

# UK agriculture and care visas: worker exploitation and obstacles to redress

## Research Report

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This is a report *UK agriculture and care visas: worker exploitation and obstacles to redress*, based on research conducted by five academics (led by Primary Investigator Dr Inga Thiemann) in partnership with four non-governmental organisations (NGOs): Focus on Labour Exploitation (FLEX), Joint Council for the Welfare of Immigrants (JCWI), Southeast and East Asian Centre (SEEAC) and Kanlungan Filipino Consortium (Kanlungan), with support from UNISON. The project was funded through an open call for proposals by the Modern Slavery and Human Rights Policy and Evidence Centre (Modern Slavery PEC), which in turn is funded and supported by the UK Arts and Humanities Research Council (AHRC).

The full report and the research summary can also be accessed on the Modern Slavery PEC website at [modernslaverypec.org/resources/uk-agriculture-care-visas-vulnerability-exploitation](https://modernslaverypec.org/resources/uk-agriculture-care-visas-vulnerability-exploitation).

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## 1. Introduction

The UK's exit from the European Union (EU) triggered significant changes to the immigration system. As part of these reforms, the government introduced unique, temporary visa schemes for work in the agricultural and care sectors. In agriculture, the government introduced the Seasonal Worker visa (SWV) to allow workers from overseas to come to the UK to work for periods of up to six months, initially as a 'pilot' in 2019. For the 2023 and 2024 growing seasons, up to 55,000 visas are available in horticulture for each growing season. Under the SWV, it is very difficult to change employers in practice: workers can only do so if the 'scheme operator', which acts as their sponsor, facilitates their request.

On 1 January 2021, the government introduced a Skilled Health & Care Worker visa (H&CWV), which mirrors the Skilled Worker visa except for the fact that applicants pay lower visa processing fees and do not have to pay the Immigration Health Surcharge. In 2022, care workers were added to the Shortage Occupation List, which means that employers can now sponsor workers earning at least £20,960 per annum. In contrast to the SWV, the H&CWV can be renewed, allows entrants to apply to bring family members, and contains a route to permanent settlement. However, as a sponsored visa, it is still associated with limited labour market mobility for workers because workers are unable to change employers with ease.

Workers on both these visas (like most migrants) are subject to the 'no recourse to public funds' condition, excluding them from mainstream welfare benefits. Apart from workers on the H&CWV, the care sector comprises of migrant workers with a range of statuses, including the restrictive Overseas Domestic Worker Visa (ODWV), European Economic Area (EEA) nationals with (pre-)settled status, student visas, and irregular migrant workers.<sup>1</sup>

Our project's key aim is to analyse the effects of these migration schemes on workers' vulnerability to exploitation and modern slavery. The term 'modern slavery' encompasses slavery, servitude, trafficking, and forced labour.<sup>2</sup> We understand the

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<sup>1</sup> The term 'irregular migrants' refers to those who lack the correct authorisation to enter, remain / or work - UN High Commissioner for Human Rights, 'The Economic, Social and Cultural Rights of Migrants in an Irregular Situation' (2014) 4. See section two for further details on other visa types.

<sup>2</sup> Nicole Siller, "Modern Slavery": Does International Law Distinguish between Slavery, Enslavement and Trafficking? (2016) 14 *Journal of International Criminal Justice* 405, 405-407.

concept of exploitation more broadly, including situations where workers face repeated violations of employment standards.<sup>3</sup> It is also informed by the International Labour Organisation (ILO)'s list of forced labour indicators, which include: abuse of vulnerability; deception; restriction of movement, isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions; and excessive overtime.<sup>4</sup>

The project began from an understanding that labour exploitation is not solely the result of malevolent actors such as bogus or abusive employers, but is also caused by structural and institutional factors, such as immigration law and policy, visa rules, the legal regulation of work, government enforcement practices,<sup>5</sup> and systemic forms of discrimination. Our research explores how these factors interact with unique risk factors in each sector (explored below) to put workers in these sectors at disproportionate risk of labour exploitation.

This report is based on one of the first research projects exploring the SWV and H&CWV routes, both individually and comparatively. It is helpful to study these two visa regimes alongside one another because of the many commonalities in the sectors, including the proliferation of low-paid, precarious work, reliance on migrant labour, social and / or geographical isolation, limited rights awareness amongst workers, and low levels of unionisation. In 2022 the Director of Labour Market Enforcement (DLME) identified the agricultural sector as creating a severe risk of labour market non-compliance, and the care sector as high risk,<sup>6</sup> with an increasing trend according to the latest Strategy.<sup>7</sup>

Distinctively, the project also examines workers' access to protective labour market structures, such as union membership and mechanisms of statutory enforcement and redress. We analyse how workers' perceptions of their own precarious status<sup>8</sup> affects their ability to resist unreasonable demands and exploitative working conditions, or to bring forward complaints and / or engage with trade unions and state-led enforcement

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<sup>3</sup> Anna K Boucher, *Patterns of Exploitation: Understanding Migrant Worker Rights in Advanced Democracies* (OUP, 2023).

<sup>4</sup> International Labor Organization, 'Indicators of Forced Labour. Special Action Programme to Combat Forced Labour' <[https://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_203832/lang--en/index.htm](https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang-en/index.htm)> accessed 11 October 2023.

<sup>5</sup> Hila Shamir, 'A Labor Paradigm for Human Trafficking' (2012) 60 *UCLA Law Review* 76.

<sup>6</sup> Margaret Beels, 'United Kingdom Labour Market Enforcement Annual Report 2019/20' (Director of Labour Market Enforcement 2022) 48.

<sup>7</sup> Margaret Beels, 'United Kingdom Labour Market Enforcement Strategy 2023/24' (Director of Labour Market Enforcement 2023) 5.

<sup>8</sup> Precarious status denotes migrants who are at risk of losing their right to remain/work, e.g. because of its short-term / restrictive / limited nature, or whose status is unclear.

bodies. Finally, we assess whether the current enforcement mechanisms contribute to workers' vulnerability to exploitation and modern slavery across each of the two examined sectors. This comparative study allows us to identify cross-sectoral effects and instances of best practice that shape our recommendations for reform.

Section two sets out the project's methodology, while section three of the report provides the legal background regarding the agricultural sector, the care sector, and labour market enforcement. Sections four and five present and analyse the findings from the interviews and surveys on agriculture and care respectively. Section six comprises additional cross-sector thematic analysis of these findings. Section seven puts forward recommendations to protect and advance workers' safety, conditions, and rights in both sectors, as well as to improve enforcement of labour standards.

## 2. Methodology

The project was an equal collaboration –one in which parties have played an equivalent role – between five academic researchers and four non-governmental organisations (NGOs): Focus on Labour Exploitation ('FLEX'), Joint Council for the Welfare of Immigrants ('JCWI'), Southeast and East Asian Centre ('SEEAC') and Kanlungan Filipino Consortium ('Kanlungan'), with support from the trade union UNISON. The frontline partners were involved in every stage of the project, providing their input and expertise, ensuring the co-production of research design and findings. The methodology drew on FLEX's 'participatory migrant community approach' in closely collaborating with migrant and community organisations, with the objective of producing research that is inclusive and sensitive to migrant workers' lived realities.<sup>9</sup> This approach includes a strong emphasis on providing ongoing support and training to community organisations throughout the project, which may not be as present in some other forms of participatory research.<sup>10</sup>

Our project examined the following research questions:

- What are the effects of precarious migration status and the visa conditions attached to short-term migration routes on migrant workers' conditions at work, and do they create vulnerability to modern slavery?
- How do migration regimes impact workers' ability to unionise, seek the assistance of labour inspectorates, and individually access and enforce their rights?
- How do workers' perceptions of their own (precarious or more secure) status affect the above?
- Does employer non-compliance with labour law render workers vulnerable to more exploitative forms of work, and / or to modern slavery?
- Which changes in law and policy can improve migrant workers' access to labour rights and protection from exploitation?

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<sup>9</sup> Focus on Labour Exploitation, 'Researching Labour Exploitation: A FLEX Guide to Research with Hard-to-Reach Migrant Workers in the UK' (Focus on Labour Exploitation 2018) 2.

<sup>10</sup> FLEX provided training on ethical research, trauma-informed research, research methods, sign posting and safeguarding, as well as modern slavery frameworks in the UK and an overview of the SWV route. FLEX and SEEAC met regularly to discuss recruitment and to provide support on safeguarding where needed. FLEX and SEEAC also worked together to define research questions and to determine research objectives, drawing on the community knowledge of SEEAC.

To answer these questions, the project's academic team first carried out desk-based research to establish how the labour market in each of these sectors has changed over time, the policies associated with the new visa regimes, and the challenges faced by migrant care and agriculture workers. This allowed for a mapping of the legislative and policy landscape and identification of its potential impact on migrant workers in these sectors. These insights informed the empirical strand of the project, which entailed worker interviews, focus groups, and a mix of surveys and interviews with other stakeholders, such as unions, NGOs, employers, and labour enforcement agencies.

As part of the participatory strategy of the project, which understands research participants as central agents throughout the research process,<sup>11</sup> the academic team and NGO partners conducted two focus groups for each sector. The focus groups in the care sector comprised migrant care workers, while those for agriculture also included representatives from the relevant NGO partners and / or other support organisations, as well as experts on the agricultural sector, because of difficulties recruiting large numbers of workers for those sessions.

For care, Kanlungan and JCWI recruited participants through their community contacts, bilingual posters in community spaces, social media posts, and a short online survey to make sure participants were a good fit for the research.<sup>12</sup> Participants were also recruited at meetings for migrant workers, through online platforms, and through snowball sampling. For agriculture, FLEX invited partner organisations and experts on the agricultural sector, and SEEAC invited SVW workers they had recruited through social media. For both sectors, some of the migrant worker focus group participants also became interviewees. The first round of focus groups took place at the beginning of the project (November 2022), to gather feedback on the findings from the literature review and input on the design of worker interviews and stakeholder surveys. The second round took place once the academic team had analysed the findings from the interviews and surveys (September 2023), with participants providing feedback on the key findings and draft recommendations.

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<sup>11</sup> Sara Kindon, Rachel Pain and Mike Kesby, 'Participatory Action Research Approaches and Methods: Origins, Approaches and Methods' in Sara Kindon, Rachel Pain and Mike Kesby (eds), *Participatory action research approaches and methods: connecting people, participation and place* (Routledge 2007) 14; Deirdre McCann and Arely Cruz-Santiago, 'Labour/Data Justice: A New Framework for Labour/Regulatory Datafication' 49 *Journal of Law and Society* 658, 678.

<sup>12</sup> Inclusion criteria included e.g. being a migrant worker, working in the care sector and being on or wanting to switch to the H&CWV.

Interviews with migrant workers in each sector were carried out to complement the desk-based research and highlight workers' lived experiences, particularly as relevant to our research questions. The partner NGOs co-designed and tested the interview questions, promoted the research, built trust among target respondents, translated the materials, and facilitated and carried out the interviews. They conducted interviews in languages workers were fluent in (in many cases a member of the frontline NGO's staff spoke the same language as the interviewee). This approach was advantageous as it added to the richness and depth of the information gathered, since it allowed interviewees to fully express themselves, and allowed the interviewers to transcribe the interviews. The latter also supported interviewees, including referring them for further assistance where needs were identified, and making them aware of community organisations' and unions' activities that were relevant to them. The NGO partner organisations also collaborated with formulating policy recommendations and provided input into the final report. FLEX supported SEEAC in undertaking interviews with twenty seasonal agriculture workers, while JCWI and Kanlungan interviewed fifteen care workers.

SEEAC had no previous contact with workers on the SWV and recruited interviewees through various channels, such as YouTube and Facebook, as well as through other migrant workers (non-SWV) in direct contact with SWV holders. From the first few (four) participants agreeing to participate through social media and migrant communities, new research participants were recruited through snowball sampling. Whereas snowball sampling resulted in participants being of similar ethnicity (and sometimes even from the same local community), as well as in them working for a small number of agriculture employers in the UK, the fact that they were referred by friends and acquaintances helped to build workers' trust in the researchers, which was a priority. Workers who were still in the UK at the time of the interviews (February/March 2023) were particularly vulnerable due to the suspension of AG Recruitment and their resulting unclear visa status. Their willingness to nonetheless be interviewed by SEEAC reflects the trust that research participants had in SEEAC and that the interview process would not harm them.

Kanlungan and JCWI had strong existing links to workers in the care sector, but the newness of the H&CWV meant that they had limited existing contacts to workers on this visa route specifically. Recruitment took place at community meetings, through posters shared both on- and offline, as well as through snowball sampling of workers who were on the H&CWV. Due to the broad reach of Kanlungan and JCWI, the interviewees included both Filipino workers and workers from five African countries (Kenya, South



Africa, Congo, Nigeria and Zimbabwe), as well as two from undisclosed West African countries. These included workers who were on the H&CWV, workers who were on the ODWV and other visa routes, as well as irregular workers.

Interview questions for both sectors covered the workers' visa situation and issues arising from this, their working and living conditions, their knowledge of and access to mechanisms for the enforcement of rights, and the changes they would like to see in relation to their work environment, enforcement avenues or migration regime. The academic team used thematic content analysis to analyse the interview transcripts.<sup>13</sup> The process began by collaboratively determining key themes and sub-themes (e.g., visa issues, contractual problems, etc.), after which each transcript was analysed by one academic team member, with a second moderating their review, to identify which themes it fit and extract relevant facts and quotations. References to the interviews use pseudonyms to preserve anonymity.

In addition, surveys, primarily of a qualitative nature, were used to gather stakeholder input on the issues stemming from the research questions of the project, feeding into the main analysis and recommendations. Overall, we collected 11 responses from support organisations (i.e., NGOs, charities, legal advice centres, other third sector organisations), 3 responses from trade unions, 3 responses from agriculture employers, and 2 responses from labour market enforcement bodies. Given these stakeholders' resource and time-related constraints, using surveys was thought to be more effective than stakeholder interviews. We used discrete surveys for third sector or other organisations supporting migrant care and / or seasonal agriculture workers, trade unions, employers and / or employers' representatives, and enforcement bodies active in these sectors. However, one employer representative and one agricultural sector-related training initiative's representative reached out, preferring to be interviewed instead, and their input has been incorporated in the analysis in addition to the surveys.

While the interviews and survey responses we received provided rich data, the relatively low number received represents a limitation of our study. The sample size for the interviews reflects what was feasible within the project's short timescale, but does not represent a significant disadvantage because of the depth of the interview data. The gathered data incorporate rich detail on workers' motivations, decision-making,

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<sup>13</sup> Ellie Fossey and others, 'Understanding and Evaluating Qualitative Research\*' (2002) 36 *Australian and New Zealand Journal of Psychiatry* 717, 728–9.

experience, and perceptions in a way that large-scale surveys or mapping exercises cannot capture. Our analysis is based on thematic findings from the interviews alongside existing empirical studies from civil society organisations and other bodies, which further mitigates against the small sample. Existing studies and research were also used to triangulate our survey findings, which were primarily qualitative in design in order to achieve a more in-depth engagement, given the relatively limited number of stakeholders active in the examined areas, their constraints, and difficulties in accessing some of those.

Regarding the worker interviews, a more specific limitation of our study design was that all agriculture workers interviewed were Indonesian rather than from a range of nationalities.<sup>14</sup> While this may impact the representativeness of our data (although note that the range in the care sector was wider), this also had the advantage of providing rich insight into this group's experience, which can be read alongside other studies on the sector. Finally, care sector interviewees were in the UK on a range of visa types rather than just the H&CWV. This is a limitation in some respects, but also reflects the realities of the sector, which, as described in the next section, comprises migrant workers with a range of statuses, and allows for comparisons across visa types and with workers with no formal immigration status.

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<sup>14</sup> See the section on recruitment above for reasons.

### 3. Background and legal framework

Once it was decided that the UK's departure from the EU would definitively mean the end of free movement, the government commissioned the Migration Advisory Committee (MAC) to assess the impact of EEA migrants on the economy and to provide a base of evidence for the design of a new immigration system. The MAC proposed the parity of treatment between EEA migrants and non-EEA migrants, the extension of the Tier 2 visa for 'third country nationals' to apply also to EEA migrants, the redefinition of 'skilled' to mean the equivalent A-level qualification and a lower salary threshold, and the abolishment of labour market testing and quota.<sup>15</sup> Two exceptions were later made in respect of the agricultural and care sectors.

#### The agricultural sector and the Seasonal Worker Visa (SWV)

Prior to the UK's departure from the EU, UK farmers were heavily reliant on a seasonal workforce from Eastern Europe for planting and harvesting crop.<sup>16</sup> The increasing employment of migrant workers in the horticulture sector began in the 1990s as a result of patterns of labour intensification and flexibilization, driven by supply chain dynamics—especially through the increasing pressure placed on farmers by powerful retailers.<sup>17</sup> In the aftermath of the Brexit referendum, British farmers and their lobbies, such as the National Farmers' Union, raised strong concerns about the loss of EU workers.

The government responded to the concerns raised by stakeholders in the agricultural sector by utilising a two-pronged strategy. Firstly, it tried to encourage the recruitment of local workers, which had very limited success as evidenced by the failure of the 'Pick for Britain' campaign.<sup>18</sup> Secondly, it resuscitated the Seasonal Agricultural Workers Scheme that had been in place from 1945 to 2013. That scheme had been criticised for prioritising immigration concerns over workers' rights and safety, focusing only on

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<sup>15</sup> Migration Advisory Committee, 'EEA Migration into the UK: Final Report' (MAC 2018) 125; Migration Advisory Committee, 'Adult Social Care and Immigration: A Report from the Migration Advisory Committee' (MAC 2022) CP 665 35.

<sup>16</sup> William Booth and Karla Adam, 'Brits Don't Want to Work on Farms – so Who Will Pick Fruit after Brexit?' *The Independent* (7 November 2018) <<https://www.independent.co.uk/climate-change/news/brexit-eu-agriculture-farms-fruit-picking-migrant-workers-labour-shortage-a8469806.html>> accessed 4 November 2023.

<sup>17</sup> Ben Rogagly, 'Intensification of Workplace Regimes in British Horticulture: The Role of Migrant Workers' (2008) 14(6) *Population, Space and Place* 497-510.

<sup>18</sup> Adrian Zorut, 'Government Scraps Pick for Britain Programme after Brits Fill As Few as 5% of Roles' *New European* (22 April 2021) <<https://www.theneweuropean.co.uk/brexit-news-westminster-news-brits-reject-pick-for-britain-campaign-7916574/>> accessed 15 December 2023.

preventing the worst forms of exploitation,<sup>19</sup> despite studies highlighting the widespread exploitation in the sector, coupled with insufficient enforcement.<sup>20</sup>

In March 2019, the government announced the commencement of the Seasonal Agricultural Workers 'pilot' to allow British farmers to recruit temporary agricultural workers from a range of countries to help harvest crops.<sup>21</sup> The re-introduction of a seasonal worker visa received enthusiastic backing from the farm sector due to the certainty and greater control over workers that temporary labour migration programmes provide.<sup>22</sup> Initially, the number of visas issued was capped at 2,500 per annum.

Concerningly, the government proceeded with the introduction of the new SWV scheme before the pilot was reviewed, and has continued to expand the scheme despite strong evidence of worker exploitation and mistreatment.<sup>23</sup> More recently, the government has announced that it will allow 45,000 visas for work in the horticulture sector, plus 10,000 extra places if necessary, for each of the 2023 and 2024 growing seasons.<sup>24</sup> The main kind of work that workers are entitled to perform is picking fruits, vegetables, or flowers. A SWV can also be obtained for work in the poultry sector (2,000 visas per year are available for this purpose).

Under the programme, scheme operators are responsible for recruiting workers, allocating them to farm employers, and having oversight over workers' welfare. To be approved as a scheme operator by the Department of Environment, Food and Rural Affairs (DEFRA), the organisation must hold a license issued by the Gangmasters and Labour Abuse Authority (GLAA). The GLAA should issue a license only once it is satisfied that the scheme operator is 'fit and proper', which means after making inquiries about whether the entity has committed any previous offence, assessing the veracity of

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<sup>19</sup> ACL Davies, 'Migrant Workers in Agriculture: A Legal Perspective' in C. Costello and M. Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law* (OUP, 2014).

<sup>20</sup> Bridget Anderson and Ben Rogaly, 'Forced Labour and Migration to the UK' (TUC-Compass Study 2005); Caroline Robinson, 'Preventing Trafficking for Labour Exploitation' (FLEX Working Paper 01, 2014).

<sup>21</sup> Department for Environment, Food and Rural Affairs and Home Office, *Seasonal Workers Pilot Review 2019*, <<https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019>> accessed 15 December 2023.

<sup>22</sup> Sam Scott and Johan Fredrik Rye, 'The Mobility-Immobility Dynamic and the 'Fixing' of Migrants' Labour Power' (2023) *Critical Sociology* (early access online).

<sup>23</sup> FLEX, 'Government Must Act to Prevent Exploitation on the UK's Seasonal Workers' Scheme' (27 March 2023) <<https://labourexploitation.org/news/government-must-act-to-prevent-exploitation-on-the-uks-seasonal-workers-scheme/>> accessed 17 November 2023; Catherine McAndrew and others, 'Debt, Migration, and Exploitation - The Seasonal Worker Visa and the Degradation of Working Conditions in UK Horticulture' (Landworkers' Alliance 2023).

<sup>24</sup> Department for Environment, Food and Rural Affairs, 'Seasonal Worker Visa Route RFI Notice' (GOV.UK, 27 June 2022) <<https://www.gov.uk/government/publications/seasonal-worker-visa-route-request-for-information-rfi/seasonal-worker-visa-route-rfi-notice>> accessed 17 November 2023.

any disclosures made during the application process, and a range of other factors. As well as holding a GLAA license, DEFRA requires that operators meet Home Office Requirements and have capability to supply workers to farmers.<sup>25</sup> Once DEFRA has designated an entity as a scheme operator, the Home Office will authorise it to hold a sponsor license. Being a Home Office sponsor means that scheme operators can issue workers with Certificates of Sponsorship, which in turn, allows workers to apply for a SWV from UK Visas and Immigration.

Before the Russian invasion of Ukraine in February 2022, close to half of workers came from Ukraine.<sup>26</sup> Scheme operators have since recruited workers from countries including Tajikistan, Uzbekistan and Kyrgyzstan, Kazakhstan, Nepal, Moldova, Romania, Bulgaria, and Indonesia (recruitment from Indonesia is currently suspended).<sup>27</sup> Scheme operators sometimes engage third party recruiters to act as their agents in various countries rather than recruiting directly. It is not clear how much oversight scheme operators exercise over overseas recruiters, but mounting evidence that workers are paying illegal 'recruitment fees'<sup>28</sup> would suggest that oversight is minimal or ineffective,<sup>29</sup> as discussed in our findings below. In any event, workers are generally responsible for applying for a SWV from a visa application centre (such as TSL or VFS), or a UK Embassy or Consulate in their home country and paying the application fee (£298 currently) as well as the substantial costs of transportation to the UK.

Oversight of scheme operators is fragmented and often inadequate,<sup>30</sup> and lines of accountability remain unclear. UKVI is responsible for monitoring whether scheme operators are complying with sponsorship requirements, including that at least 95% of nominated workers obtain a visa, at least 97% of workers who are granted a visa take up their place, and fewer than 3% of workers fail to leave at the end of their visa.<sup>31</sup> So far, only one scheme operator, AG Recruitment, has lost its ability to act as a sponsor.<sup>32</sup>

<sup>25</sup> Department of Environment, Food and Rural Affairs, Seasonal Worker Visa Route RFI Notice (27 June 2022), <<https://www.gov.uk/government/publications/seasonal-worker-visa-route-request-for-information-rfi/seasonal-worker-visa-route-rfi-notice>> accessed 15 December 2023.

<sup>26</sup> David Neal, 'An Inspection of the Immigration System as It Relates to the Agricultural Sector' (Independent Chief Inspector of Borders and Immigration 2022) 19.

<sup>27</sup> Ibid.

<sup>28</sup> Recruitment fees are illegal in the UK and are contrary to international labour standards, e.g. ILO Convention 181 on Private Employment Agencies.

<sup>29</sup> See, e.g., Emiliano Mellino and Matthew Chapman, "All That Is Missing Is a Whip": Home Office Ignored Migrant Worker Abuses on Farms' The Bureau of Investigative Journalism (en-GB) <<https://www.thebureauinvestigates.com/stories/2023-10-22/all-that-is-missing-is-a-whip-home-office-ignored-migrant-worker-abuses-on-farms>> accessed 4 November 2023.

<sup>30</sup> Neal (n 26).

<sup>31</sup> Ibid.

<sup>32</sup> CJ McKinney, Sarah Coe and Iona Stewart, 'Seasonal Worker Visas and UK Agriculture' (2023) House of Commons Library Briefing Paper 9665.

The GLAA maintains responsibility for ensuring that scheme operators are complying with the obligations regarding the welfare and employment conditions of workers set out in the scheme. However, the GLAA has limited remit to act on non-compliance that does not reach the threshold of slavery or breach of licensing guidelines. The GLAA has confirmed that it does not routinely inspect farms to monitor compliance, and as such it is unclear how the GLAA investigates scheme operators' compliance with their obligations beyond simply reviewing operators' own statements.<sup>33</sup> This is at odds with a prior commitment to conduct unannounced visits.<sup>34</sup> The GLAA has reported that it has revoked the license of a Nepalese labour operator, but neither whether this applies to a scheme operator or a downstream recruiter, nor the basis for the revocation, are clear.<sup>35</sup>

Further, it appears the Home Office and DEFRA have conducted some ad hoc audits to assess whether workers are receiving their legal entitlements. A 2019 review conducted by the Home Office and DEFRA uncovered several breaches, including workers not being provided with health and safety equipment and / or written employment contracts in their native language, and living in poor quality accommodation.<sup>36</sup> The Independent Chief Inspector of Borders and Immigration (ICIBI) reviewed the programme in August 2022 and concluded that 'there was a lack of clarity as to how roles and responsibilities were divided across the Home Office, other government departments, devolved administrations and local authorities.'<sup>37</sup>

Once workers are allocated to a farm employer—for which scheme operators receive roughly £200 per worker—<sup>38</sup> they conclude a contract of employment with the farm employer. This means that farm employers are responsible for complying with all UK employment and labour laws. As of 2023, farm employers are required to provide at least 32 hours paid employment each week with some averaging possible, although there is no stipulation relating to the minimum length of any contract. Scheme operators

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<sup>33</sup> Stuart McDonald and Tom Pursglove, Gangmasters and Labour Abuse Authority (Question for Home Office, tabled on 20 September 2022), <<https://questions-statements.parliament.uk/written-questions/detail/2022-09-20/51713/>> accessed 15 December 2023.

<sup>34</sup> Margaret Beal, Compliance Strategy for the GLAA-2021 (GLAA, July 2021), <<https://www.gla.gov.uk/media/7494/compliance-strategy-final.pdf>> accessed 15 December 2023.

<sup>35</sup> GLAA, Nepalese Recruitment Agency Loses GLAA Licence (Press Release, 13 March 2023), <<https://www.gla.gov.uk/whats-new/latest-press-releases/13032023-nepalese-recruitment-agency-loses-glaa-licence/>> accessed 15 December 2023.

<sup>36</sup> Department for Environment, Food and Rural Affairs and Home Office, Seasonal Workers Pilot Review 2019, <<https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019>> accessed 15 December 2023. .

<sup>37</sup> Neal (n 26) 7.

<sup>38</sup> *ibid* 14.

remain responsible for finding workers a new farm employer if the previous one is unable to provide sufficient work, or the worker requests a change for whatever reason.

However, there is significant lack of clarity about transfer pathways and many requests for transfers go unanswered.<sup>39</sup>

## The care sector and the extension of the H&CWV

Care work includes both domiciliary care (both live-in and visit-based) and residential care. A process of privatisation, in which care workers' direct employment by local authorities is replaced by outsourced work through private care companies, has created pressure to cut costs, reduced legal protections,<sup>40</sup> and placed greater responsibility on families and communities.<sup>41</sup> Under the coalition government between 2010-2015, councils cut spending on adult social care by almost 9.3%, reversing the trend of increasing spending on adult social care in the 2000s. From 2014/15 onwards, councils began to increase spending, particularly during the COVID pandemic. However, since then it has levelled off, with only a 1.6% real-terms increase in 2022/2023.<sup>42</sup>

Furthermore, the sector is marked by a demand for extremely flexible hours: the work frequently involves assisting people who require 24-hour care,<sup>43</sup> while home visits often mean a series of high-pressured short engagements without payment for travel time.<sup>44</sup> The business models of intermediaries, such as agencies, has been identified as a key factor driving vulnerability to exploitation.<sup>45</sup>

Care work is devalued as a 'feminised' form of labour, which contributes to exploitation. Low pay is often purportedly justified via its construction as 'unskilled' and inferior to forms of 'productive' work, as well as via its conflation with work traditionally provided for

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<sup>39</sup> In relation to the pilot, see Focus on Labour Exploitation and Fife Migrants Forum, 'Assessment of the risks of human trafficking for forced labour on the UK Seasonal Workers Pilot' (FLEX 2021). See also: Adis Sehic and Dora-Olivia Vicol, 'Systemic drivers of migrant worker exploitation in the UK' (Work Rights Centre, 2023) 11.

<sup>40</sup> For example, protections on equal pay require comparison that is more viable in a local authority context.

<sup>41</sup> Nancy Fraser, 'Crisis of Care? On the Social-Reproductive Contradictions of Contemporary Capitalism' in Tithi Bhattacharya (ed), *Social Reproduction Theory: Remapping Class, Recentering Oppression* (Pluto Press 2017) 32; LJB Hayes, *Stories of Care: A Labour of Law: Gender and Class at Work* (Palgrave, Macmillan Education 2017) 22–55.

<sup>42</sup> Performance Tracker 2023: Adult Social Care' (Institute for Government, 30 October 2023) <<https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/adult-social-care>> accessed 19 November 2023.

<sup>43</sup> Unseen, 'Who Cares? A Review of Reports of Exploitation in the Care Sector' (Unseen 2023) 6.

<sup>44</sup> Hayes (n 41) 72-6.

<sup>45</sup> University of Nottingham Rights Lab and others, 'The Vulnerability of Paid Migrant Live-in Care Workers in London to Modern Slavery' (University of Nottingham Rights Lab 2022) 26–27.

free by women in the family.<sup>46</sup> Women workers, especially those in highly feminised sectors, are subject to specific structural risk factors and gendered forms of exploitation and violence, including sexual harassment, and may be less likely to report abuses against them due to their need to provide care for others.<sup>47</sup>

There are significant legal gaps in the regulation of care work, which reflect its devaluation. Care workers carrying out ‘sleep-in’ shifts in England and Wales are not entitled to payment of the minimum wage for hours when they are not actively engaged in tasks, even though they may be required to listen out for any care needs that arise.<sup>48</sup> Those working in private households are excluded from labour inspections,<sup>49</sup> and from key working time protections, including the maximum average 48-hour working week.<sup>50</sup> Where living in their employer’s home, workers are sometimes even excluded from entitlement to the National Minimum Wage (NMW),<sup>51</sup> although this is due to be remedied in April 2024.<sup>52</sup>

Migrant workers have long been essential to social care and amounted to 17% of the sector’s workforce in 2020, prior to the Covid-19 pandemic.<sup>53</sup> Workers from EEA countries exercising free movement rights comprised an important part of this population, particularly following the accession of Eastern European member states in 2004 – 2008.<sup>54</sup> Brexit and the end of free movement therefore had a significant impact on vacancy levels, alongside the exacerbated pressures on the care sector because of the pandemic.<sup>55</sup> These factors formed the background to the addition of care workers to the Shortage Occupation List in February 2022, making them eligible for the H&CWV

<sup>46</sup> Hayes (n 41) 34–52; Inga K Thiemann, ‘Beyond Victimhood and Beyond Employment? Exploring Avenues for Labour Law to Empower Women Trafficked into the Sex Industry’ (2019) 48 *Industrial Law Journal* 199; Natalie Sedacca, ‘Domestic Workers, the “Family Worker” Exemption from Minimum Wage, and Gendered Devaluation of Women’s Work’ (2022) 51 *Industrial Law Journal* 771, 777–780.

<sup>47</sup> Focus on Labour Exploitation, ‘Risky Business: Tackling Exploitation in the UK Labour Market’ (Focus on Labour Exploitation 2017).

<sup>48</sup> *Royal Mencap Society v Tomlinson-Blake* [2021] UKSC 8; LJB Hayes, ‘Discrimination by Legal Design? UK Supreme Court in Mencap v Tomlinson-Blake Finds Care Workers Are Not Protected by Minimum Wage Law for Sleep-in Shifts’ (2022) 51 *Industrial Law Journal* 696.

<sup>49</sup> Health and Safety at Work Act 1974, s.51.

<sup>50</sup> Working Time Regulations - SI 1998/1833, Reg 19.

<sup>51</sup> Section 57(3) of the National Minimum Wage Regulations (SI 2015/621) – where the worker is treated ‘as a member of the family’ in relation to accommodation, meals, tasks and leisure activities.

<sup>52</sup> National Minimum Wage (Amendment) (No. 2) Regulations 2023.

<sup>53</sup> Agnes Turmpenny and Shereen Hussein, ‘Migrant Home Care Workers in the UK: A Scoping Review of Outcomes and Sustainability and Implications in the Context of Brexit’ (2022) 23 *Journal of International Migration and Integration* 23, 24.

<sup>54</sup> *ibid* 26.

<sup>55</sup> Emily Brady and Caroline Emmerson, ‘Assessing the Vulnerability of Care-Workers in England to Modern Slavery Risks during the COVID-19 Pandemic’ (University of Nottingham Rights Lab 2020); Rosie Harding, ‘COVID-19 in Adult Social Care: Futures, Funding and Fairness’ in Dave Cowan and Ann Mumford (eds), *Pandemic Legalities: Legal Responses to COVID-19 - Justice and Social Responsibility* (Policy Press 2021); Caitlin Boswell and Chai Patel, ‘When the Clapping Stops: EU Care Workers after Brexit’ (JCWI 2021).



with a minimum salary of £20,480 (20% lower than for a conventional Skilled Worker visa).

In contrast to the SWV, the H&CWV permits workers to apply to renew their visas and provides a route to settlement and family reunification (although plans announced in December 2023 aim to bar migrant care workers from bringing their dependents to the UK).<sup>56</sup> Nonetheless, Skilled Worker visas like the H&CWV still limit labour mobility, and these limits may fuel labour exploitation. They require employer sponsorship, which must be updated if moving to a new role, and which can be a lengthy and complex process, leaving workers susceptible to being made irregular.<sup>57</sup> In order to change jobs, workers must find another licensed sponsoring employer and make a new application involving the payment of a further fee (£284, or £551 for a new sponsorship over three years).<sup>58</sup> A further difficulty is the existence of repayment clauses that require workers to pay back the upfront costs the employer has invested in recruiting staff if they leave employment, including situations in which the worker is left in debt bondage.<sup>59</sup> The Code of Practice for international recruitment requires such clauses to abide by the principles of transparency, proportionate costs, timing, and flexibility,<sup>60</sup> but compliance with these requirements is frequently lacking.<sup>61</sup>

While the H&CWV is the key focus of the study, workers with a range of visa pathways and migration statuses continue to work in the care sector. This includes EEA nationals who obtained settled or pre-settled status and their family members, migrants on student visas (limited to 20 hours' work per week in term time), partners and dependents of UK

<sup>56</sup> Home Office and The Rt Hon James Cleverly MP, 'Home Secretary unveils plan to cut net migration', (GOV.UK, 4 December 2023) <<https://www.gov.uk/government/news/home-secretary-unveils-plan-to-cut-net-migration>> accessed 13 December 2023.

<sup>57</sup> Mimi Zou, 'Employer Demand for "Skilled" Migrant Workers - Regulating Admission Under the United Kingdom's Tier 2 (General) Visa' in Joanna Howe and Rosemary J Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart 2016); University of Nottingham Rights Lab and others (n 45) 39; Meri Åhlberg and Lucila Granada, 'The Making of Irregular Migration: Post-Brexit Immigration Policy and Risk of Labour Exploitation' (2022) 30 *Journal of Poverty and Social Justice* 120, 124.

<sup>58</sup> Adis Sehic and Dora-Olivia Vicol, 'Systemic Drivers of Migrant Worker Exploitation in the UK - The Work Sponsorship System and Labour Enforcement' (Work Rights Centre) 29.

<sup>59</sup> 'Unison Calls for Health Staff "repayment Clause" Reform' *BBC News* (11 August 2023) <<https://www.bbc.com/news/uk-northern-ireland-66462332>> accessed 16 October 2023.

<sup>60</sup> Department for Health and Social Care, 'Code of Practice for the International Recruitment of Health and Social Care Personnel in England' (GOV.UK, 23 August 2023) <<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>> accessed 29 November 2023.

<sup>61</sup> Trade Union Congress, 'An Inspection of the Immigration System as It Relates to the Social Care Sector - TUC Response' (26 September 2023) <<https://www.tuc.org.uk/research-analysis/reports/inspection-immigration-system-it-relates-social-care-sector-tuc-response>> accessed 24 November 2023.

citizens, people with no formal immigration status, and those on other routes like the Youth Mobility Scheme.<sup>62</sup>

Another pertinent route is the ODWV, in which many of the visa holders are brought over to the UK to care for elderly or ill employers instead of, or in addition to, carrying out domestic work duties. The ODWV was amended in 2012 to disallow changes of employer or extensions beyond an initial six-month period. This restrictive visa heightens dependency on the employer and the risk of becoming irregular where the six-month limit is exceeded.<sup>63</sup> An independent review of the amended scheme in 2015 raised concerns about its impact on domestic workers' rights and found that the inability to change employer led to a lack of bargaining power and a feeling of being 'owned' or trapped, risking creating a large pool of undocumented migrants.<sup>64</sup> Recommendations to address these issues<sup>65</sup> were only partially followed by the government, which introduced a formal right to change employer in 2016, but only during the initial six-month validity period, with limited exceptions in formally identified cases of modern slavery or trafficking.<sup>66</sup>

The ODWV's limitation to six months means the right to change employer is not effective in practice, since few employers will hire a domestic worker with only a short time left on their visa.<sup>67</sup> Workers are therefore deterred from leaving or challenging exploitative conditions, and where they do, risk falling into irregular status. Irregular migrant care workers are at the sharpest end of workplace precarity, and are often pushed into unregulated, underground work because of the UK government's 'Hostile Environment' policies, discussed below.

The record number of visas recently granted to workers in the health and social care sector, coupled with weak oversight of recruitment and enforcement of labour

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<sup>62</sup> Migration Advisory Committee, 'Adult Social Care and Immigration' (n 15) 38–56.

<sup>63</sup> Virginia Mantouvalou, "'Am I Free Now?' Overseas Domestic Workers in Slavery' (2015) 42 *Journal of Law and Society* 329, 95.

<sup>64</sup> James Ewins, 'Independent Review of the Overseas Domestic Worker Visa' (2015) 22 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486532/ODWV\\_Review\\_-\\_Final\\_Report\\_\\_6\\_11\\_15\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf)> accessed 29 November 2023.

<sup>65</sup> *ibid* 34–35.

<sup>66</sup> On this exception, see Natalie Sedacca and Avril Sharp, 'Dignity, Not Destitution: The Impact of Differential Rights of Work for Migrant Domestic Workers Referred to the National Referral Mechanism' (Kalayaan 2019).

<sup>67</sup> Kalayaan and others, 'Why the UK Must Reinstate the Original Overseas Domestic Worker Visa - Briefing for Report Stage of the Nationality and Borders Bill in the House of Lords - 1 March 2022' <<http://www.kalayaan.org.uk/wp-content/uploads/2022/03/Briefing-Report-Stage-House-of-Lords-1-March-2022-v2.pdf>> accessed 25 October 2022.

protections, has left migrant care workers highly susceptible to abuse and exploitation.<sup>68</sup> While Home Office literature signifies that sponsors have a responsibility for migrant workers' welfare, state-led enforcement (such as compliance visits) is rare, and where it does occur is more focused on checking immigration compliance than labour standards.<sup>69</sup> In July 2023, the GLAA's Head of Enforcement reportedly stated that 'the care industry has gone from "not being on their radar" to becoming a "top priority" in the past 18 months,'<sup>70</sup> reiterating serious concerns about exploitation in the sector, including under the new H&CWV extension. Media coverage over the last two years has also highlighted increasing reports of migrant workers facing illegal recruitment fees, debt bondage and unscrupulous employers.<sup>71</sup>

## Enforcement of labour standards and challenges for migrant workers

We have outlined the responsibility that various divisions and agencies of the Home Office and DEFRA bear for administering the SWV and H&CWV. A different set of government agencies are responsible for ensuring that employers comply with employment and labour laws. The UK's labour rights enforcement system is incredibly complicated, with agencies and their responsibilities spread across several different government departments.<sup>72</sup> The responsible government agencies primarily include the HM Revenue and Customs' National Minimum Wage unit (NMWU), the Health & Safety Executive (HSE), and the Employment Agencies Standards Inspectorate (EAS). In addition to operating a licensing scheme for labour providers in food production and processing, since 2016, the GLAA has been duty-bound to monitor and investigate instances of modern slavery and labour exploitation in the labour market. It performs the latter function in collaboration with law enforcement and immigration agencies, such as the National Crime Agency, Border Force and Immigration Enforcement. The DLME is a statutory officeholder whose responsibility is to coordinate the efforts of the GLAA, NMWU and EAS (but not the HSE). The Equality and Human Rights Commission also plays a role enforcing anti-discrimination laws in workplaces.

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<sup>68</sup> Madeleine Sumption and Zachary Strain-Fajth, 'Evidence Paper - Migration and the Health and Care Workforce' (ReWAGE and Migration Observatory, 2023).

<sup>69</sup> Sehic and Vicol 'Systemic Drivers' (n 58) 15 – 16.

<sup>70</sup> 'Modern Slavery Gangmasters Exploit Care Worker Shortage' *BBC News* (24 July 2023) <<https://www.bbc.com/news/uk-66260064>> accessed 16 October 2023.

<sup>71</sup> Shanti Das, 'Migrant Care Workers Came to Help the UK. Now They're Trapped in Debt Bondage' *The Observer* (18 June 2022) <<https://www.theguardian.com/world/2022/jun/18/migrant-care-workers-uk-debt>> accessed 13 March 2023.

<sup>72</sup> Alex Balch, Regulation and enforcement to tackle forced labour in the UK: a systematic response? (JRF Programme Paper, 2012).

As well as being complex, labour rights enforcement in the UK is also mainly individualised. Workers affected by alleged breaches of employment legislation are expected to bring claims in the Employment Tribunals. However, there are many barriers to individual workers pursuing their entitlements through the tribunal system, including lack of knowledge of legal rights, costs of legal representation, length and stress of proceedings, and lack of provision of qualified employment advisers within the community and voluntary sector.<sup>73</sup> These problems are amplified for migrant workers because of language difficulties, lack of familiarity with Britain's institutions, and different cultural frames of reference,<sup>74</sup> as well as the sponsorship requirements and restrictions discussed above.

In this context, government agencies charged with enforcing employment rights on behalf of workers can play an important supplementary role. However, despite the best efforts of individuals that work in these agencies, enforcement efforts suffer from the twin challenges of fragmentation and under-resourcing. To compound matters, the different agencies do not always coordinate their enforcement efforts, despite evidence that non-complaint employers commit multiple breaches.<sup>75</sup> In 2019, the Government committed to creating a Single Enforcement Body (SEB) that would merge the GLAA, NMWU and EAS, with strong support from the DLME, but this has not been implemented. Notably, the DLME has recently recognised the importance of coordinating labour enforcement efforts in high-risk industries such as agricultural and the care sectors.<sup>76</sup>

The other main problem is the lack of sufficient personnel and resources to monitor, investigate and prosecute breaches.<sup>77</sup> Although in recent times there has been some growth in NMWU inspectors, and additional funding allocated to the GLAA in recognition of its expanded mandate, this has occurred alongside almost a 50% cut in funding to the

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<sup>73</sup> Victoria Boelman and others, 'Rights and Risks: Migrant Labour Exploitation in London' (The Young Foundation and FLEX, 2023).

<sup>74</sup> Catherine Barnard, 'Enforcement of Employment Rights by Migrant Workers in the UK: The Case of EU-8 Nationals' in Catherine Costello and Mark Freeland, *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press, 2014).

<sup>75</sup> Lindsay Judge and Hannah Slaughter, 'Enforce for Good: Effectively Enforcing Labour Market Rights in the 2020s and Beyond' (25 April 2023), <https://www.resolutionfoundation.org/publications/enforce-for-good/>

<sup>76</sup> Beels (n 7).

<sup>77</sup> Stephen Mustchin and Miguel Martínez Lucio, 'The Evolving Nature of Labour Inspection, Enforcement of Employment Rights and the Regulatory Reach of the State in Britain' (2020) 62 *Journal of Industrial Relations* 735

HSE over the 2010s.<sup>78</sup> Other agencies have even fewer resources –for example, the EAS had a budget of just £1.5 million and employed only 29 staff in 2021.<sup>79</sup> Another issue is that labour inspection bodies and the police routinely share data with immigration enforcement.<sup>80</sup> This makes it extremely difficult for migrant workers, particularly those with a precarious or irregular status, to cooperate with these inspection bodies, as there are legitimate fears this could lead to immigration enforcement action against them.<sup>81</sup> Data sharing is one aspect of the UK government’s ‘Hostile Environment’ set of policies, now known as the ‘compliant environment,’ which were introduced primarily through the Immigration Acts of 2014 and 2016 with the aim of making life extremely difficult for people who cannot prove their legal status in the UK.<sup>82</sup> These also include the Illegal Working Offence which criminalises work by an individual disqualified as a result of their immigration status, either knowing or having reasonable cause to believe they are disqualified.<sup>83</sup> The impacts of the ‘Hostile Environment’ are felt most sharply by irregular workers, but in practice extend far beyond this group,<sup>84</sup> including by creating a culture of fear that deters all migrant workers from reporting abuse, as discussed in the ‘cross sectoral analysis’ section.

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<sup>78</sup> *ibid.*

<sup>79</sup> Sehic and Vicol ‘Systemic Drivers’ (n 58) 21.

<sup>80</sup> Labour Exploitation Advisory Group, ‘Opportunity Knocks: Improving Responses to Labour Exploitation with Secure Reporting’ (Focus on Labour Exploitation 2020) 6, 25.

<sup>81</sup> *Ibid* 11; ACL Davies, ‘The Immigration Act 2016’ (2016) 45 *Industrial Law Journal* 431, 438.

<sup>82</sup> JCWI, ‘The Hostile Environment Explained’ (*Joint Council for the Welfare of Immigrants*, 17 July 2020) <<https://www.jcwi.org.uk/the-hostile-environment-explained>> accessed 19 November 2023; Christopher Rowe, ‘Falling into Line? The Hostile Environment and the Legend of the “Judges” Revolt’ (2022) 85 *Modern Law Review* 105.

<sup>83</sup> Immigration Act 2016, s34.

<sup>84</sup> Melanie Griffiths and Colin Yeo, ‘The UK’s Hostile Environment: Deputising Immigration Control’ [2021] *Critical Social Policy* 0261018320980653, 10–13; Rowe (n 82) 110.

## 4. Agriculture work – Empirical findings & analysis

### Interviewee profile

We conducted twenty interviews with migrant agriculture workers. Eighteen interviewees were male, and two were female. All workers were from Indonesia and had either returned to Indonesia after completing their first stay in the UK (17) or were still in the UK (3).<sup>85</sup> All twenty workers had experience working on farms in the UK. In terms of visa status, all workers had entered the UK on the SWV, with one worker in the UK having overstayed their visa. Two workers were unsure about their current immigration status in the UK.

### Pay and working hours

Issues around pay and working hours were frequently mentioned in our interviews, the significance of which was corroborated by the surveyed organisations supporting seasonal agriculture workers.<sup>86</sup> The most pressing issue for the majority of workers was the ability to save up enough money to be able to send home. Some interviewees expressed great concern about the low amounts of money they were able to remit.<sup>87</sup> This situation was exacerbated by the large amount of debt some workers had incurred coming to the UK, the limited time and hours some were able to work, as well as the short-term nature of the SWV.<sup>88</sup> One worker described having to work 3.5 months full time to pay off the debt,<sup>89</sup> and three workers told us they were unable to fully pay off their debt.<sup>90</sup> As detailed below, our research uncovered instances of workers being charged between £2,000 to £4,000 to come to the UK, although it was not always clear exactly what these amounts were meant to cover. Furthermore, most workers had made the decision to come to the UK on the basis of having been promised a two-year contract

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<sup>85</sup> See the methodology section in Part 1 for explanation.

<sup>86</sup> Five out of the seven organisations surveyed (71.43%) highlighted income insecurity as the most pressing challenge faced by seasonal agriculture workers.

<sup>87</sup> Interview with Sulaiman 2/23.

<sup>88</sup> Focus group 1 with workers and experts, 11/2022; Focus group 2, 9/2023; several workers, e.g., Elang (3/23) and Eman (3/23) mentioned wanting to stay longer.

<sup>89</sup> Interview with Agung 3/23.

<sup>90</sup> Interview with Eko 2/23; interview with Andi 3/23; interview with Taufik 3/23.

with two 6-month periods of work in the UK,<sup>91</sup> with several workers hoping to be able to save up money or send remittances to family on their second 6-month stay.<sup>92</sup>

Most interviewees reported being paid either a standard hourly rate of £10.10 per hour (above NMW at the time, brought back down to National Living Wage (NLW) in April 2023), or a piece rate (e.g., per basket of fruit picked), which made it possible for experienced workers to earn above the standard rate. Several workers also mentioned receiving the standard rate of £10.10 even when they had not picked enough fruit to get paid above minimum wage, demonstrating employers' compliance with NLW requirements.<sup>93</sup>

However, multiple workers told us that if they had to be paid the hourly rate while picking fruit, a role that normally carries the 'per basket' piece rate, this indicated they had not met their picking target. This could lead to warnings due to the fact that they were perceived as picking too slowly,<sup>94</sup> which is against the guidance that workers should not be penalized 'for failing to work at the fair piece rate.'<sup>95</sup> We were unsure whether workers' inability to pick enough fruit was due to worker speed or external factors, such as a lack of available ripe fruit to pick and long distances workers had to walk to reach the assigned harvesting spots. Additionally, some workers were uncertain whether they earned more or less than £10.10 when paid per basket rather than per hour, demonstrating difficulties for workers to ensure they were paid their promised minimum hourly rate.<sup>96</sup>

Workers expressed varying opinions about the different systems of pay for fruit picking and other tasks. Some workers were happier with the standard rate and wanted to be paid per hour. Others felt they could earn significantly more if they were paid per basket.<sup>97</sup> Workers' opinions about whether it was preferable to work maintenance tasks or in fruit picking also varied due to the seasonality of the work. Weather conditions, and

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<sup>91</sup> Out of 20 interviewees, 15 explicitly mentioned 2-year contracts with their Indonesian agency.

<sup>92</sup> Focus group 1 12/2022 & Focus Group 2 9/2023; interview with Gesang 3/23.

<sup>93</sup> Interview with Sulaiman 2/23, interview with Ujang 2/23.

<sup>94</sup> Interview with Ujang 2/23.

<sup>95</sup> UK Visas and Immigration 'Workers and Temporary Workers: Guidance for Sponsors: Sponsor a Seasonal Worker' Version 04/23 (2023), < <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>> accessed on 26 November 2023. We address the disciplinary process further below.

<sup>96</sup> Interview with Gesang 3/23.

<sup>97</sup> Interview with Gesang 3/23; interview with Ismail 3/23.

the peaks and troughs of available work, affected whether workers felt like they were being paid enough.

Some interviewees reported that they worked 50 or more hours per week.<sup>98</sup> Most interviewees working long hours were willing to do so, as their expenses to come to the UK were high and they could save more money this way. However, it was not clear whether they had made a free and informed decision to opt out of working time limits. If their decision was not free and informed, then instances of excessive overtime may constitute one of the ILO indicators of forced labour.

Those working during low season reported being offered fewer hours than the minimum promised to them in their contracts. Workers also mentioned working fewer months than the six months promised by the recruiters in Indonesia, in some cases substantially less (e.g., two months instead of six).<sup>99</sup> One interviewee said that he had been unable to pay back the costs of coming to the UK due to the lack of work available: 'if I worked for six months, I think it'd be enough [money]. But I only got the opportunity to do the job for two months, because winter came and there's no more jobs on the farm.'<sup>100</sup> This interviewee's SVW ended before the rule change towards a guaranteed minimum average of 32 hours came into effect. However, his main concerns were regarding duration of the contract, not hours per week.

Multiple other workers, one surveyed employer, as well as one employer representative interviewee, mentioned cases of contracts shorter than six months, which is not prohibited under the SVW. Workers' experiences therefore suggest that the newly guaranteed average of 32 hours per week alone does not suffice. This must be coupled with a minimum contract duration, to allow workers to ensure they can earn enough to cover their costs and avoid unrecoverable debt, provide clarity about their expected length of stay in the UK, and to address false promises from recruitment agencies.

## Recruitment, contracts, and changing employers

All workers were recruited through agencies in Indonesia, predominantly *PT Al Zubara* and their partner organisation *LPK (Lembaga Pelatihan Kerja)*, as well as multiple unidentified training agencies in Indonesia. Workers interviewed for this research had

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<sup>98</sup> See e.g. Interview with Ismail 3/23; interview with Herman 3/23.

<sup>99</sup> Interview with Bagus 2/23; interview with Andi 3/23.

<sup>100</sup> Interview with Bagus 2/23.



contracts with the Indonesian agencies for a two-year duration, of which they expected to work two 6-month seasons in the UK, with a 6-month waiting period back in Indonesia in-between. Contracts for the 6-month stay in the UK were provided by the UK operator AG Recruitment.

For Indonesian workers, the loss of AG Recruitment's license prevented their being able to return on a second SWV, leaving some in debt and most without any of the expected savings that incentivised them to sign up for the scheme in the first place. Workers have not been informed as to whether and under what conditions they could possibly return. As one interviewee described: 'It's not clear about the situation. Whether we have to pay another administration fee, or what. It's still rumours.'<sup>101</sup>

The structure of the SWV means that these workers have no alternative routes of return available to them, unless a different scheme operator starts recruiting from Indonesia, for which there is currently no indication. The suspension of AG Recruitment also makes it difficult for Indonesian workers to reclaim their overpaid tax from HM Revenue & Customs (HMRC), as they now lack a UK-based agent to support them in their claims. Some have tried to seek help directly from their former employers in the UK, but have not received any responses.<sup>102</sup> This highlights the need to have a separate tax code and / or accessible system for reclaiming tax for workers on the SWV instead of relying on scheme operators to administer claims.

The situation of Indonesian workers is unique due to AG Recruitment's suspension.<sup>103</sup> However, many of the interviewees' experiences are relevant to workers from other countries of origin, with different scheme operators. Equally, promises by the Indonesian recruiters that workers would be able to return to the UK at least once are likely not unique, and similar set-ups may exist for workers in other countries. There are widespread risks for all seasonal agriculture workers created by the lack of guaranteed redeployment of workers or other appropriate measures to make up for the suspension of a scheme operator, placing them in a precarious financial position.

Suspending a scheme operator without mitigating measures for affected workers also negates the expectation of a second season, which as mentioned above, was a deciding

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<sup>101</sup> Interview with Eko 2/23.

<sup>102</sup> Focus group 2, 9/2023; conversations between SEEAC and workers.

<sup>103</sup> It is also important to note that AG Recruitment was not suspended as a scheme operator due to any of the issues experienced by workers outlined in this report, but due to their inability to meet their stringent targets for their workers to leave the UK at the end of their SWV.

factor in the interviewed workers' decision to come to the UK on the SWV. Relatedly, the need for seasonal agriculture workers to come at least a second time in order to repay debts and make some money for themselves, points to the SWV scheme not being a 'money making' one for a large number of such workers, whose vulnerable position may be abused by the various actors involved (e.g., local recruitment agencies, scheme operators, employers, etc.), pointing to another ILO indicator of forced labour.

The workers paid large sums to Indonesian recruitment agencies, with total amounts varying significantly. Some workers mentioned having paid 'official fees' of 48 million Indonesian rupiah (approximately £2,500) to the Indonesian recruiters, as well as additional payments, the precise nature of which was not clear. Others paid total sums of up to 80 million Indonesian rupiah (approximately £4,000), which included accommodation while in Indonesia, and the costs of visas and plane tickets. These figures suggest a lack of effective monitoring of partner agencies in sending countries by their UK counterparts to prevent recruitment fees, which are illegal in the UK, as well as fees that may not be illegal but were for services that were not a requirement for the visa. Potential exploitation by agencies was the second most chosen key challenge for seasonal agriculture workers according to the support organisations surveyed.<sup>104</sup>

Workers are charged significant sums to secure work in the UK and then have only a maximum of six months to make sufficient money to repay them (with multiple workers reporting working for fewer months). This occurs while workers are forced to rely on the recruiters and scheme operators to facilitate a return for a second year to recoup the costs and / or be able to save money or support their families. The short visa length is a specific issue for the SWV, which surveyed employers also commented on, noting that it would be preferable to have an option for longer durations (such as nine months) as well as criticising the requirement for workers to be away for at least six months.<sup>105</sup>

Another prevalent issue that came through in our interview analysis was that of workers having two or more written versions of their contracts, often one with the Indonesian recruiter and one with the farm in the UK, as well as having working conditions that did not match what they had been promised pre-departure. All workers had written contracts, but some workers mentioned a discrepancy between their working reality and

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<sup>104</sup> Four out of seven organisations.

<sup>105</sup> There was a one-off exemption that allowed workers who had been on the 2022 SWV scheme to return in 2023 after five months instead of six months.

the terms they were promised.<sup>106</sup> Most commonly, these related to working hours, with higher minimum hours promised than were actually available. One workers told us that he ‘worked only three times in a week. [...] It was not full time.’<sup>107</sup>

Workers also mentioned that the contract stated pay per hour, but fruit-pickers were paid per basket.<sup>108</sup> Additionally, the actual deductions for accommodation were higher than in the original contract (£70 per week instead of £60 per week) for some workers.<sup>109</sup> Such widespread discrepancies between what was promised and what was actually the case may point to deception, which is one of the ILO indicators of forced labour.

Debt incurred due to travel and recruitment fees was a key concern for our interviewees, particularly as their working hours and pay did not match their expectations and / or the recruiters’ promises. The current arrangement for the SWV places the burden of visa and travel costs on workers, contrary to the ILO’s principles and the Institute for Human Rights and Business’s ‘Employer Pays Principle,’ whereby all costs associated with recruitment including travel and visa costs should be borne by the employer.<sup>110</sup>

Implementing the ‘Employer Pays Principle’ would reduce workers’ risk of debt bondage (an ILO indicator of forced labour).<sup>111</sup> However, there is very little appetite for this from the employer side.

Some workers expressed wanting to change employers due to a lack of sufficient work available but found this difficult in practice.<sup>112</sup> One worker told us that she wanted to move because of the working conditions on the farm, but was retained because she was ‘among the good pickers.’<sup>113</sup> Her request was not passed on by the farm to the scheme operator, as they wished to keep her. Despite the possibility of requesting a change of employer within the scheme operator, workers reported several barriers,<sup>114</sup> including not knowing who to contact to make a change beyond their supervisor on the farm,<sup>115</sup> and being told by their employers that it would make more sense to return home early if there

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<sup>106</sup> Focus group 2, 9/2023.

<sup>107</sup> Interview with Andi 3/23.

<sup>108</sup> Interview with Bagus 2/23.

<sup>109</sup> Interview with Bagus 2/23.

<sup>110</sup> IHRB and Leadership Group for Responsible Recruitment, ‘Six Steps to Responsible Recruitment - Implementing the Employer Pays Principle’ <[https://www.ihrb.org/uploads/member-uploads/Six\\_Steps\\_to\\_Responsible\\_Recruitment\\_-\\_Leadership\\_Group\\_for\\_Responsible\\_Recruitment.pdf](https://www.ihrb.org/uploads/member-uploads/Six_Steps_to_Responsible_Recruitment_-_Leadership_Group_for_Responsible_Recruitment.pdf)> accessed 21 August 2023; ILO, ‘General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs’ (International Labour Office 2019).

<sup>111</sup> International Labor Organization, ‘Indicators’ (n 4).

<sup>112</sup> Interview with Andi 3/23, Interview with Doni 3/23.

<sup>113</sup> Interview with Siti, 3/23.

<sup>114</sup> Interview with Siti, 3/2.3

<sup>115</sup> Interview with Doni 3/23; Interview with Ujang, 2/23.

was insufficient work.<sup>116</sup> Without assistance to change return flights that have already been booked, this will either mean substantial costs for the worker or a period without income in the UK.<sup>117</sup>

Whereas in theory the SWV allows workers to request a change in employer within their same scheme operator, workers were unaware of how to do this in a variety of contexts: when their employment was terminated by the employer (either because they were dismissed or because there was no work available), as well as when workers wanted to change employers for other reasons, such as insufficient hours or unacceptable conditions. Being unable to change employers in practice can be an indication of forced labour, according to the ILO.<sup>118</sup>

The key obstacles to workers changing employers were the lack of accessible information about their rights in case of termination, as well as who to contact if they wanted to change employers. Lack of recourse to public funds and potential loss of employer-provided accommodation further exacerbated these issues and put workers at risk of destitution. Our interviews and focus groups showed that those workers who had been offered insufficient work or had been dismissed struggled to make ends meet while they were waiting to return home. Consequently, research participants strongly supported recourse to public funds or a dedicated fund for workers in this situation.<sup>119</sup>

Nonetheless, employers of seasonal agriculture workers in our survey rejected the idea of extending recourse to public funds, stating 'this a scheme that is open to workers for a short period of time, this is not a settlement scheme',<sup>120</sup> and that the 'visa is for working in the UK and therefore should not have [access to] Universal Credit... Realistically the scheme is for working in the UK and should not be a route for immigration.'<sup>121</sup> Considering that even those workers completing their term incurred debts or were unable to save or remit significant funds, this is in direct contrast to the employers' supposed notion of the scheme as a 'scheme for working in the UK,' which assumes workers' ability to financially gain from employment in the UK.

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<sup>116</sup> Focus group 2 9/2023.

<sup>117</sup> Focus group 1 12/2022.

<sup>118</sup> ILO Special Action Programme to Combat Forced Labour (SAP-FL) International Programme on the Elimination of Child Labour (IPEC), 'Hard to See, Harder to Count – Survey Guidelines to Estimate Forced Labour of Adults and Children' (2011) 25.

<sup>119</sup> An option also supported by our Focus Group 2 9/2023.

<sup>120</sup> Respondent 3, Agriculture Employers survey.

<sup>121</sup> Respondent 4, Agriculture Employers survey.

## The role of intermediaries

Drawing on the preceding discussion and analysis, there are numerous issues arising from the role of intermediaries, including scheme operators and agencies.<sup>122</sup> One survey respondent from an organisation supporting seasonal agriculture workers was critical of the powers given to scheme operators as part of the SWV. They saw this as part of government outsourcing the running of the scheme ‘to private sector actors, who are not equipped to take on this role,’<sup>123</sup> and as contributing to exploitation and deterring workers from addressing exploitative conditions.

An employer in the sector we surveyed also noted that having scheme operators creates a longer supply chain, which can exacerbate vulnerability to exploitation. For them, a sponsorship system similar to the old Tier 2 visa would be preferable, in terms of opening up the base of who can act as a sponsor, removing the role of scheme operators altogether. Given insights from other research, as well as the care sector analysis for this project, such a change could still make workers vulnerable to exploitation.

Alongside general concerns regarding the structure of the scheme and the role allocated to scheme operators, surveyed employers also raised issues relating to scheme operators and the local recruitment agencies they partner with, such as failure to manage expectations, lack of detailed information provided to workers, and over-recruiting. These issues also arose during the interviews with workers, revealing the potentially key role intermediaries play in fuelling deception, an ILO forced labour indicator. For example, it is not clear whether the promise of second season was made in good faith. There is a pressing need for greater regulation of these practices, in particular for local agencies, which appear to charge a series of dubious fees that often constituted the biggest repayment expense for our agriculture worker interviewees.

## Discrimination

Over half of our interviewees reported some form of discrimination relating to race / ethnicity or nationality. This was most often from colleagues and supervisors, who may have showed preferential treatment to workers of their own nationality. According to our

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<sup>122</sup> See, in particular the section titled ‘Recruitment, Contracts and changing employer’ above.

<sup>123</sup> Respondent 1, Support Organisations Survey.

interviewees, foremen sometimes gave people from their country rows with more fruit to pick or switched baskets to favour certain nationalities.<sup>124</sup> Another example of racist and dehumanising behaviour, which also affected workers' earnings, was being referred to as 'Indonesia'.<sup>125</sup> According to one interviewee, multiple Indonesian workers would respond to the call, which interrupted their fruit-picking, adding financial disadvantage to the discriminatory behaviour.

## Accommodation & Surveillance

All the workers we interviewed reported being housed in caravans near their workplaces. Workers were housed with between 3-5 other workers in each caravan, and were segregated by sex – and, often, nationality. Worryingly, our focus group participants had heard of mixed sex caravans. The conditions in the caravans were variable. Some reported that everything was clean and in working order,<sup>126</sup> while others reported several broken appliances, lack of Wi-Fi,<sup>127</sup> or malfunctioning heating systems.<sup>128</sup> Several interviewees reported that five workers were housed in a caravan with 3 rooms, which necessitated some workers sleeping on a sofa or sharing a room.<sup>129</sup> Some of the caravans had an internal toilet, but others were required to use an outdoor toilet,<sup>130</sup> and in one case, a public bathroom.<sup>131</sup>

It seems that between £65-80 per week was deducted for accommodation from the workers' wages, excluding the cost of utilities (which were usually shared between the residents). The deductions appear disproportionate compared with equivalent costs of renting caravans. For example, the rental cost for a three-bedroom static caravan in Kent may be around £225,<sup>132</sup> whereas six workers renting a comparable caravan would be paying in excess of £420 per week.

Several interviewees told us that employers regularly inspected the caravans to ensure that they were being kept clean (see below), suggesting a lack of privacy and autonomy in the space.

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<sup>124</sup> Interview with Ujang 2/23, interview with Siti 3/23.

<sup>125</sup> Interview with Siti 3/23.

<sup>126</sup> Interview with Sulaiman 2/23.

<sup>127</sup> Interview with Andi 3/23; interview with Ajij 3/23.

<sup>128</sup> Interview with Ujang 2/23.

<sup>129</sup> Interview with Eko 2/23; interview with Gesang 3/23.

<sup>130</sup> Interview with Budi 2/23.

<sup>131</sup> Interview with Ajij 3/23.

<sup>132</sup> Right Move, <[https://www.rightmove.co.uk/properties/#/?channel=RES\\_LET](https://www.rightmove.co.uk/properties/#/?channel=RES_LET)> accessed 9 October 2023.

## Health and safety

Most interviewees reported that they had not witnessed any inspections by government agencies. In some cases, workers were unaware of the concept of workplace inspections for health and safety or worker welfare. Some workers witnessed external inspections being carried out, but often they were not sure who was carrying out the inspection or the scope of their mandate. Several workers stated that they had seen the Indonesian Embassy carry out inspections.<sup>133</sup> One worker mentioned an inspection from the UK government, but questioned the usefulness of the inspection, saying ‘it was only questions like “are you comfortable with this tool? Can you use it?”.’<sup>134</sup> Beyond these few instances, workers mostly referred to accommodation inspections, which workers interpreted to be about their level of tidiness,<sup>135</sup> rather than adequate standards of living: ‘if you were not tidy then you’d get a penalty.’<sup>136</sup>

Access to healthcare varied in our interviewees’ experience. Some workers reported having access to a doctor or local clinic and feeling able to take time off work when necessary—some were given the choice to rest in the caravan and see a doctor.<sup>137</sup> Several reported inadequate treatment: being given medication for a rash by a supervisor instead of being taken to a doctor;<sup>138</sup> being told to keep working while feeling unwell,<sup>139</sup> and not being permitted to call emergency services when a co-worker fainted at work.<sup>140</sup>

## Rights, information and training

Interviewees’ knowledge of their workplace rights was extremely limited, although most workers we spoke to knew how much they were paid and whether any deductions had been taken from their pay. Given the prevalence of reactive enforcement, which is initiated on the basis of worker complaints, lack of awareness or hesitance in raising such a complaint, further contributes to the proliferation of exploitation. While some workers reported that they had been provided with holiday pay,<sup>141</sup> for others, lack of

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<sup>133</sup> Interview with Putra 3/23.

<sup>134</sup> Interview with Andi 3/2.3

<sup>135</sup> Interview with Ujang 2/23, Interview with Sulaiman 2/23.

<sup>136</sup> Interview with Ujang 2/23.

<sup>137</sup> Interview with Ajij 3/23.

<sup>138</sup> Interview with Eko 2/23.

<sup>139</sup> Interview with Sulaiman 2/23.

<sup>140</sup> Interview with Siti 3/23.

<sup>141</sup> Interview with Siti, 3/23.

knowledge of legal entitlements meant they continued to work with illness,<sup>142</sup> and were not given rest breaks, nor provided with leave entitlements.<sup>143</sup> Multiple workers were either unaware of sick leave or stated that they did not receive sick pay for days they could not work. Relatedly, an agriculture employer suggested in the survey that scheme operators and recruitment agencies fail to adequately inform their workers about the type of work they will be doing, and in general do not manage expectations, which, in turn may amplify situations of deception.

Based on several interviews, we understand that most of the workplaces operated an internal disciplinary system consisting of three warnings, which workers understood could lead to the termination of employment and repatriation back to Indonesia given the difficulty switching employer. One interviewee reported, admittedly hearsay, that some workers had been issued with a termination / repatriation notice, and when these were queried with the agency in Indonesia, no action was taken.<sup>144</sup> Even if workers had no direct experience with the disciplinary system, fear about the consequences of being given a warning weighed on their minds. None of the workers reported knowledge of any internal appeal system to challenge the warning or the order for termination / repatriation.

Some workers were under the impression that termination of contract with one employer meant automatic loss of visa status and risk of repatriation. They were unaware of a possibility of the scheme operator finding them a new employer. In the context of workers being terminated due to lack of work available on the farm they worked, some interviewees were told that there was no point in trying to find an alternative employer. Workers' lack of contact persons at the scheme operators made them overly reliant on their employers to help them find alternative employment –for which employers have no incentive.

Workers also had no information about support they could access in the event of a disciplinary procedure being initiated. Sponsors are under an obligation to ensure that they have procedures in place that allow workers to report any concerns.<sup>145</sup> One interviewee reported that he was told that all issues should be resolved with the foreman,<sup>146</sup> and another was asked to contact the recruiter in Indonesia or the

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<sup>142</sup> Interview with Sulaiman 2/23.

<sup>143</sup> Interview with Siti, 3/23.

<sup>144</sup> Interview with Budi 2/23.

<sup>145</sup> UK Visas & Immigration (n 95), SE3.4.

<sup>146</sup> Interview with Eko 2/23.



Indonesian Embassy.<sup>147</sup> When workers encountered issues, unsurprisingly, these avenues did not prove to be a useful source of information or assistance with regards to finding a suitable resolution.

Some workers reported receiving training prior to their departure from Indonesia, which ranged in length from 1-2 weeks. Some workers paid for these trainings, even though the SWV does not require any prior training. Some of the training costs were for English language training (10 million rupiahs or approximately £500), which many workers never received. There should be no need for English language training as information should be provided to workers in a language they understand, and there are no language requirements in the rules for the SWV route. However, information in the workers' mother tongue often was not available in reality. There seems to have been limited training in the UK, although one worker told us that they had received two weeks of training in the UK, paid at 'training level' wages.<sup>148</sup>

## Support networks and unions

A significant number of workers reported feeling isolated and unsupported during their time in the UK. Cultural and, particularly, language barriers prevented deeper bonds forming with workers from other nationalities. Those workers who had some fluency in English generally fared better in this regard.<sup>149</sup> Almost all stated that they had had very little contact with any British nationals during their stay in the UK.<sup>150</sup>

The farms' remoteness contributed to the sense of isolation, since getting to places where workers could have social interactions was quite difficult. Several workers told us their farm employers provided weekly bus services to take workers into town.<sup>151</sup> These trips afforded few opportunities for social interaction since they were short (between 30-120 minutes) and reserved for the purposes of picking up provisions. If workers could not make this trip and needed to go into town, they had to rely upon unreliable public transport systems,<sup>152</sup> if public transport was available at all. Isolation, including geographic isolation, is included in the ILO indicators of forced labour. Those workers

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<sup>147</sup> Interview with Putra 3/23.

<sup>148</sup> Interview with Eko 2/23.

<sup>149</sup> E.g., interview with Ismail 3/23.

<sup>150</sup> E.g., interview with Eman 3/23.

<sup>151</sup> E.g. interview with Eko 2/23.

<sup>152</sup> E.g. interview with Siti 3/23.

who could access public transportation reported that they were able to use their day off to go into town and enjoy its amenities.<sup>153</sup>

None of the workers we spoke to had been approached by a trade union, nor had they actively sought one out themselves. Workers' interactions with trade unions had been limited both in the UK and at home and our respondents did not necessarily view trade union membership as a priority. However, they also lacked information about the services provided by trade unions to members in the UK, which might make trade union membership more relevant to them. The trade union respondent in our survey concurred that it was very difficult to organise seasonal agriculture workers, and attributed this to anti-union employers, difficulties reaching workers, as well as their temporary visa status. An interviewed employer representative's perspective was that employers would be quite happy to grant unions and support organisations greater access to workers. However, two out of the three agriculture employers surveyed said that they were not sure whether they would like such assistance.

Difficulties in accessing support were also reflected in the survey responses by support organisations, where all noted that it was either difficult (5 out of 7) or very difficult (2 out of 7) to access and support migrant agriculture workers. When asked about the three main challenges they face in that regard, most respondents cited workers' fear of raising concerns (5 out of 7), followed by employers' restrictions or resistance, and lack of awareness of such organisations by workers (4 out of 7 each).

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<sup>153</sup> Interview with Damar 3/23.

## 5. Care work – Empirical findings and analysis

### Interviewee profile

We conducted fifteen interviews with migrant care workers (MCWs) in the UK. All interviewees were from the Philippines (seven) or African countries (one from Kenya, two from South Africa, two from undisclosed West African countries, one from Congo, one from Nigeria, and one from Zimbabwe). Nine were working in private homes and six were working in institutional settings such as hospitals and care homes. Five held the H&CWV, two held the ODWV, four reported holding other types of visas or were unsure of their exact visa,<sup>154</sup> and five had no formal immigration status, since their initial visa had expired. Five were men and ten were women (including one trans woman).

### Pay and working hours

Our analysis highlights a prevalent issue of low pay among MCWs, regardless of the nature of their workplace and visa status. Many interviewees mentioned that their income was barely enough to afford everyday necessities in the UK –for example: ‘it’s rarely enough for my basic needs like rent, to make up for rent, food, clothing and I rely on, actually, my sister who very kindly offers me help sometimes.’<sup>155</sup> Almost half reported being paid below the NMW. Interviewees with irregular migration status were particularly vulnerable to labour exploitation with two being paid less than £5 per hour. One interviewee with irregular migration status was only paid approximately £3 per hour, but her employer would deduct accommodation from her salary.<sup>156</sup> The ODWV holders were also at pronounced risk of low pay, with one, brought to the UK by her Kuwaiti employer to care for a family member, only paid £20 once during her stay and given £10 on one other occasion to buy food after they arrived in London.<sup>157</sup> Another worker came to the UK to care for her ill employer from Hong Kong but was not paid at all while in the UK.<sup>158</sup> Among seven interviewees who were paid below the NMW, four were working in private homes and three in institutional settings, such as hospitals and care homes.

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<sup>154</sup> The visa statuses these workers reported was not entirely clear, referring for example to ‘business visa,’ which is not a known route for work in the sector. This may suggest deception by an agent arranging the visa or could arise from confusion.

<sup>155</sup> Interview with Diwa 5/23.

<sup>156</sup> Interview with Dolores 3/23.

<sup>157</sup> Interview with Tala 5/23.

<sup>158</sup> Interview with Angela 6/23.

Deductions likely relating to illegal recruitment fees were also an issue that came through in our interviews. One interviewee on the H&CWV indicated that she had paid the agency, but that her employer was not aware of the agency fee since it was illegal.<sup>159</sup> Another, a domiciliary carer on the H&CWV, was initially told she would not have to pay for visa or solicitors' fees, but stated that this changed after a month when she was informed these items would all be deducted, and that she would have to start paying for accommodation, highlighting an instance of deception.<sup>160</sup> The care work focus group also pointed to this issue, with reports that many agencies in the Philippines organising nurses' and care workers' travel to the UK charge significant fees, which may create situations of debt bondage.

Our analysis supports existing findings that a lack of pay for travel time and night shifts is common among MCWs.<sup>161</sup> This was another significant concern raised by three interviewees (two working in institutional settings and one domiciliary carer).<sup>162</sup> For example, a H&CWV holder working as a domiciliary carer commented that they were often sent to approximately 15 houses in a day, without their travel time being paid at all.<sup>163</sup> They were only paid for 45 minutes per house to complete a series of tasks including 'fetch everything, wash clothes, dishes, prepare meals'. Two domiciliary carers received no pay for their night work at all.<sup>164</sup> Four interviewees (two H&CWV visa holders, one ODW visa holder and one irregular worker) were not paid holiday pay and / or sick pay.

Long working hours were common in both domiciliary and institutional settings regardless of visa status. Three out of four survey respondents from organisations supporting care workers identified extensive working hours as a key challenge for workers in the sector. Seven interviewees reported that they had to work for more than 50 hours per week. This included five on the H&CWV, one of whom noted that he was working for 55 hours compared with the 44 stated in his contract, and that he would often get 'pulled back in' to work during breaks.<sup>165</sup> As an extreme example, an ODWV holder was required to work for 24 hours a day (on-call at any time).<sup>166</sup> This theme was echoed in the final focus group, where participants stressed that they work all hours

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<sup>159</sup> Interview with Maria 4/23.

<sup>160</sup> Interview with Jasmine 3/23.

<sup>161</sup> Migration Advisory Committee, 'Adult Social Care and Immigration' (n 15).

<sup>162</sup> Interviews with Kojo 3/23, interview with Jasmine 3/23, and interview with Dolores 3/23.

<sup>163</sup> Interview with Jasmine 3/23.

<sup>164</sup> Interview with Ada 3/23; interview with Kehinde 6/23.

<sup>165</sup> Interview with Sofia 7/23.

<sup>166</sup> Interview with Angela 6/23.

including ‘on call’ time, without these being fully counted or remunerated. Excessive overtime, beyond what is legally allowed, and without appropriate pay and / or the genuine agreement by the worker, is an ILO indicator of forced labour.

## Contract and changing employers

Our interviews revealed difficulties in changing employers on the H&CWV, which leaves migrant workers at risk of being trapped in exploitative or abusive working conditions. The domiciliary carer on the H&CWV mentioned above who had fees added after a month, had left the employer because of the low salary and exploitation, and was still waiting for sponsorship to be resolved, working temporary jobs in the meantime.<sup>167</sup> Due to the fragmented nature of the care sector, with an opaque network of recruitment agencies and other intermediaries, workers do not necessarily have contact with eligible employers who are recruiting and could sponsor workers. Additionally, care workers may have to pay costs associated with transfers to new employers.<sup>168</sup> Thus, the protective dimension of being able to change employers is negligible in practice, increasing vulnerability for workers. These difficulties must be understood in light of the complex stipulations for changing employers discussed in the ‘Background and legal framework’ section. Repayment clauses create a further obstacle, which can make it impossible in practice to change employer and is a possible indication of forced labour according to the ILO.<sup>169</sup>

In a recent letter to the Care Minister, UNISON stressed the exploitative conditions of migrant care workers resulting from high recruitment fees and the withholding of wages in relation to training and / or accommodation fees.<sup>170</sup> Indeed, agency recruitment often leads to costs being passed on to candidates.<sup>171</sup> The significant deductions that some interviewees referred to reinforce these concerns and the need for greater regulation of these practices.

<sup>167</sup> Interview with Jasmine 3/23.

<sup>168</sup> Neal (n 26) 30; McAndrew (n 23) 13.

<sup>169</sup> ILO Special Action Programme to Combat Forced Labour (SAP-FL) International Programme on the Elimination of Child Labour (IPEC), ‘Hard to See, Harder to Count – Survey Guidelines to Estimate Forced Labour of Adults and Children’ (2011) 25.

<sup>170</sup> Fatima Ayad, ‘Migrant Care Staff in UK “Exploited and Harassed” by Employers, Says UNISON’ *UNISON National* (10 July 2023) <<https://www.unison.org.uk/news/press-release/2023/07/migrant-care-staff-in-uk-exploited-and-harassed-by-employers-says-unison/>> accessed 29 October 2023.

<sup>171</sup> Shanti Das, ‘Migrant Care Workers Came to Help the UK. Now They’re Trapped in Debt Bondage’ *The Observer* (18 June 2022) <<https://www.theguardian.com/world/2022/jun/18/migrant-care-workers-uk-debt>> accessed 13 March 2023; Ray Mwareya, ‘How Nurses Recruited from Zimbabwe Are Being Caught in UK “Bonded Labour” Schemes’ *The Telegraph* (28 August 2022) <<https://www.telegraph.co.uk/global-health/climate-and-people/how-nurses-recruited-zimbabwe-caught-uk-bonded-labour-schemes/>> accessed 4 September 2022.

Implementing the ILO's principles and the Institute for Human Rights and Business's 'Employer Pays Principle,' would require all agency and visa costs related to recruitment and sponsorship to be borne by employers, which would significantly reduce workers' risk of debt bondage, an ILO indicator of forced labour, and improve their de-facto ability to change employers.

Another prevalent theme was a lack of written contracts and / or working conditions that did not match what had been promised to workers prior to arrival. Five interviewees reported having no written employment contract. This also reflects findings in our initial focus group, where some participants –particularly those working for private / individual employers– reported not being given contracts.

In addition, seven interviewees, often overlapping with those lacking a written contract, reported a discrepancy between the terms they were promised and their working reality, pointing to issues of deception in the sector, another ILO forced labour indicator. Most commonly, these related to pay rates –for example, a H&CWV holder working in an institutional setting reported being paid around £10 per hour,<sup>172</sup> even though his pay was supposed to be in the region of £20 per hour after the first year. Another interviewee stated that their agreement had been £10 for every two hours or £25 for each 5-hour shift, already well below the NMW, but that even this was not followed.<sup>173</sup>

Other interviewees raised broader discrepancies. One ODWV holder indicated that her contract stated 8 hours per day, £15 per hour, with insurance, food allowance, sick pay and holiday pay, but that none of these terms were implemented.<sup>174</sup> Both focus groups saw reports of tasks that were much wider than those in job descriptions. One participant noted that, while working as a carer, she had also been asked to serve extended family and visitors, as well as do gardening, without any additional pay, while another mentioned additional babysitting and cleaning.

## Discrimination

Discrimination was the other key challenge identified by 3 out of 4 support organisations in our survey. Our interview findings reveal prevalent discriminatory treatment relating to

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<sup>172</sup> Interview with James 3/23.

<sup>173</sup> Interview with Miriam 4/23 (expired visa).

<sup>174</sup> Interview with Angela 6/23.

race / ethnicity, migration status and / or nationality across different migration statuses and work types. Most often, discrimination came from employers and from clients or their family members, and in fewer cases from colleagues, or from managers who favoured their compatriots. A Kenyan interviewee working in an institutional setting on a H&CWV stated: 'I don't feel psychologically safe because they treat us like we are dispensable, like we are expendable' and believed that the low pay and lack of social benefits he and other minority workers received was based on discrimination.<sup>175</sup> Another worker told us that she was bullied by her client's children and grandchildren,<sup>176</sup> and suspected this was due to racism, stating 'maybe it's because I'm from Africa and the others are white.' In a home-based setting, one interviewee reported religious discrimination from her employer, who thought of Christians as 'dirty.'<sup>177</sup>

These views echo reports from our first focus group of discrimination on the basis of race, for example, regarding annual leave, overtime, and training. The final focus group further emphasised how discrimination might also come from peers. One participant noted that if a co-worker is the same nationality as the employer, they would be privileged and 'might manipulate you and act as if they are the boss.'

## The Emotional and 'private' nature of work

Our findings also highlight the emotional and private nature of care work as another significant factor contributing to MCWs' vulnerability to abuse and exploitation. This was echoed by support organisation and trade union respondents in our surveys.

Interviewees identified various types of emotional pressure associated with being closely involved in the everyday lives of their clients and their families. Despite the fact that these pressures are seen as 'part of the job', they can have a long-term impact on carers and contribute to mental health problems. For example, a domiciliary carer stated: 'Sometimes patients may scream due to their illness... It's important to understand that this behaviour can be absorbed and learned over time.'<sup>178</sup>

Interviewees pointed out that working in private households blurred their 'worker' status, thus putting them at greater risks of abuse and exploitation. For example: 'This idea of a family and familiarity in the domestic setting, is very problematic and prone to abuse,

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<sup>175</sup> Interview with James 3/23.

<sup>176</sup> Interview with Miriam 4/23.

<sup>177</sup> Interview with Tala 5/23.

<sup>178</sup> Interview with Andrea 4/23.

especially for domestic workers.<sup>179</sup> This reflects the legal gaps and lack of protections involved in home-based care and domestic work, in relation to inspection, working hours and wages.

## Accommodation

Unsuitable and unsafe accommodation is another common issue facing MCWs. Some domiciliary carers we spoke to were provided with temporary accommodation by their employers, with several raising complaints such as broken facilities and feeling unsafe. One stated, 'I don't think I'm safe with that kind of place, but I don't have any option.'<sup>180</sup> Live-in care workers did not necessarily have individual rooms in employers' houses, resulting in a lack of privacy and boundary between their personal and working spaces. One ODWV holder had to sleep on a sofa and had no access to the toilet, duvet and heating.<sup>181</sup>

Some workers rented their own homes, but often had to stay in overcrowded accommodation with broken facilities because of their limited financial capacity. One commented: 'It is too small. We are four in there. And we don't have much space here and I really like my privacy. Sometimes we hardly get (hot) water.'<sup>182</sup> Another complained about the expensive accommodation and how this left her struggling to make ends meet: 'Half of my salary goes to rent only. That's really devastating.'<sup>183</sup>

## Surveillance

Surveillance was reported as an issue in our final focus group. One participant expressed concerns about cameras installed in a care home, noting that the employer had not had the relevant consent from workers. Participants also reported that cameras had been installed in private homes and that this violated workers' privacy. This included a report of a worker being asked through an Amazon Alexa device why she was standing on a table, and challenged on why the device was disconnected while she was

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<sup>179</sup> Interview with Diwa 5/23.

<sup>180</sup> Interview with Dolores 3/23 (expired visa).

<sup>181</sup> Interview with Angela 6/23.

<sup>182</sup> Interview with James 3/23.

<sup>183</sup> Interview with Jasmine 3/23.



vacuuming. Reflecting other literature on surveillance in a home-based setting,<sup>184</sup> this raises significant issues of privacy.

## Health and safety

Several interviewees mentioned a lack of workplace health and safety inspections, primarily those in private homes. An interviewee on an ODWV cited this issue alongside a lack of safety equipment such as gloves and masks, or job-specific training.<sup>185</sup> In another case, lack of inspections was combined with an interviewee being too scared of their employer to complain about abuse because she did not have a valid visa, despite breaches including a lack of rest days and inadequate facilities.<sup>186</sup> The first care worker focus group pointed to additional alarming health and safety issues, including verbal and physical abuse.

Where inspections were mentioned, it was often unclear whether they were undertaken to protect the worker or to scrutinise their work. A worker who conducted home visits said that inspections were, 'to make sure we are doing the right thing, that everything is alright, things should be in places.'<sup>187</sup> Similar issues were identified in institutional settings. One interviewee, when asked about inspections, answered in terms of having to make sure she had the right equipment so she would not get in trouble.<sup>188</sup> She also reported suffering a torn ligament, which had a long-term impact on her health. This was caused by an incident when a care home she had previously worked at was short of staff, and a male patient with dementia moved forcefully. She stated that the deputy manager did not report this, and that she had not sought medical care because she had irregular status at the time.

In contrast to the lack of health and safety enforcement, there were several mentions of inspections relating to immigration enforcement, and the fear of working as a migrant in the 'Hostile Environment', particularly for those with irregular status. One interviewee reported seeing a Home Office raid on a nearby building, commenting, 'I had my papers and I was still really scared. I really hope I never encounter or meet them anywhere. It was really fearful experience for me.'<sup>189</sup> This demonstrates the strength of the culture of

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<sup>184</sup> Shereen Hussein and Agnes Turnpenny, 'Worker Voices in the Social Care Sector - Case Studies and Summary Report' (Personal Social Services Research Unit, University of Kent 2020).

<sup>185</sup> Interview with Angela 6/23.

<sup>186</sup> Interview with Miriam 4/23.

<sup>187</sup> Interview with Arno 3/23.

<sup>188</sup> Interview with Kehinde 6/23.

<sup>189</sup> Interview with James 3/23.

fear created by 'Hostile Environment' policies in all areas of public life: even workers with a secure immigration status are made fearful and deterred from reporting mistreatment or seeking support. This fear is amplified for workers with irregular status, with one interviewee explaining: 'I was always panicking all the time, any time I heard about the sound of the police... especially when the ambulance came to my workplace then, I would run to the toilet and start praying!'<sup>190</sup>

## Rights, information, and training

Many interviewees lacked adequate information about their rights or the support available to access them. Most commonly, this related to employers and / or agencies failing to provide adequate information in accessible formats. While agencies might be expected to facilitate the provision of appropriate information to workers, some interviewees employed through agencies had not received relevant information on their rights<sup>191</sup> or a written contract,<sup>192</sup> and / or reported discrepancies from promised terms.<sup>193</sup>

One interviewee, who experienced discrimination and discrepancies in his pay rate, reported that he had to find out about his rights on social media.<sup>194</sup> He found it difficult to communicate with his supervisor, including in relation to rights: 'we have to send emails...it takes a while for us to hear a reply or feedback about what the issues are' but mentioned support from friends and family. Another interviewee, who left her role because of discrepancies from promised terms, stated that she would not know where to go if her rights were violated. Her account was that: 'No one told me about employees' rights...We weren't able to even get the hard copy of our contract. No employee rights, no handbook, nothing.'<sup>195</sup> Similarly, another interviewee said they were only informed of their rights by friends and family.<sup>196</sup>

Even where workers were aware of their rights, these were often not enforced, and workers did not feel able to seek redress, either due to a sense that the system would not help, or fear of Immigration Enforcement or disciplinary action. One worker in an institutional setting tried to report a violation of his rights to a police station after this was suggested to him, and said, 'that was very pointless experience,' noting that the police

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<sup>190</sup> Interview with Kehinde 6/23.

<sup>191</sup> Interview with Kojo 3/23; interview with Andrea 4/23.

<sup>192</sup> Interview with Ada 3/23.

<sup>193</sup> Interview with Kojo 3/23.

<sup>194</sup> Interview with James 3/23.

<sup>195</sup> Interview with Jasmine 3/23.

<sup>196</sup> Interview with Arno 3/23.

'were just laughing at my accent and how I looked.'<sup>197</sup> His experience highlights how migrant workers, especially people of colour, cannot rely on public institutions like the police to provide the services they are supposed to.

## Unions and support networks in the UK

Our findings reveal that MCWs lack access to organised support. Interviewees often had several close personal friends who were able to provide emotional and material support. However, many did not have a clear idea of support groups available in the UK, and a few had never heard of trade unions or any other support organisations. Some interviewees were able to access support from UK-based organisations, including trade unions, churches, and Filipino community organisations –who also supported non-Filipino care workers according to our data. Three interviewees were union members, while, after speaking to us, eight were potentially interested in joining unions in the future. Relatedly, the majority of survey respondents from support organisation (3 out of 4) and all trade union respondents reported finding it difficult to access, support or organise MCWs.

Our analysis demonstrates several important factors that contribute to MCWs' lack of support networks in the UK. First, many interviewees had to work long hours. They often did not have time and energy to socialise or seek support from outside groups. In addition, MCWs would be seen as troublemakers by some employers if they had regular contacts with NGOs and support groups. Furthermore, many MCWs were not informed of their rights and support groups in the UK, and were often unsure where to go if their rights were violated. In our support organisation survey, little knowledge of their rights (by 3 out of 4 organisations) and where to seek support (by 2 out of 4 organisations) were identified as the main factors causing problems to access support, alongside the irregular migrant status of some MCWs (by 2 out of 4 organisations). In particular, care workers with irregular status were living in fear and isolation, avoiding socialising or any activities in public spaces due to the danger of being deported. As one commented, 'I'm just scared of making friends because... my visa has expired.'<sup>198</sup> This again demonstrates the strength of fear created by hostile immigration policies which extend beyond the public sphere and into people's personal and private lives.

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<sup>197</sup> Interview with Kojo 3/23.

<sup>198</sup> Interview with Dolores 3/23.

## Modern slavery / cases of extreme exploitation or abuse

Concerningly, our research revealed some instances of extreme exploitation and suspected modern slavery. Our interviewees included two workers on the ODWV who had been referred to the National Referral Mechanism (NRM) as potential victims of trafficking or modern slavery. One worker reported having her wages withheld, no real days off, and a lack of food because her employer ate out all the time, meaning there were no leftovers at home.<sup>199</sup> She also referred to verbal abuse from the employer and their adult son, as well as physical punishment from the employer for ‘talking back.’ The employer made racist claims, stating that Filipinos were part of organised crime syndicates to prevent the interviewee from talking to other Filipinos or Filipino-run groups. Another interviewee reported poor accommodation, non-payment, and excessive hours.<sup>200</sup> Notably, both these interviewees indicated that they would like to change onto the H&CWV - a step that is not currently possible.

Two other interviews showed indicators of modern slavery. One had originally arrived on a student visa, which had since expired, and was working in a private home.<sup>201</sup> She was paid far below the minimum wage, with deductions for clothing as well as food and accommodation, and lacked a written contract. She also stated that she was bullied by her employer, not taken seriously when she tried to share her opinions, and discriminated against because of her race. Another interviewee, who had arrived on the H&CWV, left the employer after a month, noting that this was ‘because of the low salary and also exploitation and modern slavery.’ She referred to favouritism for other ethnic groups perceived as less likely to complain, a lack of full rest days, and unclear deductions from her pay.<sup>202</sup> These cases suggest a range of ILO forced labour indicators: abuse of vulnerability; isolation; physical violence; withholding of wages; abusive working and living conditions; excessive overtime;<sup>203</sup> and possible debt bondage.<sup>204</sup>

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<sup>199</sup> Interview with Tala 5/23.

<sup>200</sup> Interview with Angela 6/23.

<sup>201</sup> Interview with Dolores 3/23.

<sup>202</sup> Interview with Jasmine 3/23.

<sup>203</sup> Interviews with Tala 5/23; interview with Angela 6/23; and interview with Jasmine 3/23.

<sup>204</sup> Interview with Jasmine 3/23.

## 6. Cross sectoral analysis

### Structure and limitation of visa schemes and the immigration landscape

The conditions attached to visa routes for both sectors exacerbate migrant agriculture and care workers' precarious position, creating a situation of 'hyper-precarity' and increasing vulnerability to exploitation.<sup>205</sup> It is well documented that short-term visa routes that tie workers to specific employers or industries make workers exploitable and put them at risk of conditions amounting to modern slavery.<sup>206</sup> This is reflected in survey responses from support organisations in both sectors: their experience supporting migrant workers indicates that visa conditions and restrictions are the most important contributory factors to labour exploitation. Our analysis has highlighted examples of abusive and exploitative working conditions across visa types.

Our research demonstrates how the general risk factors associated with tied visas are exacerbated in agriculture and care work, as they are combined with low wages, high recruitment and / or transfer fees, high travel costs, lack of information about alternative employment and how to change employers, immediate risks of loss of immigration status, and, for farm workers and in-home care workers, loss of accommodation in addition to loss of employment. Irregular migrant workers are at the sharpest end of workplace precarity.

### Visa fees and access to public funds

The fees for each visa type (£259 for a SWV for six months and £247 for the H&CWV for up to three years at the time of data collection) significantly exceeded the estimated costs to the Home Office (£137 and £129 respectively),<sup>207</sup> even before recent increases to £298 and £284. The Home Office is therefore making a profit of fees that are paid by

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<sup>205</sup> Hannah Lewis and others, 'Hyper-Precarious Lives: Migrants, Work and Forced Labour in the Global North' (2015) 39 *Progress in Human Geography* 580.

<sup>206</sup> Bridget Anderson, 'Migration, Immigration Controls & the Fashioning of Precarious Workers' (2010) 24(2) *Work, employment and society*, 300; Hila Shamir, 'The Paradox of 'Legality': Temporary Migrant Worker Programs & Vulnerability to Trafficking' in Prabha Kotiswaran, ed., *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (CUP, 2017), 471; Kendra Strauss and Siobhan McGrath, 'Temporary Migration, Precarious Employment & Unfree Labour Relations: Exploring the 'Continuum of Exploitation' in Canada's Temporary Foreign Worker Program' (2017) 78 *Geoforum*, 199.

<sup>207</sup> UK Visas and Immigration, 'Visa Fees Transparency Data' (GOV.UK, 15 September 2023) <<https://www.gov.uk/government/publications/visa-fees-transparency-data>> accessed 29 October 2023.

generally low-paid, precarious workers. In both sectors this contributes to the problem of debt noted above. Furthermore, workers on both schemes are excluded from accessing state support if they lose work, since both visas are issued with no recourse to public funds, further amplifying their vulnerability.<sup>208</sup>

## Hostile Environment

The precarity of migrant workers is compounded by the 'Hostile / Compliant Environment', which is a set of policies that were implemented primarily through the Immigration Acts of 2014 and 2016, and strictly constrains the ability to live, work and access services, as well as state support for those who cannot prove their legal status in the UK.<sup>209</sup> The culture of fear created by 'Hostile Environment' policies, and the way this acts to deter migrant workers from seeking support or reporting workplace mistreatment or abuse, was a strong theme that came through, particularly in our care work interviews. Survey respondents from support organisations and trade unions equally identified this as an obstacle to improving the situation for migrant workers. Measures directed against irregular migrants include criminalisation of their labour through the 'Illegal Working' Offence, associated right to work checks, and an expansion of data sharing between labour inspection bodies and immigration enforcement.<sup>210</sup>

Migrant care and agriculture workers are vulnerable to 'Hostile Environment' policies, especially if they become irregular. Both visa schemes, but particularly the SWV, risk making workers irregular, including if their employer or scheme operator runs out of available work before their planned return date (for the SWV), they lack a route to renew their visa (on the SWV and ODWV), were brought by an agency under the wrong visa (as can happen in the care sector), or cannot find a new sponsor after leaving an employer when on a sponsored visa (for the H&CWV). Those working irregularly are often fearful of reporting mistreatment or exploitation to the authorities, due to fear of Immigration Enforcement action, and are therefore deterred from pursuing redress.<sup>211</sup> At the same time, routes to regularisation in the UK are extremely limited and, where they

<sup>208</sup> Luin Goldring, 'Resituating temporariness as the precarity and conditionality of noncitizenship. *Liberating Temporariness? Migration, Work and Citizenship in an Age of Insecurity* (McGill-Queen's University Press, 2014), 218.

<sup>209</sup> Frances Webber, 'On the Creation of the UK's "Hostile Environment"' (2019) 60 *Race & Class* 76, 77; Wendy Williams, 'Windrush Lessons Learned Review' (House of Commons 2020) HC 93 170; Rowe (n 82).

<sup>210</sup> Immigration Act 2016, s34, Schedule 9; Alison Harvey and Zoe Harper, *A Guide to the Immigration Act 2016* (Bloomsbury Professional 2017) 275–6; Labour Exploitation Advisory Group, 'Opportunity Knocks' (n 80) 25.

<sup>211</sup> Hannah Lewis and Louise Waite, 'Migrant Illegality, Slavery and Exploitative Work' in Gary Craig and others, eds., *The modern slavery agenda: Policy, politics and practice* (Policy Press 2019) 231.

exist, are expensive, complex, and lengthy.<sup>212</sup> This creates a cycle of precarity, which traps migrants in irregularity, leaving them at risk of destitution and making it extremely difficult to regain status.

'Hostile Environment' policies can also affect migrants with a right to stay in the UK because of the culture of fear these policies create, considering the complex dividing line between regular and irregular work, alongside the burden on the individual to prove their status.<sup>213</sup> This situation creates a 'chilling effect', meaning that even workers with valid visas may be reluctant to come forward to report issues in case this leads to their detention or deportation, or other enforcement action against them,<sup>214</sup> as reflected in our care sector findings above.

## Intermediaries

In both agriculture and care, our interview findings pointed to deception by intermediaries, which is one of the ILO forced labour indicators. The situations described by our worker interviewees ranged from false promises regarding their employment and conditions while in the UK, to the length of their engagement, and failure to provide them with appropriate information on their contractual terms and rights. This issue has been identified in existing research about seasonal agriculture and migrant care workers, but no adequate steps have been taken to address it.<sup>215</sup>

Our findings show significant issues of debt and deductions from wages across both sectors, which are often associated with recruitment fees that are illegal in the UK, but can also arise from travel, training and / or accommodation costs and can lead to debt bondage. Requiring migrant workers to pay these costs is contrary to the ILO's principles (debt bondage is a forced labour indicator)<sup>216</sup> and the Institute for Human Rights and Business's 'Employer Pays Principle,' whereby all costs associated with recruitment

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<sup>212</sup> Monish Bhatia, 'Reproductive Injustice in Britain: Punishing Illegalized Migrant Women from the Global South and Separating Families' (2022) 0 *Identities* 1, 6.

<sup>213</sup> Agnieszka Kubal, 'Conceptualizing Semi-Legality in Migration Research' (2013) 47 *Law & Society Review* 555; Judy Fudge, 'Illegal Working, Migrants and Labour Exploitation in the UK' (2018) 38 *Oxford Journal of Legal Studies* 557, 564–566; Anna Triandafyllidou and Laura Bartolini, 'Irregular Migration and Irregular Work: A Chicken and Egg Dilemma' in Sarah Spencer and Anna Triandafyllidou, eds., *Migrants with Irregular Status in Europe: Evolving Conceptual and Policy Challenges* (Springer International Publishing 2020).

<sup>214</sup> Focus on Labour Exploitation, 'Position Paper: Tackling Sexual Harassment in Low Paid and Insecure Work' FLEX 2022) 17.

<sup>215</sup> Focus on Labour Exploitation and Fife Migrants Forum (n 39) 34-36; Meri Ahlberg, Caroline Emberson, Lucila Granada, Shereen Hussein and Agnes Turnpenny, 'The Vulnerability of Paid, Migrant, Live-in Care Workers in London to Modern Slavery' (Rights Lab, University of Nottingham, 2022) 16.

<sup>216</sup> International Labour Organization, 'Indicators' (n 4).

including travel and visa costs should be borne by the employer.<sup>217</sup> However, there is very little appetite to change this from the employer side.

Reports of non-compliance with workplace rights, such as breaks and paid leave in the agricultural sector, suggest that sponsors are failing to consistently comply with their duties to monitor the welfare of workers under the terms of the scheme, which include ensuring that workers are allowed time off, proper breaks and safe work environments.<sup>218</sup>

## Enforcement

Workers' reluctance to come forward with concerns whilst they are in employment<sup>219</sup> underlines the need for a proactive inspection strategy –especially in industries employing large numbers of migrant workers. Workers' reluctance is caused by a number of factors: workers may not be familiar with the UK's enforcement ecosystem, lack comprehensive knowledge about their entitlements, face significant language barriers to lodging complaints, and fear that complaining would lead to Immigration Enforcement action or jeopardise their ability to remain in the country.

However, barriers to migrant workers reporting concerns or exploitation are compounded by the fact that inspection levels are low, due to the severe underfunding of enforcement agencies.<sup>220</sup> Our interview and focus group findings demonstrate the rarity with which health and safety inspections occurred. Albeit limited, our survey responses from enforcement agencies tend to support the view that most wait for affected workers to make complaints (referred to as 'reactive' enforcement in the literature) rather than actively audit workplaces for non-compliance ('proactive' enforcement).<sup>221</sup>

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<sup>217</sup> IHRB and Leadership Group for Responsible Recruitment, 'Six Steps to Responsible Recruitment - Implementing the Employer Pays Principle' <[https://www.ihrb.org/uploads/member-uploads/Six\\_Steps\\_to\\_Responsible\\_Recruitment\\_-\\_Leadership\\_Group\\_for\\_Responsible\\_Recruitment.pdf](https://www.ihrb.org/uploads/member-uploads/Six_Steps_to_Responsible_Recruitment_-_Leadership_Group_for_Responsible_Recruitment.pdf)> accessed 21 August 2023; Interational Labour Organization, 'General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs' (International Labour Office 2019).

<sup>218</sup> UK Visas & Immigratio (n 95), SE3.4.

<sup>219</sup> David Weil and Amanda Pyles, 'Why Complain? Complaints, Compliance, and the Problem of Enforcement in the US Workplace' (2005) 27 *Comparative Labour Law and Policy Journal* 59.

<sup>220</sup> LEAG, LAWRS, JCWI, 'Safety for Migrant Workers: The Case for Safe Reporting Mechanisms' (December 2022), <<https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=978ed78e-f05a-47a4-a1bd-428030176527>> accessed 15 December 2023.

<sup>221</sup> On the distinction between proactive and reactive, see Leah Vosko et al., 'New Approaches to Enforcement and Compliance with Labour Regulatory Standards: The Case of Ontario, Canada' (Research Report, Law Commission of Ontario, 2011).



The NMWU told us that all complaints received are processed through a 'bespoke risk tool' which prioritises matters for investigation by assessing industry factors and the priorities of the Department for Business and Trade. Once an investigation is launched, the NMWU estimated that matters can take up to six months from launch of investigation to determination, and the most likely outcome was the initiation of civil procedures. The slow turnaround times for investigations are problematic for migrant workers who may have left the country by the time of determination (this is particularly true for seasonal workers). The HSE explained that it selects workplaces for investigation based on a risk assessment of various industries and any reported concerns or incidents. The respondent from HSE noted that it has not received any complaints from workers in the agriculture or care sector in the last three years. The NMWU did report some complaints received from workers in both sectors.

Another important facet of the work of enforcement agencies relates to the priority labour inspectorates give to compliance-based strategies that aim to get employers to voluntarily comply with their legal obligations.<sup>222</sup> When asked about any collaboration with employers in agriculture or care to improve compliance with their legal obligations, the NMWU cited an example of an employer support programme that it ran last year together with the Care Quality Commission. It highlighted that they have made guidance more accessible and stressed that the care sector in particular has been provided with more support and guidance than any other sector. In relation to agriculture, the NMWU mentioned that the team has worked with DEFRA on guidance about piece rates and their interaction with the NLW.

Another important issue relates to the limited prominence given to deterrence in the agencies' enforcement strategies. The NMWU told us that underpayments were unlikely to lead to criminal proceedings. However, even civil sanctions, such as notices of underpayment, seem to be issued infrequently. The NWMU could not provide any information on any notices of underpayment issued in either the agriculture or care sectors in the last 3 years. While voluntary compliance initiatives are laudable, migrant workers' structural vulnerabilities in these sectors require proactive measures to detect, prevent and penalise rights' violations. The limited role of deterrence tools in the UK

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<sup>222</sup> Mustchin and Martínez Lucio (n 77).

context is worrying.<sup>223</sup> This highlights the urgent need for adequately funded, effective monitoring and penalty mechanisms for both sectors.

One other issue that became apparent in our research is the fragmented enforcement landscape, where various agencies with different personnel and organisational cultures are responsible for enforcing the suite of employment laws. The role of the DLME was established in 2016 to combat this fragmentation by encouraging cross-agency collaboration, and we are heartened to hear that the agriculture and care sectors have been identified as priorities for this cooperation.<sup>224</sup> However, none of the workers that we interviewed could recall witnessing an inspection from a government agency, which suggests that the focus on cooperation has not yet materialised.

In contrast, both the NMWU and HSE told us that they work collaboratively with the Home Office, National Crime Agency and Police. These collaborations have much more to do with immigration enforcement, since one of the important changes introduced as a part of the 'Hostile Environment' policies is closer collaboration between government entities.<sup>225</sup> The NMWU did state that it does not collect data on complainants' migration statuses, although they also elaborated that they were only concerned with those with a right to work in the UK. Further, we know from FLEX's research that the NMWU - along with other labour enforcement agencies - does collect incidental data on immigration status and routinely reports irregular migrants to Immigration Enforcement, as well as carrying out joint inspections.<sup>226</sup> There is significant evidence that creating secure and safe reporting systems are crucial for encouraging migrant workers to report abuse and exploitation, and enabling labour inspectorates to do their jobs effectively.<sup>227</sup>

On the question of collaboration with civil society actors, the NMWU has an online complaint form and they receive and share information through various intelligence sharing networks. The NMWU also mentioned that they work with certain worker advocacy groups across sectors (e.g., Hope for Justice). There appears to be significant scope for labour enforcement agencies to expand their links to and seek advice from civil

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<sup>223</sup> See, e.g., Eric Tucker et al., 'Carrying Little Sticks: Is There a 'Deterrence Gap' in Employment Standards Enforcement in Ontario, Canada?' (2019) 35(1) *International Journal of Comparative Labour Law and Industrial Relations* 1; Tess Hardy, 'Digging into Deterrence: An Examination of Deterrence-Based Theories and Evidence in Employment Standards Enforcement' (2021) 37(2) *International Journal of Comparative Labour Law and Industrial Relations* 133.

<sup>224</sup> Beels (n 7).

<sup>225</sup> Melanie Griffiths and Colin Yeo, 'The UK's Hostile Environment: Deputising Immigration Control' 41(4) (2021) *Critical Social Policy* 521.

<sup>226</sup> FLEX, 'Opportunity Knocks' (n 80) 27.

<sup>227</sup> Shannon Gleeson, 'Brokered Pathways to Justice and Cracks in the Law: A Closer Look at the Claims-Making Experiences of Low-Wage Workers' (2015) 18(1) *The Journal of Labor and Society* 77-102.

society organisations actively working with marginalised communities, such as our project partners, to improve their monitoring of employers and more proactively address labour rights violations.<sup>228</sup> Again, the implementation of secure and safe reporting systems for migrant workers irrespective of immigration status would be crucial to facilitating such potential collaborations.

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<sup>228</sup> Janice Fine, 'New Approaches to Enforcing Labour Standards: How Co-Enforcement Partnerships Between Government and Civil Society are Showing the Way Forward' (2017) *University of Chicago Legal Forum*, Art 7.

## 7. Recommendations

### Reforming temporary visa programmes to improve fairness

#### General proviso

As the most comprehensive way to mitigate against the risks of the current schemes, we would ideally recommend that all work visas include an option for renewal, allow visa holders to have access to social entitlements (e.g., remove the ‘no recourse to public funds’ condition) whilst they are in the UK, and offer a pathway to settlement within a reasonable timeframe.<sup>229</sup> However, the academic team have formulated the recommendations below in the context of the current arrangements. In doing so, the academic team has been guided by the original objectives of the research, what we learned from our empirical work, and significant input from our project partners. We therefore make specific recommendations that are possible to implement within the short and medium terms and would go a long way in ameliorating the risk of exploitation and employment rights violations.

#### SWV

- 1. UKVI should consider increasing the obligations of Scheme Operators towards sponsored workers by amending the ‘Workers and Temporary Workers: Guidance for Sponsors: sponsor a seasonal worker’ document.**

In April 2023, the Home Office amended the ‘Workers and Temporary Workers: Guidance for Sponsors: sponsor a seasonal worker’ (Guidance) to require farm employers to provide a minimum of 32 hours per week, with the possibility of averaging hours over the pay cycle. In the event that employers are not able to provide employment for the contractually stipulated period, and, from 2023, the minimum stipulated hours per week, workers will be able to sue for breach of contract.

Given the costs and complications for workers of bringing a legal action, and the lack of clarity around the contractually stipulated period, this is not a practical remedy.

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<sup>229</sup> Our partner organisations JCWI and Kanlungan also support the scrapping of sector-specific visas.

**We recommend that UKVI consider:**

- a. **Amending the Guidance to impose an obligation on Scheme Operators to indemnify workers for any damages owed** since Scheme Operators have the means to pursue employers for payment.
- b. **Amending the Guidance to require Scheme Operators to define the ‘contractually stipulated period’ of employment in the workers’ first language prior to workers’ departure** to avoid workers coming to the UK with an expectation to work for six months but receiving a contract for only two or three months.
- c. For workers whose employment finishes before the expiry of their visa, **amending the Guidance to require the worker to be immediately re-employed at another farm for the remaining period**, or, where this fails, for emergency funds to be made available by the Scheme Operators to avoid the worker being destitute in the UK.
- d. **Requiring that Scheme Operators make a fund available for early return to the home country where no alternative work can be found and the worker wishes to exercise this option**, since costs of changing return flights tend to be prohibitively high. As a way to limit their exposure, these changes will incentivise Scheme Operators to work with ethical employers and reallocate workers to other farms more expeditiously.
- e. **Amending the Guidance to set limits on the use of workplace disciplinary systems, and including a requirement for transparent criteria which are notified to workers in advance, and the introduction of internal appeals processes for workers who consider they have been unfairly penalised**, e.g., where they were assigned to an area without adequate crops to pick. Workplace disciplinary systems can penalise workers for their picking speeds, potentially leading the loss of their job, and at worst, removal from the UK. Setting requirements around the use of these systems can help to protect workers from exploitative conditions.
- f. **Amending the Guidance to require Scheme Operators to (i) provide the contact details of a UK-based staff member who will action transfer requests, (ii) provide written reasons for denying a request both to the worker and the relevant inspection body which can scrutinise whether it is reasonable, (iii) follow a presumption, added to the Guidance, that requests will always be granted where there are indications of exploitation or breaches of employment law or accommodation standards in the current employment, and if the Scheme Operator is unable to allocate workers to**

**another employer, to (iv) allow workers to switch Scheme Operator.** We have uncovered evidence that workers do not know whom to contact to request a change of employers and we have been told that Scheme Operators rarely reallocate workers to a different farm when it is requested or provide any reasons why this is the case. This recommendation aims to address this gap.

**2. UKVI should consider ways to support workers formerly sponsored by AG Recruitment to resume their work on the Seasonal Worker Scheme in the UK in future seasons.**

The decision of UKVI to cancel the sponsor licence of AG Recruitment has meant that workers from Indonesia are no longer able to access the SWV scheme. According to our interview data, workers from Indonesia have paid significant fees on the expectation that they would be able to return to work in the UK for multiple seasons. **We recommend that the Home Office collaborate with the Scheme Operators to devise a pathway for Indonesian workers and other migrant workers with similar experience to return to the UK,** or to be compensated as an alternative.

**3. The Home Office should consider developing and implementing mechanisms that remove the barriers faced by workers on time-limited visas when seeking redress for breaches of employment standards.**

The workers on a SWV that we spoke to pointed to multiple breaches of employment standards. However, many workers are not in a position to pursue their claims through the Employment Tribunal system because the duration of their visas are too short, are restricted and are subject to the No Recourse to Public Funds condition (NRPF). The current support system under the National Referral Mechanism is not adequate to mitigate this problem for several reasons: it applies only to those who meet the high threshold for trafficking or modern slavery, rather than to all breaches of employment law, and the process of determining claims takes a median period of 530 days,<sup>230</sup> during

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<sup>230</sup> Home Office, 'Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 3 2023 – July to September' (GOV.UK, 2023) 3 <<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-july-to-september-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-3-2023-july-to-september>> accessed 27 November 2023.

which time the individual generally does not have a right to work.<sup>231</sup> Furthermore, even where it results in a positive Conclusive Grounds decision, there are only limited routes to remain in the UK,<sup>232</sup> such that the potential for workers to recoup their costs through work are highly limited. **We therefore recommend that the Home Office amend the Immigration Rules Appendix Temporary Work – Seasonal Worker to enable visa extensions for those workers who intend to commence legal action or seek legal advice on employment matters.**

- 4. The Home Office should consider implementing the ability to apply to extend the Seasonal Worker Visa where workers have secured eligible employment, aligning with the needs in the agricultural sector and further protecting workers from incurring unreasonable debts.**

In line with findings in the literature,<sup>233</sup> our research shows how the short visa timescale exacerbates the issue of debt by limiting workers' earnings compared with their significant costs of travelling to the UK. While the limitation to six months tends to be justified with reference to the seasonality of the work, many farmers and farmers' representatives have stated that this does not reflect needs in the sector –with some arguing the growing season is close to 'year-round'– and inhibits options for workers to return to the UK.<sup>234</sup> We therefore **recommend that the Home Office amend the Immigration Rules Appendix Temporary Work – Seasonal Worker to enable visa extensions where a worker: (a) can secure an eligible job in the agricultural sector for a duration longer than six months, or (b) can secure an eligible new role in the agricultural sector or an extension of their current role within the UK.** We note that the Ukraine extension scheme, while arising from exceptional circumstances, demonstrates the possibility of making provision for extension within the SWV scheme.<sup>235</sup>

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<sup>231</sup> Åhlberg and Granada (n 57) 124.

<sup>232</sup> Nationality and Borders Act 2022, s 65. See also Sedacca and Sharp (n 66) 11–13.

<sup>233</sup> See e.g., McAndrew and others (n 168). See also 'background and legal framework' section.

<sup>234</sup> Neal (m 26) 32; DEFRA, 'Independent Review into Labour Shortages in the Food Supply Chain' (GOV.UK, 30 June 2023) 44. <<https://www.gov.uk/government/publications/independent-review-into-labour-shortages-in-the-food-supply-chain>> accessed 24 November 2023.

<sup>235</sup> See Home Office, 'Ukrainian Nationals on Work and Study Routes: Concessions to the Immigration Rules - Version 1.0' (2022).

5. The Department for Levelling Up, Housing, and Communities (DLUHC), the Department for Environment, Food, and Rural Affairs (DEFRA), the GLAA, and local government authorities should work together to expand, strengthen, and enforce housing standards that apply to farm employers engaging workers on the SWV.

There are currently temporary accommodation guidance published by the Fresh Produce Consortium (FPC) that apply to farm employers engaging workers on a SWV, which are not legally binding.<sup>236</sup> We have uncovered evidence that some workers live in accommodation that does not meet these standards. **We recommend that the DLUHC and the DEFRA work in collaboration with the GLAA to introduce a set of statutory housing standards that apply to farm employers engaging workers on the SWV.** The legally binding standards should at a minimum ensure that access to internal toilet and bathroom facilities, a private bedroom, Wi-Fi access, gender-appropriate accommodation,<sup>237</sup> and an adequate heating / cooling system is included. The cap on accommodation fees and utilities<sup>238</sup> should also be properly enforced. **We further recommend that the Director of Labour Market Enforcement (DLME) establish a working group to determine a plan of action and responsibility for enforcement.**

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<sup>236</sup> Fresh Produce Consortium, 'Temporary Accommodation Guide' (4<sup>th</sup> edition, November 2021), <<https://freshproduce.org.uk/images/FINAL-Fourth-Edition-FPC-Temporary-accommodation-guidance.pdf>> accessed 15 December 2023.

<sup>237</sup> This should respect workers' personal preference and gender identity.

<sup>238</sup> GOV.UK, 'National Minimum Wage and Living Wage: Accommodation' (GOV.UK) <<https://www.gov.uk/national-minimum-wage-accommodation>> accessed 14 December 2023.



- 6. The Home Office (including both UKVI and the Modern Slavery Unit) should consider developing and implementing mechanisms that both identify and prevent recruitment fees that exceed transportation and visa application costs, which our research shows can lead to increased vulnerability to poor working conditions and exploitation.**

We have uncovered evidence that workers are being charged fees by recruitment agencies based in the UK and abroad which are well in excess of the transportation costs and visa processing fee.

**More specifically, we recommend that UKVI consider:**

- a. **Inquiring into the nature of any fees paid by workers at the point of application.**
- b. **Updating the Guidance (discussed in Recommendation 1) to require farm employers to meet the costs of transportation to and from the worker's country of residence and any visa application fees.** This would encourage employers to employ workers for a longer duration to recoup their investment and bring the UK in line with practices in other jurisdictions, such as Canada.

**We also recommend that the Home Office consider:**

- c. **Establishing a working group of enforcement agencies, Scheme Operators, NGOs, and academics to determine a comprehensive method of regulating recruitment in line with the International Organization for Migration (IOM)'s Montreal Recommendations on Recruitment.**<sup>239</sup> Scheme Operators often hire third party recruiters in different countries to assist them to find workers, and it is not clear that they have much oversight over how these agents operate. The purpose of the working group would be to propose ways of ensuring that the actions of recruitment agencies and their agents are regulated.
- d. **Removing the SWV fee or amending it to simply cover the actual costs of processing the visa application.** Workers on the SWV often need to incur debt to meet the costs of transportation and visa application fees, which, as noted in the cross-sectoral analysis, are significantly above the processing costs. It is unethical for the UK to financially benefit at the expense of low-paid workers with

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<sup>239</sup> International Organization for Migration, 'The Montreal Recommendations on Recruitment: A Road Map Towards Better Regulations' (PUB2020/009/EL, Geneva, 28 May 2020), <<https://publications.iom.int/books/montreal-recommendations-recruitment-road-map-towards-better-regulation>> accessed 15 December 2023.

limited means and the work of agriculture workers has a much wider benefit in the form of improving UK's food security.

1. **The HM Revenue & Customs (HMRC) should consider preventing workers on the SWV from overpaying tax, and removing barriers for those who need to reclaim overpaid tax.**

At present, workers on the SWV can be charged income tax and then expected to reclaim overpaid tax following their return home, which is often cumbersome and is difficult to justify given the short-term nature of the scheme. **We recommend that the HMRC waive any income tax deductions for workers on the temporary visa unless and until such time as the worker's earnings in that tax year have exceeded the tax-free limit.** For any remaining situations of tax overpayment, **we recommend that the HMRC introduce a simplified procedure to claim any overpaid tax from overseas, such as an easy-to-use online portal that non-native English speakers could navigate.**

### Visas in the care sector

2. **The Home Office should amend the nature of and conditions attached to the H&CWV to make it viable in practice to change employers. The Department of Health and Social Care (DHSC) should take steps to support workers to easily change employers.**

Despite the H&CWV being a more permissive visa than the SWV in some respects, because of its length and extension possibilities, our research and the wider literature show that migrant workers on the scheme lack labour mobility as a result of complex stipulations for changing employers and / or costs associated with transfers. Our findings indicate that this leaves them at risk of being trapped in exploitative or abusive working conditions.

**We therefore recommend that the Home Office consider:**

- a. **Amending the Immigration Rules Appendix Skilled Worker and the Health and Care Visa Guidance to make it viable in practice to change employers,**

**e.g., through a work visa with an initial sponsor.** Such an approach would **remove the obligation for H&CWV workers to update their visas when they change jobs within the sector** to provide greater freedom to change employer without risk to their immigration status.

- b.** If Recommendation 8a is not implemented, **we recommend the Home Office take steps to make the requirement to change employers easier to fulfil as a minimum.** This would include extending the current limit to secure new employment with a sponsor from the current 60 days to at least 90 days, and waiving any additional fees payable for changing employer.

**We also recommend that the DHSC consider:**

- c. Publishing a list of employers that can act as sponsors for the H&CWV,** which would assist workers in finding a new role that can meet the requirements as quickly as possible and also help ameliorate labour shortages.

### **9. The Home Office should allow H&CWV workers to apply to lift the NRPF condition in certain circumstances.**

The NRPF condition on the current visa can pressure migrant workers to remain in exploitative situations, while some abusive employers are aware of this and use it as a means to exercise power over workers.<sup>240</sup> It can also lead to destitution, for example where workers become unemployed or receive insufficient pay. **We recommend that the Home Office amend the guidance on public funds to allow H&CWV workers who do not have sufficient work to cover their time in the UK and / or are at risk of destitution, for example because they are between jobs, to apply to lift the NRPF condition.**<sup>241</sup>

### **10. The Department of Health and Social Care (DHSC), UKVI, and the Modern Slavery Unit should take steps to reduce the risk of exploitation by addressing disproportionate visa application fees, repayment fees, and by convening experts to determine a method of regulating recruitment.**

Migrant workers on the H&CWV are frequently subject to repayment clauses that allow employers to recover costs involved in recruiting the worker if they leave within a certain period,<sup>242</sup> amounting to a further restriction on labour mobility.

**We recommend that the DHSC (or other appropriate body) consider:**

- a. Implementing regulations to abolish repayment fees or, as a minimum, making the requirements in the Code of Practice<sup>243</sup> legally binding and enforceable, requiring any fees to be set at a reasonable level and to be waived for workers who leave their employer due to poor working conditions.**

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<sup>240</sup> FLEX, IWGB and UVW, 'No Viable Alternatives: Social (in)Security and Risk of Labour Exploitation during Covid-19' (Focus on Labour Exploitation 2021) 56–57.

<sup>241</sup> This would differ from the current position where provision to lift No Recourse to Public Funds is mainly confined to those on the family or private life route, or the Hong Kong BNO, and available beyond this only in exceptional circumstances usually relating to dependent children - Home Office, 'Public Funds (Updated 5 October 2023)' (GOV.UK, 2023) <<https://www.gov.uk/government/publications/public-funds/public-funds-accessible>> accessed 14 December 2023.

<sup>242</sup> Sehic and Vicol (n 39) 13.

<sup>243</sup> Department for Health and Social Care (n 60).

**We also recommend that UKVI consider:**

- b. Inquiring into the nature of any fees paid by workers at the point of application.**
- c. Limiting the visa application fee to no more than the cost of processing; ideally, the fee would be abolished to recognise the vital role of care workers.** In the interim, we recommend that the Scheme Guidance be amended to require care employers instead of workers to meet the **costs of transportation from the workers' country of residence and any visa application fees, provided measures are in place to prevent such costs to be passed** on to workers in the form of exit fees.

**Finally, we recommend that the Modern Slavery Unit and UKVI consider:**

- d. Establishing a working group of enforcement agencies, employers' representatives, NGOs, and academics be established to determine a comprehensive method of regulating recruitment.**

**11. The Home Office should amend the relevant parts of the Immigration Rules to expand the ability to switch visa types or renew visas, for the ODWV and H&CWV.**

Domiciliary care workers on the ODWV often experience highly exploitative conditions that are exacerbated by the inability to renew their visa beyond six months (except following a positive reasonable grounds decision in the NRM).

**To address this, we recommend that the Home Office consider:**

- a. Amending the Immigration Rules Appendix Skilled Worker to give ODWV holders the option to apply for the H&CWV from within the UK where they can secure a relevant job.**
- b. Amending the Immigration Rules Appendix Overseas Domestic Worker to allow for renewal where the worker will be continuously employed as a full-time domestic worker in a private household.** This would allow workers who do not meet the criteria for the H&CWV to continue working legally, rather than risk falling into irregular status. Workers who have fallen into irregular status are at stark risk of exploitation and modern slavery, particularly because the 'Hostile Environment' prevents them feeling safe in engaging with labour inspection bodies.

- c. **Establishing a route for those whose visas have expired to apply for the H&CWV from within the UK.** Alongside the option to switch from the ODWV to the H&CWV, this would facilitate workers who already have the requisite qualifications and experience being able to contribute to the starkly under-resourced care sector while working legally.

### Reforms to employment standards in the care sector

12. **The UK Government should take steps to increase labour protections for care workers, such as by addressing the prevalent issue of low pay and long hours, to reduce vulnerabilities to exploitation in this sector.**

To address the prevalent issue of low pay and long hours in the care sector that our research has highlighted, we recommend the following changes, which could be implemented through primary or secondary legislation or through sectoral agreements.

#### The UK Government should consider:

- a. **Introducing a minimum pay rate for all care workers above the National Minimum Wage**, as already recommended by the MAC. Ideally, we would support the TUC's proposal for a £15/ hour wage across the sector.<sup>244</sup> As a minimum, we suggest the rates the Living Wage Foundation has calculated to reflect living costs –currently £12/hour nationally and £13.15/hour for London.<sup>245</sup>
- b. **Amending the relevant legislation to ensure fair pay for travel time, night shifts and 'sleep in' shifts**, including by reversing the effect of the Supreme Court's 2021 judgment *Mencap v Tomlinson Blake*.<sup>246</sup>
- c. **Repealing the legislative exemptions that apply to domiciliary care workers, including the exclusion of private homes from labour inspections and the exemption of 'domestic servants' from key working time protections.**
- d. **Ratifying ILO Convention 189 on the rights of domestic workers.**
- e. **Issuing guidance on breaks for live-in care workers employed in a domestic setting.**

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<sup>244</sup> TUC (n 61).

<sup>245</sup> Living Wage Foundation, 'What Is It?' (ND) <<https://www.livingwage.org.uk/what-real-living-wage>> accessed 24 November 2023.

<sup>246</sup> *Royal Mencap Society v Tomlinson-Blake* [2021] UKSC 8.

**13. The Health & Safety Executive (HSE) (or other relevant body) should consider establishing statutory requirements on accommodation standards and clear guidelines the use of surveillance in institutional and domiciliary settings.**

Live-in care workers are often provided with poor accommodation that lacks adequate privacy, and / or subjected to intrusive surveillance. Accommodation standards should mirror those recommended for agriculture: access to internal toilet and bathroom facilities, a private bedroom, Wi-Fi access and adequate heating/cooling systems.

**Guidance on surveillance should include requirements for advance notice of any cameras or other devices, ensuring recording relates to work activities only, and ensuring GDPR compliant processing and storage of data.**<sup>247</sup>

**Cross-sectoral reforms to ensure fulfilment of contractual duties and enforcement of employment rights**

**14. In respect of SWV holders, we recommend that the Director of Labour Market Enforcement (DLME) (or another relevant body) undertake an urgent review to establish a clear division of responsibilities between the Home Office / UKVI, DEFRA, and the various labour enforcement bodies, and make this information available to the public.**

In situations involving agricultural and care workers, responsibility for the enforcement of labour standards is often unclear because departments, such as the Home Office, also have additional oversight. The recommended review aims to address this lack of clarity. 'The relevant enforcement body' in the remainder of this section refers to the body identified as relevant by the recommended review.

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<sup>247</sup> See also Care Quality Commission, 'Using Surveillance in Your Care Service' (26 April 2022) <<https://www.cqc.org.uk/guidance-providers/all-services/using-surveillance-your-care-service>> accessed 14 December 2023.

**15. We recommend that the UK Government should properly resource the enforcement bodies to allow them to monitor the working and living conditions of migrant workers in all work settings (including private households for care).**

At the moment, effective labour inspection in both agriculture and care is hindered by under-resourcing and fragmentation of mandates between several agencies.

**16. We recommend that enforcement bodies devise a proactive strategy for randomly auditing farm and care work workplaces, instead of waiting for workers to come forward with complaints of employment rights violations.**

The proactive enforcement strategy would involve examining all payroll records and speaking with managers and workers, to ensure compliance.

**In that regard, we further recommend that:**

- a. **labour enforcement bodies act on any information provided by support organisations and trade unions regarding workplaces to be targeted for enforcement.** Cooperation of this nature is unlikely to be viable without the establishment of firewalls (see below).
- b. **We recommend that enforcement agencies consider entering into paid partnership agreements with organisations that can help them spread the message to workers about legal entitlements.**

**17. We recommend that the UK Government and relevant agencies urgently establish a firewall to separate the police and labour inspectorates from immigration enforcement and create secure reporting and inspection pathways that would allow workers to feel safe to report abuses regardless of migration status.**

While the Home Office has previously rejected the proposal for firewalls in the policing context, this was based on the view that measures would be introduced to



help migrant victims regularise their stay and access relevant support.<sup>248</sup> Adding to criticism of that position by migrants' rights organisations,<sup>249</sup> our research has further underscored how the threat of immigration enforcement action deters workers from taking steps to access their rights.

**18. We recommend the relevant inspection body consider ensuring that prior to their arrival in the UK and again on arrival, all migrant workers are provided with a written, legally binding contract in their first language.**

This should detail:

- i. Pay structures (including any piece work systems, work performances standards and risks of warning systems for agriculture, and any non-payment for travel time, standby time etc for care),
- ii. Minimum guaranteed weekly hours and maximum weekly hours,
- iii. Minimum guaranteed duration of any work,
- iv. Any permissible fees / deductions for accommodation charges, and
- v. details of any repayment clauses (for care workers).
- vi. Clear information on workers' rights under UK employment law
- vii. Details of relevant government departments, embassies, trade unions, and NGOs, with confirmation that they will not be penalized for seeking support. This would also address the barriers to joining trade unions and / or seeking support that our research highlighted, which included a lack of knowledge of or approach by relevant organisations and fear of repercussions.

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<sup>248</sup> Home Office, 'Home Office and Police Data Sharing Arrangements on Migrant Victims and Witnesses of Crime with Insecure Immigration Status' <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041124/HO\\_Review\\_Police\\_and\\_HO\\_data\\_sharing\\_migrant\\_victims.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041124/HO_Review_Police_and_HO_data_sharing_migrant_victims.pdf)> accessed 16 December 2021.

<sup>249</sup> See e.g. Kalayaan, 'Government Review into Data Sharing Practices for Migrant Victims of Crime Is a Missed Opportunity - 15 December 2021' <<http://www.kalayaan.org.uk/wp-content/uploads/2021/12/Press-release-15-12-2021.pdf>> accessed 24 November 2023.

## **19. The relevant enforcement body should strengthen inspections to protect migrant workers' labour rights.**

In particular, our research has identified excessive work as a pressing issue.

**Therefore, we recommend that the enforcement body:**

- a. **should ensure that inspections in each sector include a review of hours worked** to check that they are: (a) in line with the hours stated in the contract, and (b) do not exceed the 48-hour maximum working week, unless the employer can demonstrate that the worker has made a free, clear, and informed decision to opt out of the limit. To demonstrate such a choice, the contract must state the opt out in simple terms in the worker's own language, making it clear that this is not a precondition of employment. If the relevant minimum hourly rate is not being paid for all hours worked (e.g., there are exemptions for travel time between visits) this is likely to suggest a lack of free consent, as additional hours are being used to make up a basic pay rate.
- b. **should also take steps to satisfactorily determine whether migrants are being employed on the same conditions as British and settled workers**, including as regards pay, sick and holiday pay, annual leave, pensions, other benefits, and training and progression opportunities.

## **20. The UK Government should take steps to establish dispute resolution mechanisms for migrant workers.**

Our research has uncovered that workers have few avenues to challenge unreasonable behaviour by their employers, such as failing to meet picking targets when they are allocated to crops that do not allow for these targets to be met. All workers should have access to dispute resolutions systems within and outside their workplace.

**We recommend that the Home Office considers:**

- a. **requiring employers to create internal systems of dispute resolution as a condition of sponsorship.**
- b. **exploring mechanisms for establishing an independent and accessible external dispute resolution mechanism**, with a view to providing a specialist UK-based contact point for migrant workers to discuss employment issues.

**21. We recommend that employers should provide a minimum of one week's free training (c. 35 hours) on work processes, health and safety, and rights at work, paid at no less than the National Living Wage.**

**22. We also recommend that employers should allow trade unions and NGOs access to workplaces so that they can support workers**, including by allowing them to run surgeries/drop-in information sessions during work hours.

Support organisations and trade unions play a vital role in helping workers access their employment rights.

## Areas for future research

Further research is required to explore workers' experiences on both visa schemes as regards attempts to change employers and to enforce rights through engagement with labour inspection bodies and attempts to bring Employment Tribunal claims, as well as any barriers experienced in doing so. Once the recently announced changes to the H&CWV to prevent workers bringing family members to the UK are implemented, further research will be required to determine how this affects rights at work and exploitation. In general, longer term studies that capture the experiences of a wider range of migrant workers on these schemes will add further to the evidence base. These may build further on the project's experience of recruiting participants via social media, which facilitates contact with workers beyond those already in contact with NGOs.

# MODERN SLAVERY & HUMAN RIGHTS

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