

LABOUR
EXPLOITATION
ADVISORY GROUP
POSITION PAPER

FLEX-LEAG
APRIL 2016

LABOUR COMPLIANCE TO EXPLOITATION AND THE ABUSES IN-BETWEEN

LEAG

LABOUR
EXPLOITATION
ADVISORY GROUP

Written by Bridie France

Published by Focus on Labour Exploitation (FLEX) and the Labour Exploitation Advisory Group (LEAG), August 2016

The Labour Exploitation Advisory Group (LEAG) is a group of experts from key organisations working with potential and actual victims of trafficking for labour exploitation.

The cover image does not feature exploitative working.

SUMMARY

Expert members of the Labour Exploitation Advisory Group (LEAG) have identified a strong causal link between labour abuses and labour exploitation¹ within certain UK labour sectors and particularly amongst migrant communities with whom they work. Abuses occur across the continuum, from relatively minor infractions to extreme exploitation and slavery.

'Minor' labour abuses such as non-payment of minimum wage, non-payment of holiday and sick leave, and unfair dismissal are most prevalent. When left unchecked these can develop into more severe exploitation.

"It's very easy ... from starting to be paid less or to be treated in a discriminatory manner, for that to evolve into more severe forms of exploitation and the problem is that there is a very fine line there."

Carolina Gottardo, Latin American Women's Rights Service

The employment of low-skilled migrant workers in unregulated labour sectors, often via recruitment agencies or other subcontracting models, is thought to create the perfect conditions for labour abuses to thrive, and in some cases to develop into extreme exploitation. Unscrupulous employers are able to take advantage of vulnerabilities without fear of reprisal, as workers are unable or unaware of how to enforce their rights. As indicated by FLEX research published in 2015, the UK has one of the weakest labour law enforcement structures in Europe.²

"We have a few cases with people working in one place for 8, 10 years, and because they never protected their rights, basically the employer started exploiting them more and more and I think people lose confidence in a situation like this."

Katarzyna Zagrodniczek, East European Advice Centre

Several common drivers of exploitation contribute to workers' vulnerability to abuse, or prevent workers from reporting abuse. These include worker isolation, poverty wages, language barriers, and lack of access to information about labour rights. Though mechanisms exist for referral and support of victims of trafficking,³ there is little in place to tackle lower-level abuse and frontline officials can be unwilling, or unable, to help in situations that are not considered to be extreme. Recourse and remedy should be available both in cases of labour abuse and labour exploitation, and intervention at an early stage may in many cases prevent labour abuse from developing into labour exploitation.

"I think it's very, very, very important not to fall into the trap of thinking that only extreme cases need to be dealt with. The larger volume of what we see ... is endemic exploitation. The issue of labour exploitation is far from being addressed."

Carolina Gottardo, Latin American Women's Rights Service

¹ Labour exploitation is defined here as forced labour, slavery or servitude in labour sectors other than the sex sector. Labour abuses are defined as breaches of national or international labour law (e.g. failure to pay minimum wage, unpaid overtime, unfair dismissal).

² FLEX, 2015, *FLEX Policy Blueprint: Combatting Labour Exploitation through Labour Inspection*.

³ For example, the National Referral Mechanism. However, participants highlighted that this does not guarantee long-term protection and so was often considered unsuitable for victims' needs.

KEY RECOMMENDATIONS

TO THE INDEPENDENT ANTI-SLAVERY COMMISSIONER:

The Independent Anti-Slavery Commissioner should make labour abuses a priority in order to address labour exploitation, by:

- Commissioning research into access to labour rights information, advice and protections for vulnerable workers, and making recommendations to government to improve information provision and access;
- Addressing labour abuses against vulnerable workers, by advocating the protection and enforcement of labour rights for all workers, documented and undocumented, as a means of preventing exploitation;
- Monitoring the UK labour market enforcement framework and working closely with the new Director of Labour Market Enforcement to ensure that workers' and victims' rights are prioritised.

TO THE DIRECTOR OF LABOUR MARKET ENFORCEMENT:

- The Immigration Act 2016 establishes the role of a Director of Labour Market Enforcement, one of whose primary functions is to provide a single view of risk and priorities across the spectrum of non-compliance. Under this mandate, **the new Director of Labour Market Enforcement should review the prevalence of non-compliance and the link between abuse and labour exploitation in the UK labour market.**

TO THE UK GOVERNMENT:

- **The new Gangmasters and Labour Abuse Authority (GLAA) should be provided with resources to match its new labour market wide mandate.** Once adequately resourced the GLAA should ensure that it works with a wide range of stakeholders, including LEAG members, to build strong expertise in the multiple-discriminations and abuses that are endemic in high-risk UK labour sectors.
- **The Government should review access to justice for those experiencing labour abuses as part of a strategic approach to preventing labour exploitation.** This review should look specifically at barriers to remedies for vulnerable workers.

TO THE MAYOR OF LONDON:

- **The Mayor of London should ensure that labour exploitation is included in his 2017-2021 strategies.** Labour exploitation should fall within the field of economic development and/or the labour market and the Mayor should adopt a broad approach to this issue, linking labour abuses in the labour market with more severe forms of exploitation. Any Mayoral strategy addressing labour exploitation should place a strong emphasis on identification of abuses prior to their development into exploitation. In order to achieve this the Mayor should place a high priority on labour inspection and enforcement in London, with the involvement of NGOs and trade unions working with migrant communities, workers, vulnerable women and homeless individuals.
- **The Mayor should champion multi-agency partnerships in London** which include all frontline services working together to inform and empower vulnerable workers. Local authorities, healthcare professionals, schools, and others who come into contact with those at risk of exploitation should be equipped with clear referral pathways and advice networks in order to detect and support victims of abuse at an early stage.

TO THE METROPOLITAN POLICE:

- **The Metropolitan Police should build on successes in tackling sexual exploitation in London, increasing identification and reporting of cases of labour exploitation to match the high rates of identification of sexual exploitation.** Multi-agency partnerships with NGOs, support services and other frontline professionals should be built at a local level in order to proactively identify victims of labour exploitation, and provide them with access to advice and support. All law enforcement officers should receive specialist training on victim trauma and exploitation indicators to ensure that victims are protected and given access to the appropriate support.

APPROACH AND METHODOLOGY

This position paper was developed to represent the views and experiences of LEAG members on the relationship between labour abuses and exploitation. A number of related issues common to the experiences of members provided the starting point for this research:

- Since 2010 the UK Government has increasingly sought to emphasise a binary split between the majority of businesses who are compliant, and a few who severely exploit workers. For example, the Gangmasters Licensing Authority (GLA) in its 2013-16 strategy set out its move towards a focus on organised criminal activity rather than general compliance;⁴
- However, the experience of LEAG members is that exploitation often starts with labour abuses which can develop in to severe exploitation;
- There are limited avenues for reporting labour abuses, and limited avenues for accessing impartial advice, which means that a) workers lack confidence to complain about abuse and b) employers are able to act with impunity;
- Workers sometimes don't identify as victims of labour abuses, and where workers do identify problems obstacles include: a) subcontracted workers are unclear who is their employer b) workers do not know how to report abuses; c) workers fear of losing their jobs if they complain;
- LEAG members find that if those suffering labour abuses don't qualify as a victim of slavery then nothing can be done to help them, or to prevent their situation from worsening. More emphasis should be placed on preventing exploitation from happening in the first place.

This research comprised of semi-structured interviews with LEAG members and others working directly with potential victims of labour abuse and exploitation, as well as a review of some existing research on vulnerable work, labour exploitation in London and the concept of a continuum of exploitation. Participants from the following organisations were interviewed: Latin American Women's Rights Service (LAWRS), Equality, East European Advice Centre (EEAC), British Red Cross, Union of Construction, Allied Trades and Technicians (UCATT), and The Advice on Individual Rights in Europe (AIRE) Centre.

⁴ Gangmasters Licensing Authority, *Strategy for Protecting Vulnerable And Exploited Workers 2013-2016*, available here: <http://www.gla.gov.uk/media/2030/gangmasters-licensing-authority-strategic-plan-f.pdf>

RESEARCH FINDINGS

TYPES OF LABOUR ABUSE ENCOUNTERED

In their work research participants witness cases of labour abuse across the spectrum, from relatively minor infractions, to extreme exploitation and slavery. The most commonly cited abuses were non-payment of minimum wage, non-payment of holiday or sick leave, and withholding of wages. Also mentioned were non-payment of national insurance or tax, discrimination, harassment, unfair dismissal, bullying (verbal or physical), withholding passports, unsafe working conditions, threats, physical and sexual abuse, and people being physically confined and not allowed to leave the workplace.

“Each of those little things, being paid less than minimum wage, tied into accommodation, withholding the passport, each of those in their own right can lead to worse exploitation.”

Alan Anstead, Equality

LABOUR ABUSES CONTRIBUTING TO VULNERABILITY TO EXPLOITATION

When asked to identify what may cause or allow labour abuses to develop into exploitation, research participants cited several drivers of exploitation: inherent or contextual factors which make workers vulnerable to both abuses and exploitation. Some of the labour abuses described by participants can themselves create further vulnerability to exploitation, as they impact workers' ability to make the decision to leave or report abusive or exploitative situations. These include:

NON-PAYMENT OF MINIMUM WAGE/WITHHOLDING WAGES. Where workers are in poverty, they are less likely to complain for fear of losing the little money they have to survive. Participants spoke of cases of workers suffering labour abuse and even victims of exploitation who, having accessed advice about what could be done, chose not to pursue remedies as they were too afraid of losing employment upon which they were reliant for survival. This level of financial vulnerability, which can be exacerbated by very low wages or withholding of wages, was thought to open the door to further exploitation. Where survival is more urgent than remedy, workers have no option but to endure abuse and therefore employers can get away with more exploitative practices without fear of reprisal.

EXCESSIVE CHARGES FOR ACCOMMODATION/EQUIPMENT. Accommodation that is tied to employment and, in some sectors, specialist clothing or equipment required for the job is provided at high prices by employers or recruitment agencies. Poverty and debt resulting from excessive charges holds people in abusive situations as they must work more in order to pay back what they owe or to make enough money to survive. Accommodation being tied to the job also increases worker dependency and makes it more difficult to complain about or leave abusive situations, as workers face having to find alternative accommodation as well as work in order to avoid destitution.

“If your accommodation is somehow linked to your work, then exploitation is likely to be more extreme and go on for longer because not only have you got to break your employment you've also got to find somewhere to live.”

Barckley Sumner, UCATT

CASE STUDY

DOMESTIC WORKER LABOUR ABUSE DEVELOPING INTO EXPLOITATION

Anil lived and worked in a bed and breakfast cleaning and looking after guests. He was made to work long hours and not given proper breaks to rest or eat. When Anil tried to run away, his employer took his passport and threatened him. Anil was scared of what his employer might do and so he returned to work. The employer told him that he would renew Anil's visa, but did not, forcing him to work illegally, sexually exploited him and threatened to tell his family that he was gay unless he worked in exploitative conditions. Eventually Anil escaped with help from a friend.

WITHHOLDING PASSPORTS. When people do not have access to their legal documents they may feel trapped or unable to leave. They may have no way of returning home without their passport or be afraid of being picked up by authorities without their documents.

BULLYING, threats and harassment may erode confidence to the extent that workers feel unable to complain or leave.

FURTHER DRIVERS OF EXPLOITATION

Some drivers of exploitation are not labour abuses in themselves, or even created directly by particular types of abuse; they are issues, which alone or (more often) in combination serve to make workers vulnerable to abuse by affecting their ability to enforce their rights. For example:

ISOLATION. In the cleaning and hospitality industries particularly isolated working and antisocial hours mean that workers are extremely vulnerable. For example, cleaning work often takes place overnight in offices which may be empty except for a supervisor, who in many cases is the person responsible for the worker's abuse. Limited contact with other workers or employers means few opportunities to complain about abuse and workers may feel unsafe when alone with abusive line managers. Cases of harassment are common and one service provider mentioned cases of rape in an isolated work setting.

"The fact that this is very isolated work and is in unsocial hours means that the abuses that take place are more hidden, so nobody can see them."

Carolina Gottardo, Latin American Women's Rights Service

INSECURE IMMIGRATION STATUS. Fear of immigration authorities is a major barrier to reporting for both undocumented and documented migrant workers – the latter often being unaware or insecure in their migration status. The threat of reporting to police or immigration authorities is routinely used by unscrupulous employers to hold workers in abusive situations. Even if the threat does not come directly from the employer, undocumented workers often will not report abuse as they are afraid of coming to the attention of authorities and being deported.

"When women are undocumented and employers know about it, they are very easy prey for very serious manners of labour exploitation."

Carolina Gottardo, Latin American Women's Rights Service

"If people don't feel like they can talk about small abuses that they've experienced in their workplace, then it allows them to be abused further or exploited further and for employers to take advantage of their irregular immigration status."

Kathryn Baldacchino, British Red Cross

POVERTY/LACK OF ALTERNATIVE OPTIONS. Survival is the primary concern for most of the people research participants come into contact with, particularly as many have families either in the UK or abroad who depend on them. Fear of losing work, and any meagre income it provides, is a major deterrent to reporting abuse and many workers are willing to endure labour abuses and even exploitation in order to continue a subsistence standard of living. Bogus self-employment and zero-hours contracts create instability and fear as workers have fewer protections. As a result, many workers are fearful that if they complain about abuse they will be fired or not be offered any further work. Employers take advantage of this, knowing that workers are reliant upon them to survive.

"I think if you are in a certain situation the employer knows that he can exploit you. And they know that even if you have the tools you can potentially use, you won't use them because you don't want to lose your job."

Katarzyna Zagrodniczek, East European Advice Centre

"A concern is people not being able to work, and therefore looking for ways to survive. 30% of the asylum seekers we see in the UK are destitute and have very little options to support themselves. It is a massive concern for us that those that are destitute are vulnerable to exploitation and this starts with small labour abuses and informal working arrangements which then leads to exploitation."

Hannah Jackson, British Red Cross

LONG EMPLOYMENT CHAINS. Subcontracting models which create long employment chains were identified as a key driver of exploitation in certain sectors, particularly construction and cleaning. As many workers do not know by whom they are ultimately employed they are unsure of where they can complain if there are problems. Lack of accountability within subcontracting models is a major issue; primary contractors are able to deny knowledge of or responsibility for abuse, and often do not know who is working for them. One participant mentioned a case of a group of cleaners working at a high street retailers, who were contracted through a recruitment agency and did not receive their holiday entitlements but instead had their timesheets altered. When they approached their manager,

they were dismissed and told that it was the recruitment agency's responsibility. Another participant spoke of a case where a recruitment agency contracting workers for a large retailer was paying workers far less than minimum wage and withholding their passports. The company using this agency claimed they did not know that this abuse was happening.

LANGUAGE BARRIERS. Those working with Latin American and East European communities cited low-level English language skills as a key driver of worker vulnerability, as workers who do not speak English are less able to access information about their rights, and face difficulties complaining to their employers about abuse or reporting exploitation to police or other agencies. Especially when working in isolated conditions, workers are often dependent upon one line manager, who may be the only one who speaks their language, and is usually the one abusing or exploiting them.

LACK OF AWARENESS OF LABOUR RIGHTS. All participants found that many of the people they encounter who have suffered labour abuses or exploitation do not know their labour rights or what they should expect of their employers. This may mean that they accept low-level abuse, which can develop into more severe exploitation. It also means that even if they suspect something is wrong, they are not equipped to challenge it.

THE DEVELOPMENT OF ABUSE

EXAMPLE SCENARIOS

SCENARIO 1

V is hired by a gangmaster to work in a factory. He is housed by the gangmaster with four other workers and taken to work every day in a minivan. The workers are charged above market rate for their accommodation, and are also charged for food provided by the gangmaster. Once this has been deducted from their wages, there is very little money left. V is supporting a family in Bulgaria and soon gets into debt. When more workers are brought to the house and living conditions worsen, V cannot leave as he has no money to pay for somewhere else to live. The workers are soon told that their living costs are increasing, which means that V can no longer afford to send money home. He decides to leave, but is told by the gangmaster that he has not been paying the correct tax, and if he leaves they will report him to the police. V is afraid of being sent to prison and so he continues to work.

SCENARIO 2

C works loading trucks. The work is physically demanding and health and safety procedures are not followed by C's manager. When he raises the issue, C's manager becomes angry and shouts at him. C is expected to load heavy goods onto the trucks within a very short time frame, and after a few weeks he injures his back. C is afraid to take time off as the employer has a reputation for dismissing people who take time off sick. C's wages are cut and he is told it is because he is not working fast enough. His manager begins to bully him. Because he is not being paid properly, C struggles financially. C's manager takes on new contracts and pressures C to work overtime. When he is not paid for the extra hours, C does not feel confident enough to raise the issue as he is convinced he will be fired and cannot afford to lose his job.

SCENARIO 3

M works for a family as a live-in domestic worker on a tied visa. Her working hours are long and she is paid minimum wage. When her visa expires, her employer tells her they will renew it, but they do not. M's wage is reduced, and when she raises this with her employer, they tell her she is working undocumented, and so they do not have to pay her the national minimum wage. M decides to leave, but her employers tell her they will report her to the authorities and she will be deported. After this her conditions worsen: she is verbally abused, and when she is sick, M's employer accuses her of being lazy and pressures her to work through her illness. M's freedom is restricted, so she eventually is not allowed to leave the house at all. If M complains about her treatment, her employers threaten to have her arrested.

BARRIERS TO ADDRESSING ABUSE AND EXPLOITATION

LACK OF REPORTING AND REMEDY

Failure to report abuse and lack of remedy, if abuse is reported, are two key factors that allow exploitation to develop. The perception that 'if they can get away with it, things will get worse' was common to all research participants.

"If you don't know where to report it and how to solve the situation it will always get more and more serious ... They're businesses, basically they use exploitation as a tool to accumulate the income. Because they can do it, it's as simple as that. They can get away with it."

Katarzyna Zagrodniczek, East European Advice Centre

The following obstacles can prevent workers from reporting and pursuing remedies:

1. LACK OF ACCESS TO REPORTING MECHANISMS.

Where workers know they are being abused and wish to report, not knowing where to complain to and how to enforce their rights is a barrier. This may be because they don't know who they work for, or because they don't know what mechanisms are available for reporting.

Mechanisms for reporting abuse and achieving remedies are slow, difficult to access and may achieve no outcome or undesirable outcomes for victims. The Advisory, Conciliation and Arbitration Service (ACAS) helpline service was considered to be inaccessible to those with little understanding of the system and poor English language skills. Employment tribunal fees are a major barrier for many who cannot afford them, especially as there is a risk of losing the case and ending up with nothing. Anonymity was also cited as an issue: workers are afraid of facing their employers or of losing their job as a result of reporting, if their details are disclosed in the process. For some victims of labour exploitation, the UK official National Referral Mechanism (NRM) was not seen as offering enough in terms of long-term protection and support to make it worth pursuing this route.

"Even in cases that were extreme, the reason why women were not willing to use [the NRM] is because they just thought that there was more to lose than to win, by going through a mechanism that didn't offer enough protections."

Carolina Gottardo, Latin American Women's Rights Service

2. LACK OF SELF-IDENTIFICATION.

Migrant workers face discrimination and stigmatization in the UK due to social attitudes and politics increasingly emphasising an anti-immigration agenda. This causes many migrants to believe they are 'second class citizens' and as a result to expect poorer treatment and fewer rights, even where they are entitled to the same rights as UK citizens. Migrant workers can also be willing to accept low wages, poor conditions and abuses if they perceive their situation to be better than what they might otherwise have in their country of origin. They may not identify as victims of abuse or exploitation, either because they are unaware of their rights in the UK, or because they expect poor working conditions and low pay. This was viewed by participants as a major barrier to intervention.

"It's getting away with it and the willingness of the victims to be part of that which can lead to that abusive relationship getting worse."

Alan Anstead, Equality

3. UNWILLINGNESS TO REPORT ABUSE

This is an issue common to the experience of all research participants. Fear is a huge barrier to reporting. Reasons people do not want to report include fear of losing work, fear of coming to the attention of immigration authorities, cultural reasons (stigma), and belief that reporting won't achieve anything.

CASE STUDY

WORKERS IN EXPLOITATION PRIORITISE WORK OVER REMEDY

Police in Derby stopped a minivan transporting Roma workers to a store distribution centre. When interviewed, the workers revealed that they were contracted by a recruitment agency and were being paid well below minimum wage. Their passports had also been withheld. Despite this, the workers did not want to be assisted by police or the local authority. They asked to return to the van and go to work, as they were concerned about being penalised if they arrived late.

LACK OF REGULATION AND ENFORCEMENT

The fact that there is no regulatory body with the power to inspect all labour sectors and enforce labour rights was a frustration expressed by most participants. It was acknowledged that the new GLAA will cover the whole labour market. However, FLEX has serious concerns with respect to the resources available for this task and the ability of the authority to shift from a narrow to extremely broad remit.

Research participants felt that if businesses are not required to uphold labour standards and are not held accountable for abuse, then there is no deterrent to continued and increased labour law breaches. Given the endemic nature of abuses, the vast majority of labour abuse and exploitation will continue to go undetected unless there is better enforcement.

"A lot of the people that we've encountered have been exploited by organisations or entities or individuals that are well below the £36 million threshold for the Modern Slavery Act, so they currently don't have any obligation to report what their standards are with regards to transparency in their supply chains ... predominantly the people that we're encountering are exploited by small businesses or medium-size businesses."

Kathryn Baldacchino, British Red Cross

PROPOSED SOLUTIONS

PROVISION OF ACCESSIBLE AND APPROPRIATE INFORMATION AND ADVICE

Research participants felt that if workers were able to access information and advice about their rights, their employment situation and mechanisms for complaining about minor abuses, they would be better able to leave abusive situations, seek redress or prevent themselves from entering abusive situations in the first place – all of which would prevent abuse from developing further. A crucial element in provision of this information is translated material and interpretation services. Workers must be able to access both information and advice in their native language. For those who have been exploited, impartial advice should also be available prior to referral into the NRM to enable them to make informed decisions about entering into referral processes and support systems.

STRONGER LABOUR INSPECTION

Improved inspection would provide opportunities for intervention at an early stage. If abuse is detected, remedy could be sought before exploitation develops. If businesses know that there is a chance they could be caught and penalised, there would be more incentive to comply.

MAKING AVENUES TO REPORTING/ REMEDY SIMPLE AND ACCESSIBLE

Lack of understanding of processes for reporting and remedy, lack of legal aid, fees for tribunals, and restrictions due to status were mentioned several times as barriers to justice for those who have suffered labour abuses. Mechanisms for redress should be visible, understandable, and accessible to all. Anonymous reporting was also mentioned as a way to make workers feel safer in coming forward. At an early stage some victims of exploitation may be reluctant to work with statutory bodies; it is therefore important that NGOs and other non-statutory agencies are empowered to make referrals for support and advice, which may enable them to report and/or seek remedy at a later stage.

MULTI-AGENCY PARTNERSHIPS

All participants mentioned partnership working as key to ensuring that workers are able to access appropriate advice and support which would empower them to report abuse or leave exploitative situations. Working with organisations/ services which come into contact with vulnerable workers – for example police, healthcare, schools, local authorities – to disseminate information was cited as an effective way of informing workers about their rights and detecting abuse. All of these agencies should have a clear idea of where people should be referred to in different situations.

CLEAR SEPARATION OF IMMIGRATION CONTROL AND LABOUR ENFORCEMENT

Fear of coming to the attention of immigration authorities was cited as a huge barrier to reporting abuse. Undocumented workers cannot be encouraged to report unless they feel safe to do so. Both workers' and victims' rights should be upheld regardless of immigration status.

MAKING SUBCONTRACTING MODELS MORE TRANSPARENT

Lack of accountability and transparency within labour subcontracting structures was identified as a key driver of exploitation, as workers don't know who they are working for and employers are unaware of abuses happening within their supply chains. In order to address this problem, employment agencies should be made responsible for providing clear information on workers' employers and the complaints mechanisms available.

**FOCUS ON
LABOUR
EXPLOITATION**

LEAG | LABOUR
EXPLOITATION
ADVISORY GROUP

**POSITION PAPER:
LABOUR COMPLIANCE TO EXPLOITATION
AND THE ABUSES IN-BETWEEN**

**PRODUCED WITH
THE SUPPORT OF:**



Trust for London

Tackling poverty and inequality