV rule is unfortunately limited in scope and will only benefit a small proportion of DV victims. Currently only victims whose partners are British, settled, have refugee leave or limited leave under Appendix EU can benefit from the domestic violence rule. Regrettably many victims of DV whose partners are students or workers or on other global mobility routes are unable to benefit from the DV rule. This cohort of migrant victims are also excluded from the Destitution Domestic Violence Concession (DDVC), a concession that once granted enables victims of DV to access public funds prior to applying for settlement under the DV rule. The majority of migrants on dependent visas are permitted to work but are prohibited from claiming public funds. Therefore, if the relationship breaks down, there is little assistance and no clear route to settlement or remaining in the UK for victims of domestic abuse who are here as dependent partners of students, workers, or others with limited leave within or outside the Immigration Rules. Migrant victims of DV are more likely to remain in an exploitative work environment either because it is preferable than having to rely on their perpetrator partner financially and they may have been victims of economic abuse in the past and/or because they tolerate the exploitation at the hands of their employer solely to escape their perpetrator partner. It's simply the lesser of two evils in cases where the mental impact of DV on a victim is severe.
- The formalities required to switch from non sponsored employment into sponsored employment can prevent many victims of trauma, including victims of DV and trafficking, from benefiting from sponsored employment routes even though they may have the skills, qualifications and experiences to undertake a role. The individual may be forced to accept employment with unfavourable terms and conditions due to the anticipation of receiving a curtailment notice and/or the need to escape her perpetrator partner by changing her work location.

- We are also aware that many victims of DV have been forced to give up their jobs or have been pushed out of their jobs by their employers because their perpetrator partners have turned up at their work location to harass them. This often leads to exploitation by the victim's employer before the victim is given notice by the employer.

4. How is exploitation in the labour market further differentially affected by other characteristics such as gender, age, marital status, disability?

- Insecure work is disproportionately carried out by women and BME workers. BME women are twice as likely to be on zero-hours contracts as white men (4.7 per cent compared to 2.4 per cent). Overall, BME workers are significantly overrepresented on zero-hours contracts compared to white workers (4.3 per cent compared to 3 per cent.) BME women are the most disproportionately affected group, followed by BME men (4.7 per cent compared to 4 per cent). White women are also significantly more likely than white men to be on zero-hours contracts (3.6 per cent compared to 2.4 per cent). People doing insecure work have little or no job security. They are not sure how much income they will receive week to week, and they are more likely to be exploited as they fear being sacked if they raise complaints.
- Workers with caring responsibilities are more likely to take on part time work at unsociable hours in order to balance this with their caring duties. This work is more likely to be low paid and insecure. Employers use knowledge of caring responsibilities to exploit workers knowing that the worker cannot risk being unable to support her family.
- Isolated work and work in private spaces is disproportionately carried out by migrant women e.g. cleaning, caring, domestic work. This work is often outsourced with a lack of accountability for employment issues.
- There is risk of gender based exploitation, sexual and emotional abuse for workers in private households. It's the worker who is responsible for enforcing their own rights and approaching agencies. This is really difficult when they may not even speak the language needed to seek help. If they do manage to seek help to enforce their employment rights, their waiting time for the employment tribunal is longer than their visa.
- Large numbers of migrant workers (especially those with precarious immigration status) face racism at work, e.g. in the care sector.