

Focus on Labour Exploitation (FLEX) written evidence to the Regulatory Reform Committee

Subject: Government's deregulation agenda

20 April 2018

Summary

1. In order to meet the aims of the UK Modern Slavery Act 2015 and to fulfil its commitments under international anti-trafficking treaties to which it is party, the UK urgently needs to increase protections for workers and to enforce existing protections in order to prevent exploitation.
2. The Protocol to the Forced Labour Convention 2014 is clear that States Parties should ensure the 'coverage and enforcement' of legislation related to forced labour including labour law and that labour inspection services should be strengthened. The UK ratified the Protocol in 2016 and yet enforcement of labour law is patchy and labour inspection capacity is weak;
3. FLEX research shows UK labour inspection capacity does not come close to ILO recommended standards for 1 inspector per 10,000 workers and falls short when compared to other European countries.
4. The GLAA is the UK's only pro-active labour inspectorate working to prevent and identify incidences of trafficking for labour exploitation.
5. Since 2010, the GLAA has seen its resources reduced. In 2016, its scope was extended to the whole labour market without sufficient budget increases to match this major expansion.
6. The remainder of the UK's labour inspectorates have also seen reductions in budget and scope, leaving increasing elements of the UK labour market unregulated and ripe for exploitation.
7. The Migration Advisory Committee has warned that 'on average, a firm can expect a visit from HMRC inspectors once in every 250 years and expect to be prosecuted once in a million years.'¹
8. Deregulation has seen many protections for workers at risk of exploitation lost, particular concerns relate to: protections for self-employed workers; protections against harassment of workers; and a curb on wider recommendation-making powers for employment tribunals.

Introduction

9. Focus on Labour Exploitation (FLEX) welcomes the opportunity to contribute to the Regulatory Reform Committee's Inquiry on the Government's deregulation agenda.
10. 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.
11. This submission sets the backdrop to modern slavery in the UK and the official response, it outlines the UK's international commitments to tackle modern slavery in general and labour exploitation in particular. It examines the threat to the aims of the Modern Slavery Act 2015 and the UK's commitment to tackle modern slavery posed by deregulation, including: cuts to resources for UK labour inspectorates; curtailment of

¹ Migration Advisory Committee, 2014, Migrants in Low-Skilled Work, p.4.

labour inspectors' powers to proactively identify cases of labour abuse and exploitation; and reductions to regulations protecting workers from threats to their labour rights such as accident recording and employment tribunals' wider recommendation making powers.

Modern Slavery in the UK

12. According to the Home Office² there are an estimated 10,000 to 13,000 victims of modern slavery in the UK. In 2017 5,145³ potential victims were referred to the UK National Referral Mechanism, and the most common exploitation type recorded among adults and children was labour exploitation, comprising 2,352 of all cases. Through the Modern Slavery Act 2015 the UK Government has made a commitment to tackle all forms of modern slavery, including trafficking for labour exploitation and forced labour. However, according to the UK Independent Anti-Slavery Commissioner⁴, many cases of modern slavery are not reported as crimes, and are therefore never investigated. This includes cases of trafficking for labour exploitation. Therefore, the criminal penalties introduced in the Modern Slavery Act alone cannot prevent labour exploitation or forced labour. Prevention can only be achieved by understanding and addressing the risks in the labour market, including through regulation to protect workers and by funding labour inspectorates to fulfil their remits.

International standards on labour market regulation to tackle exploitation

13. In 2016 the UK Government became one of the first governments to ratify the new Protocol to the Forced Labour Convention at the International Labour Organisation (ILO). Under the 1930 Forced Labour [Convention](#) forced labour is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.
14. The Forced Labour Protocol complements the 1930 convention by requiring states to take effective measures to prevent and eliminate forced labour and to provide protection and compensation for victims regardless of their immigration status. The Protocol also calls for employer due diligence to mitigate the risks of forced labour in business and supply chains, and crucially requires governments to strengthen labour inspection systems in order to ensure workers are protected from exploitation. Critically the Protocol recognises the need to strengthen labour inspection services as part of efforts to tackle forced labour. This treaty taken together with the UN Human Trafficking Protocol (2000) and the European Trafficking Convention (2009) set a clear framework for preventing modern slavery.
15. The Council of Europe Group of Experts on Action against Trafficking in Persons (GRETA) reported on the UK implementation of the European Trafficking Convention in 2016. In this report GRETA noted the following concerns relating to UK regulatory reform:

Civil society has expressed concerns about the increasing precariousness and potential vulnerability to trafficking of self-employed workers, in particular in the construction industry. At the same time, GRETA notes that since 2010, the resources of different inspectorates (Employment Agency Standards Inspectorate, GLA and HRMC National Minimum Wage) have been significantly reduced and there is currently 0.9 inspector for 100 000 workers. As a result, there has been a

² Home Office, 2014, Modern Slavery Strategy

³ See NCA, 2018, National Referral Mechanism Statistics – End of Year Summary 2017

⁴ See IASC, 2016, IASC Annual Report 2015 to 2016

reduction in the number of proactive labour inspections. GRETA underlines the significant role of workplace inspections, including on health and safety, compliance with labour standards and revenue laws, in deterring instances of human trafficking for forced labour and identifying possible victims of THB.⁵

Impact of deregulation on key indicators of forced labour

16. Monitoring and oversight of the health and safety of workers provides an early indicator of risk of worker exploitation. Since 2010 there have been on-going cuts to Health and Safety Executive (HSE) inspections as well as reductions to HSE funding by 40 per cent. In addition, local authorities have had their workplace inspections reduced by 93 per cent.⁶
17. The Equalities Red Tape Challenge (RTC) scrutinised equalities legislation in May 2011. The subsequent scrapping of a number of 'unnecessary burdens' in the [Equality Act](#) included the repeal, in October 2013, of the provision which made employers liable for the harassment of staff by a third party. Previously, employers were required to take reasonable steps to prevent harassment of their employees by third parties, such as customers or suppliers.

Deregulation Act 2015 measures that could contribute to risk of exploitation:

18. Measures set out in section 1 of the Deregulation Act 2015, amended section 3(2) of the Health and Safety at Work Act 1974 (HSWA) which imposed a duty on people who are self-employed to protect themselves and others from risk to their health and safety. This duty now only applies where the work is of a 'prescribed description' - including agriculture, construction, quarrying, mining, offshore work or high-risk chemical sites; or where they carry out an activity which may pose a risk to the health and safety of other persons. For many people who are self-employed there is a danger that this reduction in health and safety checks could mean key indicators of human trafficking for labour exploitation, hazardous work and bad working conditions⁷, are not identified in a timely manner.
19. The removal of powers given to Employment Tribunals in the Equality Act 2010 to make wider recommendations that may benefit others besides the claimant in a discrimination case. The repeal, effective from October 2015, meant that tribunals could no longer make recommendations beyond a specific case. This measure has a worrying impact on the ability of Employment Tribunals to prevent systemic patterns of abuse that can fuel exploitation.
20. Introduction of the 'growth duty' requirement in Section 108 for those exercising a regulatory function set out in the Act to 'have regard to the desirability of promoting economic growth' whilst conducting their regulatory functions, in particular ensuring that such action is only taken where needed. Guidance on the 'growth duty' has encouraged regulators to support self-regulation by businesses in order to avoid 'duplication of effort'.⁸
21. FLEX and many experts forming part of the Labour Exploitation Advisory Group find that self-regulation schemes have limited effect on businesses that are not public facing. As the Ethical Trading Initiative has highlighted in relation to Section 54 of the Modern

⁵ GRETA, 2016, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom

⁶ Trades Union Congress, 2014, Government Record on Health and Safety

⁷ ILO, 2009, Operational indicators of trafficking in human beings

⁸ Department for Business, Energy and Industrial Strategy, 2017, Growth Duty: Statutory Guidance

Slavery Act which calls on companies to report on activities taken to address modern slavery in their supply chains:

Most companies are small- or medium-sized enterprises or are suppliers to businesses, and most industries operate outside the public domain, yet are as likely, if not more so, to have modern slavery risks in their own operations and supply chain. (...) It is impossible for companies – large or small – to operate responsibly unless governments create an effective enabling policy and regulatory environment to eliminate child and forced labour.⁹

Self-regulation should not take the place of regulation in high-risk labour sectors with a large number of workers who do not have the means nor the ability to self-report in cases of labour abuse and exploitation.

22. In April 2012, there was a concerning change to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR). The threshold for reporting on non-fatal injuries to workers, that were not ‘major’ or ‘specified’ by definition, changed from recording individuals that had faced three days of incapacitation to reporting only those who had been incapacitated for seven days. This move removed an estimated 30,000 injuries off official figures for annual workplace injuries – limiting capacity to track indicators of forced labour. Similarly in October 2013 there were also changes to reportable injuries under RIDDOR to reduce the number of injuries recorded with fewer types of reportable occurrences.¹⁰

Threat to UK labour market enforcement capacity

23. As recognised in the Forced Labour Protocol, labour inspection is critical to upholding workers’ rights and preventing forced labour and exploitation. In 2017 FLEX published the report *Risky Business: Tackling exploitation in the UK labour market*. This report identified major resource gaps in UK labour inspection capacity.

The Gangmasters and Labour Abuse Authority

24. The GLAA’s licencing scheme has continuously been cited as an example of best practice for preventing labour exploitation, both at the national and international level. The International Labour Organization (ILO) includes the GLAA licencing system in its good practices database for fair recruitment¹¹; as an example of good practice in its 2012 publication *Good practices in labour inspection: The rural sector with special attention to agriculture*¹²; and again in its 2015 report *Regulating labour recruitment to prevent human trafficking and to foster fair migration*.¹³
25. The GLAA has 70 full time staff, covering 996 licence holders and 460,000 workers in the farming, food processing and shellfish gathering sectors, as well as investigating and tackling labour exploitation and modern slavery offences across the UK labour market. The GLAA’s eight licencing standards reflect key forced labour indicators. The Immigration Act 2016 increased the scope of the GLAA across the labour market. The GLAA’s budget is £7.6m for 2017/18, an increase in funding of 2.6 million from the

⁹ Ethical Trading Initiative (ETI), 2017, Submission to the Public Accounts Committee on Reducing Modern Slavery, p. 2.

¹⁰ HSE, 2013, A brief guide to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013

¹¹ ILO. 2015. The Gangmasters (Licensing) Act 2004.

¹² ILO. 2012. Good practices in labour inspection: the rural sector with special attention to agriculture.

¹³ Andrees, B. Nasri, A. Swiniarski, P. 2015. Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities. Available at

previous year.¹⁴ However this funding was allocated to the GLAA's new police style powers rather than to its general regulatory activity and represents a fraction of what would be required for the GLAA to operate pro-active monitoring and enforcement across the labour sectors that fall within its new remit. The limits to the GLAA's capacity threatens its ability to monitor existing license holders, conduct pro-active investigations and engage in intelligence gathering.

Employment Agencies Standards Inspectorate (EAS)

26. The EAS has 11 full time staff (10 frontline staff and 1 administrative officer), covering 18,000 agencies and 1.1 million workers.¹⁵ They are responsible for enforcing the Employment Agencies Act of 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003. The EAS's budget has been cut in half from 932,000 (actual spend)¹⁶ in 2010/11 to 500,000 in 2016/17. The number of agency workers grew by 30% between 2011 and 2016.¹⁷ Women accounted for 85% of the growth in temporary agency workers.¹⁸

27. The ILO recommends a target of one inspector for every 10,000 workers.¹⁹ In a survey of comparable countries in the European Economic Area, FLEX found that the UK's labour inspection capacity falls well below the ILO target and far behind others such as Ireland and Norway.

28. Graph I and II. Number of labour inspectors per 10,000 workers and enforcement budget per worker.²⁰



Funding and staffing of UK labour inspectorates

- Equality & Human Rights Commission budget has fallen by 67% in real terms from 2009-17²¹
- The GLAA's budget was cut by 20% between 2010 and 2015²²
- Equality & Human Rights Commission staff numbers fell by 63% from 2009-17²³

¹⁴ GLA, 2017, GLA Our Plan 2017-2020

¹⁵ DLME, 2017, Labour Market Enforcement Strategy Introductory Report

¹⁶ House of Commons Hansard, 23 January 2017, Written Parliamentary Answer 61285.

<https://bit.ly/2HlbcfA>

¹⁷ BBC, 5 December 2016, Number of UK agency workers 'to reach one million' by 2020

¹⁸ *Ibid.*

¹⁹ David Weil, A strategic approach to labour inspection. International Labour Review, 2008, 147(4), p.372. Available at http://www.ilo.org/public/english/revue/download/pdf/s3_weil.pdf

²⁰ FLEX, 2017, Risky Business: Tackling labour exploitation in the UK labour market

²¹ Equality and Human Rights Commission, 2010, Annual Report and Accounts 2009-10 and EHRC, 2017, Annual Report and Accounts 2016-17

²² GLA, 2015, Annual Report and Accounts 2014-15, <https://bit.ly/2qUHZqb>

- The number of GLAA investigations into illegal activities dropped from 134 in 2011 to 68 in 2014, and prosecutions were down from 19 in 2010 to three in 2014²⁴
- Out of the 75 convictions for gangmaster offences since the GLAA regulating them came in to force, there has been only one compensation order for victims²⁵
- Potential modern slavery victims referred through the governments National Referral Mechanism rose by 62.5% from 2012-16.²⁶
- 2016 ONS analysis found that 6.2 million jobs across the UK earned less than the voluntary living wage; 23% of all jobs (excluding self-employed workers).²⁷
- The National Minimum Wage Inspectorate investigations into individual worker complaints have dropped from 4,773 in 2007-08 to 1,615 in 2012-13²⁸, rising slightly to 2,667 in 2015/16²⁹.

Focus on reactive rather than proactive enforcement

29. According to the World Bank, labour inspectorates should 'aim for a goal of 60 percent proactive inspections, and 40 percent reactive (accidents, complaints) based on an application of risk prioritization towards highest risk workplaces.'³⁰
30. FLEX's work with frontline organisations and primary research has shown that self-identification amongst victims of labour exploitation is extremely low and that many who experience abuse are too afraid to come forward. A proactive approach to identifying cases of labour abuse from non-compliance to severe exploitation is essential to ensure that the most vulnerable are protected and cases of exploitation are detected in all labour sectors.
31. According to Citizens Advice, who helped 380,000 people with employment-related enquiries in 2015-2016:
- options for enforcing rights have become less accessible, with ... a confusing and often poorly-resourced set of enforcement bodies, including HMRC, Acas, GLAA and EASI. This leaves many workers unaware of, unsure about, or unable to enforce their rights.*³¹
32. The Labour Exploitation Advisory Group finds that long waiting times for cases to be processed and lack of anonymity frequently deter workers from making complaints. FLEX has heard evidence that cases of non-payment of minimum wage referred to HMRC can take up to two years to complete, and that many workers choose not to report as a result.³²

²³ EHRC, 2010, Annual Report and Accounts 2009-10 and EHRC 2017, Annual Report and Accounts 2016-17

²⁴ Travis, A., 2014, The Guardian, 'Gangmaster prosecutions decline to four-year low, reports Home Office, <https://bit.ly/2jikhfm>

²⁵ House of Commons Hansard, 17 September 2015, Written Parliamentary Answer 9885

²⁶ National Crime Agency, 2018, UK Annual Report on Modern Slavery

²⁷ Office of National Statistics, 2016, Annual Survey of Hours and Earnings (ASHE) - Number and percentage of employee jobs with hourly pay below the living wage, by parliamentary constituency and local authority, UK, April 2015 and 2016

²⁸ FLEX, 2015, Prevention Working Paper

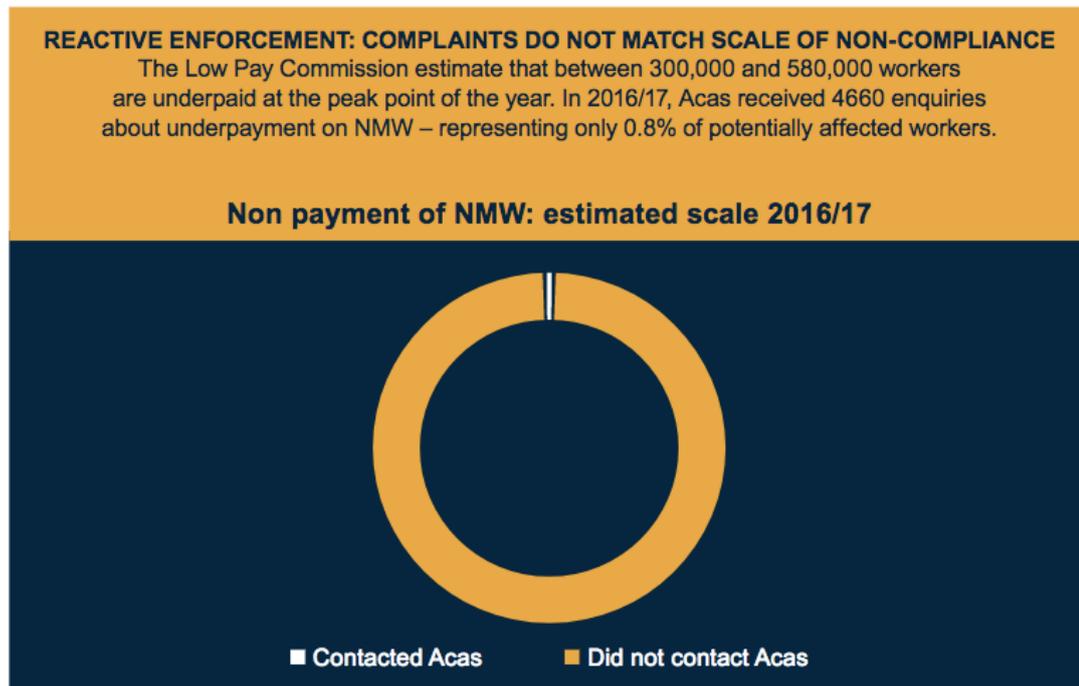
²⁹ Director of Labour Market Enforcement, 2017, Labour Market Enforcement Strategy Introductory Report

³⁰ The World Bank, 2011, International Experiences in Reforming Labour Inspection Services

³¹ Citizen's Advice, 2017, 'How can job security exist in the modern world of work?'

³² FLEX interview with migrant support worker, Risky Business

33. Graph III. Number of enquiries received by Acas on underpayment on NMW relative to the Low Pay Commission's estimate of scale of underpayment.



34. Labour inspectorate resource records:

Staff and budget of GLAA, 2012/13-2017/18

Year	GLAA Budget	Number of Full Time Equivalent Staff for each year
2012/13	£4,114,000 ¹	66 ³
2013/14	£4,346,000 ¹	65 ³
2014/15	£4,447,000 ¹	66 ³
2015/16	£4,099,000 ¹	66 ³
2016/17	£4,800,000 ²	72 ³
2017/18	£6,770,000 ³	107 ³ (expected, not confirmed)

¹ GLA, Annual Report and Accounts: 2011-2012, 2012-2013, 2014-15, and 2015-16

² Director of Labour Market Enforcement, 2017, Labour Market Enforcement Strategy Introductory Report

³ GLAA, 2017, Parliamentary Question – GLAA Budget and staff 2017-18', <https://bit.ly/2HEq7KK>

Staff and budget of HMRC NMW compliance unit, 2013/14-2017/18

Year	HMRC Budget	Number of Full Time Equivalent Staff for each year
2013/14	£8,000,000 ¹	151 ⁵
2014/15	£9,200,000 ¹	189 ¹ (as of 18 Dec 2014)
2015/16	£13,000,000 ²	237 ⁴
2016/17	£20,000,000 ³	363 ³
2017/18	£25,300,000 ⁴	291 ⁴ (as of 9 January 2017)

¹ House of Commons Hansard, 18 December 2014, Answer to Written Parliamentary Question 218679, <https://bit.ly/2HTQLNf>

² House of Commons Hansard, 19 March 2018, Answer to Written Parliamentary Question 133318, <https://bit.ly/2vll5Z2>

³ Director of Labour Market Enforcement, 2017, Labour Market Enforcement Strategy Introductory Report

⁴ House of Commons Hansard, 09 January 2017, Answer to Written Parliamentary Question 58602, <https://bit.ly/2qTfeKF>

⁵ House of Commons Hansard, 29 February 2016, Answer to Written Parliamentary Question 27319, <https://bit.ly/2qR2uoz>

Staff and budget of EASI, 2011/12-2017/18

Year	Employment Agency Standard Inspectorate Budget	Number of Full Time Equivalent Staff for each year
2011/12	£776,643 ¹	n/a
2012/13	£526,068 ²	16 ²
2013/14	585,410 ²	12 ²
2014/15	n/a ²	3 ²
2015/16	£500,000 ³	11 ³
2016/17	£500,000 ³	11 ³
2017/18	£725,000 ^{3,4}	12 ³

¹ FOI Release: Employment Agency Standards Inspectorate Funding, 29 July 2014, <https://bit.ly/2Hm6CqS>

² House of Commons Hansard, 11 November 2014, Answer to Written Parliamentary Question 213790, <https://bit.ly/2vDbC5d>

³ House of Commons Hansard, 12 February 2018, Answer to Written Parliamentary Question 126332 <https://bit.ly/2HGomwG>

⁴ The increase in budget was provided to purchase new IT systems to increase casework productivity and support EAS' intelligence capability.

Staff (inspectors) and budget of HSE, 2013/14-2017/18

Year	HSE Budget	Number of Full Time Equivalent Staff for each year
2013/14	n/a	1,115 ²
2014/15	£219m ¹	1,051 ²
2015/16	£224m ¹	1,038 ²
2016/17	£224m ¹	1,037 ²
2017/18	£232m ²	988 ²

¹ House of Commons Hansard, 28 June 2017, Answer to Written Parliamentary Question 1904, <https://bit.ly/2vEXliP>

² House of Commons Hansard, 28 July 2017, Answer to Written Parliamentary Question HL987, <https://bit.ly/2HmO59W>