

**Focus on Labour Exploitation (FLEX) Submission to the Public Accounts Committee**  
**Call for Evidence regarding ‘Immigration Enforcement’**

July 2020

**About Focus on Labour Exploitation (FLEX)**

Focus on Labour Exploitation (FLEX) is a UK-based research and advocacy organisation that works to end human trafficking for labour exploitation, both in the UK and worldwide. To achieve this, FLEX conducts research and advocacy to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation. Further information on FLEX’s work and all of our research publications and policy briefings can be found on our website at [www.labourexploitation.org](http://www.labourexploitation.org).

**Contact details**

Emily Kenway, Senior Policy and Communications Advisor,  
[emilykenway@labourexploitation.org](mailto:emilykenway@labourexploitation.org)

**Summary**

FLEX welcomes this Call for Evidence. We consider that any assessment of the effectiveness, performance and value for money of Immigration Enforcement (IE) must include consideration of how IE is meeting its anti-modern slavery operational priority and, in accordance with the view of the National Audit Office (NAO), how it is collaborating with other parts of the Home Office under which the national Modern Slavery Strategy sits. We find that current IE activities undermine both its anti-slavery operational priority and all four pillars (Pursue, Prevent, Protect and Prepare) of the national Strategy, in addition to harming its ability to deliver value for money. We make a series of clear and actionable recommendations, including that any assessment undertaken by IE as a result of the NAO report and the Committee’s inquiry examines how IE activities currently undermine IE’s own operational priorities and wider Home Office and national objectives, specifically the national Modern Slavery Strategy; that in recognition of the NAO’s concern regarding whether IE is delivering its mission in a manner providing ‘value for money’, we recommend that the financial consequences of IE activities that may facilitate or exacerbate modern slavery crimes is undertaken; and that IE set an objective to end the knowing detention of victims of these crimes.

## Response

1. FLEX welcomes the Committee's Call for Evidence regarding Immigration Enforcement (IE) and its performance and effectiveness.

### *Modern Slavery and IE*

2. FLEX notes that IE's most recent business plan, *Our IE*, as cited in the National Audit Office (NAO) report (Part Three, point 3.4), includes the following as an operational priority: "disrupting organised crime groups, with a focus on those who exploit individuals through modern slavery and human trafficking". This objective makes clear that crimes falling under the Modern Slavery Act that intersect with migration issues must be considered when assessing the performance and effectiveness of IE.
3. Further, the NAO report states that "managing immigration enforcement activity effectively depends on IE collaborating with other parts of the Home Office's wider border and immigration system, law enforcement bodies, international partners and other areas of government" (Summary, point 3). Whilst the function of IE is to reduce 'abuse' of the immigration system, the wider Home Office in which it sits also holds responsibility for our national modern slavery strategy. Pursue, which seeks to "prosecute and disrupt individuals and groups responsible for modern slavery"; Prevent, which seeks to "prevent people from engaging in modern slavery"; Protect, which seeks to "strengthen safeguards against modern slavery by protecting vulnerable people from exploitation and increasing awareness of and resilience against this crime", and; Prepare, which seeks to "reduce the harm caused by modern slavery through improved victim identification and enhanced support". Whilst this strategy is a cross-departmental, modern slavery falls under the remit of the Home Office as part of its responsibilities to reduce and prevent crime<sup>i</sup> and it therefore holds the strategy and contains the 'Modern Slavery Unit' ('the Unit') to support and pursue it. Despite IE being in the same department as that which works extensively on tackling modern slavery, all four of the national workstreams that form the Modern Slavery Strategy are undermined by current IE aims and activities, as this submission will demonstrate.

4. On the basis of IE's stated operational focus on modern slavery offences and the recognition that IE cannot operate effectively without a collaborative approach with other Home Office units and functions, which include those focused on tackling modern slavery, FLEX considers that IE's performance and value for money cannot be sufficiently assessed or understood without examining the impact of its activities on modern slavery crimes.
5. Modern slavery crimes that involve victims of irregular or significantly restrictive migration statuses are not separable from IE activities and policies. That is, when a migrant person is (i) undocumented; (ii) of insecure migration status, such as lacking in certainty regarding their rights under their visa or in positions as seen in the recent Windrush cases, or; (iii) on a visa with significant restrictions, such as one that ties the worker to a specific employer or sector, or only allows the person to work in the UK for a very short period of time, that person is more likely to become a victim of modern slavery crime than a migrant with stable and legal status or a UK national. In this way, we cannot separate IE activities from our national modern slavery strategy and specifically the Prevent workstream which seeks to prevent modern slavery occurring.
6. Hostile environment policies enforced by IE, including the illegal working offence and the 'no recourse to public funds' rule, push undocumented or insecure migrants into informal, unregulated work. Within that labour space, these workers lack the power to ensure decent working conditions, such as minimum wages, rest breaks, or basic health and safety including PPE and social distancing. They lack this power because of the potential risk of their identification by IE and subsequent detention and deportation, a risk that is leveraged by unscrupulous employers to coerce and control migrant workers. Significant national and international evidence has shown the use of undocumented or insecure immigration status to coerce workers to endure exploitative working conditions.<sup>ii</sup> For example, research undertaken by the European Union Agency for Fundamental Rights (FRA) in eight European countries, including the UK, uncovered that migrant workers rank their insecure status as the primary reason they were made vulnerable to exploitation while in Europe as well as the main reason this group chose not to report exploitation.<sup>iii</sup> This issue is recognised in key UK documentation pertaining to modern slavery. For example, the form used to refer suspected victims to the National Referral Mechanism (the UK's national framework for identifying and

supporting victims of modern slavery) lists “threat of being handed over to authorities” as an indicator of modern slavery<sup>iv</sup> and likewise, the Gangmasters and Labour Abuse Authority (GLAA) lists being “afraid of revealing their immigration status”.<sup>v</sup>

7. FLEX convenes the Labour Exploitation Advisory Group (LEAG), a group of 10 expert organisations working to tackle labour exploitation.<sup>vi</sup> Its recent research report, *Opportunity Knocks: improving responses to labour exploitation with secure reporting*, corroborated FRA’s findings. For example, Luisa, a Peruvian undocumented cleaner supported by LEAG member Latin American Women’s Rights Service (LAWRS) explained her unwillingness to report workplace violations: “When you are facing such precarity, you are made to feel grateful for the scraps. You keep your mouth shut, turn a blind eye, you lie to yourself. Because it is better to survive abuse at work than having the Home Office knocking on your door.” FLEX is currently conducting ongoing research in several labour sectors that present a high risk of exploitation. Our findings, which will be published in due course, have identified some employers purposefully hiring undocumented workers in order to impose indecent working conditions and therefore make more profit for themselves, as demonstrated in the following interview excerpt:

*Interviewer: How do they [employers] know that people have no documents?*

*Worker: When I was recommended to this role, they asked it and said to my friend that they liked people without secure status.*

*Interviewer: Why do you think that is?*

*Worker: Because if we are illegal here we have no rights to complain or report.*

Even when the threat of denunciation to IE does not come directly from the employer, migrants often feel unable to report exploitative working conditions for fear that their personal information will be passed onto immigration authorities, putting them at risk of being stripped of their source of income, detained and separated from their families. In this way, IE activities again undermine our national modern slavery strategy, held by the Home Office. Specifically, activities undertaken by IE that enforce hostile environment policies undermine:

- (i) Prevent – by pushing migrants or irregular status into informal and unregulated work, and by ensuring that only the most unscrupulous persons will employ them, leading to abuse and exploitation;
  - (ii) Pursue – by providing traffickers and other exploiters with the tool to coerce victims into modern slavery, i.e. the threat of IE intervention
  - (iii) Prepare – by undermining the aim to “proactively identify”<sup>vii</sup> victims of modern slavery by incentivising victims to avoid such identification due to fear of IE activities
8. The NAO report has demonstrated that there is a dearth of evidence from IE regarding the efficacy of its activities in terms of deterring undocumented migration. However, as the research cited above demonstrates, there is ample evidence of the impact of IE activities on migrant workers and how it drives them into abusive circumstances, including those that fall under the Modern Slavery Act. As stated, this undermines our national modern slavery strategy, but it also undermines IE’s own operational priority of “disrupting organised crime, with a focus on those who exploit individuals through modern slavery and human trafficking” because the employers perpetrating modern slavery conditions may themselves be part of organised criminal gangs which IE is purportedly trying to tackle. In this way, the fear and vulnerability constructed by IE’s enforcement activities against migrants directly feeds organised criminals more opportunities to make profit and expand their operations.
9. The ways in which IE activities enable modern slavery crimes is not restricted to those with undocumented status but also applies to those who are in the UK legally. For example, the LEAG paper, *Lost in Translation: Brexit and Labour Exploitation*<sup>viii</sup> (2017), found that uncertainty around Brexit and how it would impact workers’ migrant status was being used by unscrupulous employers to impose or perpetuate abusive working conditions on workers. Likewise, LEAG member Kalayaan has noted that many migrant domestic workers who are victims of abuse and exploitation in the UK are unaware of their immigration status and rights entitlements. Concern that reporting to the authorities could lead to negative consequences stops many of them from seeking support, even when they are compliant with ‘right to work’ requirements, leading them to endure long periods of exploitation.<sup>ix</sup>

10. The potential for IE activities to exacerbate modern slavery will only increase as a result of Brexit if policy and practice are not altered. Current immigration plans include no general route for low paid workers despite the high demand for labour in many low paid sectors, such as care, hospitality and manufacturing. For example, approximately 62,000 new migrants are needed per year to allow the hospitality sector to maintain its current activities and to grow.<sup>x</sup> In another low paid sector, agriculture, a pilot approach is underway: the Seasonal Workers Programme is a short-term visa which allows non-EEA nationals to enter the UK and work on our farms for a maximum term of six months within any 12. It is not clear whether this scheme will be extended and expanded after the Transition Period. However, it is clear that far more workers are needed by our economy than current plans would allow entry and therefore there is a risk that, without a general low paid labour migration route, future immigration policy introduces a series of comparable short-term sector-specific visas. Short-term visas have been demonstrated repeatedly to make people more vulnerable to modern slavery offences.<sup>xi</sup> These types of programmes will therefore bring with them a higher risk of exploitation, and many entrants to the UK who are uncertain about their rights and therefore more vulnerable to the threat of IE being used to coerce them into highly exploitative conditions.

**Recommendation: FLEX welcomes the NAO’s recommendation that IE “assess its goals and objectives to check they measure relevant indicators”. On the basis of the evidence detailed above, we recommend that this assessment includes consideration of the ways in which IE activities currently (i) undermine wider Home Office and national objectives, specifically the national Modern Slavery Strategy; (ii) undermine labour market enforcement<sup>1</sup> and policing endeavours to prevent modern slavery crimes occurring, to identify victims and to prosecute offenders; and, (iii) undermine IE’s own operational goal of “disrupting organised crime groups, with a focus on those who exploit individuals through modern slavery and human trafficking”. Any resultant performance management process and attendant metrics should include clear indicators and measures**

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<sup>1</sup> Labour market enforcement straddles multiple government departments. However, the Gangmasters Labour Abuse Authority (GLAA) comes under the remit of the Home Office and is therefore in the same department as IE. The GLAA is the primary labour market enforcement body tackling modern slavery issues in labour sectors since the expansion of its powers under the Immigration Act 2016.

regarding activities taken, or not taken, to ensure migrant workers are not made more vulnerable to crimes under the Modern Slavery Act as a result of IE activities.

**Recommendation:** in recognition of the NAO’s concern regarding whether IE is delivering its mission in a manner providing ‘value for money’, we recommend that the financial consequences of IE activities that may facilitate or exacerbate modern slavery crimes is undertaken.

### *Immigration Detention*

11. FLEX notes the NAO findings that:

- 62% of IE detainees are released from detention without removal;
- in the 12 months to the end of December 2019, it released 14,900 (62%) of the detainees whom it intended to remove from the country;
- that there is a significant cost implication for all failed removals, as described at point 2.31 in the report;
- and that claims that detainees are victims of modern slavery are one reason why planned returns do not take place.

We also note that over 1,000 immigration detainees have been released as a result of the COVID-19 pandemic and related activities, with UK immigration detention now at its lowest for 10 years,<sup>xii</sup> demonstrating the significant number of immigration detainees who can be released into the community but are detained at high cost to the public purse.

12. In July 2019, FLEX published a new LEAG report, *Detaining Victims: Human Trafficking and the UK Immigration System*, which explained how potential victims of modern slavery are being detained in UK immigration removal centres, despite a legal presumption in favour of liberty and that detention is only used as a last resort, as stated in the Home Office Enforcement Instructions and Guidance.<sup>xiii</sup> LEAG considers this to be a breach of the UK’s responsibility to “assist victims in their physical, psychological and social recovery” under Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings.<sup>xiv</sup> These responsibilities are also covered by Articles 8 and 9 of the EU Victims’ Rights Directive which state that victims should

receive support tailored to their needs, especially those victims who have “sufered considerable harm due to the severity of the crime”.<sup>xv</sup> Despite these domestic policies and international obligations, Freedom of Information requests sent by the After Exploitation Project had shown that, in 2018, 507 victims of human trafficking were in detention despite having received ‘positive reasonable grounds’ decisions<sup>2</sup> either before, or while in, detention.

13. Detention of victims of modern slavery does not align with a presumption in favour of liberty nor the idea that detention would only be used as a last resort. In May 2020, in recognition of this fact, the Home Office committed to reviewing its policy of detaining modern slavery survivors as a result of a legal challenge brought by a survivor detained under immigration powers and supported by Duncan Lewis Solicitors. The Home Office conceded that it had detained the survivor unlawfully and the Home Office committed to reviewing its policy regarding detention of victims of trafficking.<sup>xvi</sup>
14. The Public Accounts Committee should take note of this development and the underlying issue of the persistent detention of victims of modern slavery and its implications regarding value for money. According to the Migration Observatory and Oxford University, the daily cost for a detainee is approximately £95, and costs increase if courts order the Home Office to compensate people who have been unlawfully detained. In the year ending March 2019, £8.2 million in compensation was paid.<sup>xvii</sup> There is therefore a significant potential cost to the public purse in detaining modern slavery victims who, in accordance with the Home Office’s own policy and international instruments, ought not to be detained.
15. Finally, the practice of detaining victims of modern slavery under immigration powers undermines the fourth workstream of the national Modern Slavery Strategy: ‘Prepare’ seeks to “reduce the harm caused by modern slavery” by providing victims with “appropriate and effective support”.<sup>xviii</sup> Appropriate and effective support cannot be provided in the context of immigration detention, as demonstrated by a significant body of research. The Mental Health and Immigration Detention Working Group

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<sup>2</sup> These decisions, taken under the National Referral Mechanism for victims of modern slavery, mean that the UK considers there to be sufficient reasonable grounds to believe that this person may be a victim of modern slavery offences, and that they are therefore entitled to a period of state support.

(MHIDWG), a voluntary membership group comprised of lawyers, health professionals, former detainees and NGO workers, has found that “high proportions of immigration detainees display clinically significant levels of depression, post-traumatic stress disorder (PTSD), anxiety, intense fear, sleep disturbance, profound hopelessness, self-harm and suicidal ideation.”<sup>xxix</sup> These findings are echoed by the British Medical Association, which stated that “even if it does not reach a clinical threshold, all immigration detainees will face challenges to their well-being during their time in detention”.<sup>xx</sup> A 2009 study monitoring immigration detainees over a nine month period found that 85% reported chronic depressive symptoms, 65% reported suicidal ideation, 39% experienced paranoid delusions and 21% showed signs of psychosis.<sup>xxi</sup> Another study estimated that the likelihood of self-harm in Immigration Removal Centres is of 12.79%, compared with between 5 and 10% in the prison community in the UK.<sup>xxii</sup> People who have previously experienced trauma are at greater risk of developing trauma-related mental health problems while in immigration detention, including PTSD.<sup>xxiii</sup>

The national Modern Slavery Strategy also states that it seeks to “ensure effective safeguards to prevent victims being criminalised” as part of the ‘Protect’ workstream, and yet detaining migrant victims of modern slavery under IE powers is precisely such criminalisation.<sup>xxiv</sup>

**Recommendation:** as noted previously, FLEX welcomes the NAO’s recommendation that IE “assess its goals and objectives to check they measure relevant indicators”. We recommend that IE undertake to review why and how its enforcement activities lead to victims of crimes under the Modern Slavery Act being detained in immigration removal centres. We further recommend that an objective is set to end the knowing detention of victims of these crimes.

**In order to support the achievement of this objective, FLEX and LEAG recommend that the following steps are taken by the Home Office:**

- amend the ‘Adults at Risk’ policy to state that no vulnerable adults, including potential victims of human trafficking, should be detained.

- adopt recommendation 29 of the 2018 Shaw Report, which states that “all caseworkers involved in detention decisions should visit an Immigration Removal Centre either on secondment or as part of their mandatory training”.
- all detainees should be allowed to contact their Home Office case-workers during their time in immigration detention, either directly or through an independent support provider.
- amend the Home Office ‘Adults at Risk’ policy and ‘The Detention Centre Rules’ to include human trafficking as a new category, and anyone suspected to be a potential victim should receive prompt specialised advice and support to help them prepare for their National Referral Mechanism (NRM) referral interview. Anyone referred to the NRM should be immediately released from immigration detention.
- medical staff in detention centres should be required to complete compulsory training on identifying indicators of human trafficking. If medical staff suspect a detainee is a potential victim, they should be required to immediately contact the independent support provider in detention.

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