

UK Labour Visa Schemes: Creating the Conditions for Exploitation?

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A post event report summary exploring the unintended consequences of labour visa schemes for migrant workers in the UK.



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Creating the Conditions for Exploitation?
Post-Event Report Summary

Human
Trafficking
Foundation

Many thanks to our panellists Chris Williams (International Transport Workers Federation), Jessica Sparks (Rights Lab, University of Nottingham), Marissa Begonia (Voice of Domestic Workers), David Camp (Association of Labour Providers), Narmada Thiranagama (Unison), Ake Achi (Migrants at Work), Lucila Granada (Focus on Labour Exploitation) and Francesca Humi (Kanlungan).

With special thanks to Kate Roberts and Peter Wieltschnig at Focus on Labour Exploitation for their support.

Published:
December 2022

Front cover photo:
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The below is a summary of the concerns, experiences and recommendations made during the Human Trafficking Foundation's online forum on 22nd September 2022.

Introduction

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The Human Trafficking Foundation organised a forum with expert speakers, open to anyone working in the anti-trafficking space, to explore a range of short-term labour visas available in the UK for migrant workers.

In recent years labour shortages in the UK have intensified and in attempt to mitigate these gaps in the workforce a large number of labour visas are granted to migrant workers each year. Workers who come to the UK on temporary labour visas with high hopes of better wages sacrifice a lot to leave their country behind; in many cases incurring high recruitment fees and visa charges to do so which they hope to pay off but can often trap them in debt.

Once in the UK workers can find that the restrictive nature of their visas, which do not always permit them to change employer once in the UK or allow access to public funds, along with the burden of debt, can result in a lack of viable alternatives of safe work if exploitation or abuse arises in their workplace. Migrants at Work described this experience as 'home grown slavery' whereby the state establishes conditions which make migrant workers deeply vulnerable to exploitation.

All visa schemes explored in the forum (Transit Visas, Health and Social Care Visa, Seasonal Workers Visa and the Overseas Domestic Workers Visa) exhibited a striking parallel; all were created for industries which are hidden from public scrutiny, invisible in

private domestic settings, in UK waters and farms where workers are often isolated from each other and society without centralised working spaces.

Panellists noted the lack of consultation ahead of Government changes to the restrictions of these visas and a disregard for evidence from experts around exploitation risks. They also viewed the labour market enforcement system as under resourced and therefore not fit for purpose.

It was regularly raised that migrant workers on short term visas in the UK are not only unable to exercise their rights, but if they experience abuse or exploitation, they often struggle to access legal support as their cases span across both immigration and employment law. Migrants at Work described this experience as falling into a gap where support cannot be accessed as the issue is interpreted as outside of the remit of either immigration or employment law.

Ultimately, panellists described how discriminative hostile environment policies construct precarious work for migrant workers, which observes labour, Kanlungan describes, as highly mobile and not warranting protection. This results in the following:

- Lack of access to medical care
- Power imbalances between worker and employer
- Dependency as housing is often provided by employer
- Inaccurate information given to workers during recruitment stage
- Recruitment fees creating restrictions and debt bondage
- Inability to change employers
- Fear of repercussions in raising concerns around working conditions

Transit Visas

Transit visas are designed for seafarers as a means to pass through the UK and onto a ship, however most migrant fishers are employed through this route, despite the availability of the skilled worker's visa. The transit visa never intended to employ those in the fishing industry living in UK waters and does not give workers legal rights to enter the UK itself or to change employer.¹ The use of this visa, which treats migrant fishers as if they are in transit and deprives workers of their rights, was described by The International Transport Workers' Federation as a demonstration of the UK Government's hostile environment for migrant workers.

Fishing is an informal and often precarious industry, where fishers are usually paid a percentage of the catch rather than hold normal employment contracts. Fishing is not heavily unionised in the UK, and the precarity of the sector is heightened for migrant workers under the limitations of the transit visa itself.

Challenges Raised

The International Transport Workers' Federation and University of Nottingham's Rights Lab described how under the transit visa and policy incoherences, migrant fishers are excluded from minimum wage and denied both labour market access and healthcare (except in emergencies). Migrant fishers under this visa require permission to enter the UK which allows employers to restrict their movement and control who they have contact with.

Financially, a two-tier system has been constructed in UK fishing whereby migrant workers receive a fixed wage, respondents in Rights Lab research reported an average of £3.51 an hour, whereas UK nationals receive a percentage of the catch, amounting to a substantially larger wage.² Excessive working hours of 16/20 hour a day have been reported with a common requirement to work on rest days and Rights Lab research also found that 35% of fishers interviewed reported experiencing regular physical violence.³ Despite this however, exploited fishers have no incentive to enter the National Referral Mechanism (NRM) – the UK government's framework for identifying victims of modern slavery and human trafficking – as within this system they are not permitted to find alternative employment and therefore continue to send money back home.

Further, issues arise as the industry is not regulated by the same authorities, the Gang Masters and Labour Abuse Authority (GLAA) cannot convene as it has no maritime jurisdiction.

Recommendations

- > Fishers should be moved onto a tailored skilled worker visa with fishing specific language requirements for vessel safety. This tailored visa must ensure minimum wage and access to the NHS and permit fishers to change employers.
 - > Requirements must be established for workers to have fishing experience to ensure safety on vessels
 - > The Home Office must permit migrant fishers on the transit visa to find employment and continue to work while within the NRM
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¹ <https://www.itfglobal.org/en/reports-publications/one-way-ticket-labour-exploitation>

² <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2022/may/letting-exploitation-off-the-hook.pdf>

³ <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2022/may/letting-exploitation-off-the-hook.pdf>

Health and Care Worker Visa

The Health and Care Worker Visa is a type of skilled worker visa which requires migrant workers to demonstrate that they will be working for a UK company within the NHS or adult social care. The Government has recently accepted care workers, care assistants and home care workers as eligible for the NHS Health and Care Worker Visa; roles which are already seen as high-risk for labour exploitation due to their isolated nature and tendency for irregular hours. Workers are no longer required to pay the NHS surcharge so do not have to pay use health services themselves.

Challenges Raised

Both Kanlungan and Unison reported recruitment agencies precurring fees from migrant workers before they arrive in the UK which increase the risk of debt bondage. Speakers also noted how under the conditions of the visa, workers who leave their job only have 60 days to find a new employer approved by the Home Office to sponsor them. In this way the Health and Care Worker Visa enforces dependency on individual sponsors, whereby migrant workers' right to live in the UK is determined by their relationship with their employer. Employers are also aware that dismissal means workers may be deported from the UK and Unison reported employers enforcing large fines on workers when they resign after experiencing difficult working conditions. These fines can act as a deterrent for leaving an exploitative employer, essentially trapping workers in unsafe work.

Unison described how one employer asked all migrant workers to report where they were when they were away from work in the evenings and weekends, incorrectly claiming this was a Home Office requirement. This deliberate decision to create fear of the Home Office means that workers are acutely aware that their position in the UK can be taken away from them and they could face deportation. Within this environment of fear, it is clear that migrant workers can often feel unable to report abuses to authorities and enter the NRM, leaving them deeply vulnerable to further exploitation.

Kanlungan emphasised the lack of public visibility of care work, describing how difficult it is for carers to build solidarity and networks, as they are often disconnected from the wider work force employed in a range of private homes. Kanlungan explained how not being able to develop workplace relationships means it is harder for carers to reach out for help when abuse takes place.

Recommendations

- > Suspend No Recourse to Public Funds (NRPF) for migrant workers in health and social care to ensure that workers have a safety net without the risk of destitution
 - > Establish regulation and ensure that migrant workers on the Health and Care Visa are not paying recruitment fees before entering the UK
 - > Remove fines for changing employers once in the UK under the Health and Care Visa
 - > Ensure the provision of training and clear guidance for legal practitioners on the intersections of immigration and employment law to support migrant workers
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Case study

A family from the Philippines was offered sponsorship to come to the UK and work as physiotherapists through a care agency and be provided with accommodation. Once they arrived the lodging was a single bedroom for the whole family, and they were made to do caring and cleaning work for different families across the UK - not physiotherapy as they were sponsored and trained to do. Their 16-year-old son was forced to take care of a small child in the day while his parents were working. The family worked excessive hours and were told that if they tried to leave before the end of their probation, they would have to reimburse fees incurred by their sponsor. After reaching out for support, problems arose in receiving legal support as immigration lawyers would say it's an employment matter, and employment solicitors would say this is an immigration dispute. The family eventually had to pay themselves out of the contract they found themselves trapped in.

Seasonal Worker Visa

The Seasonal Worker Visa scheme allows individuals to come to the UK temporarily for up to six months to work in horticulture.⁴ The Seasonal Worker Visa scheme has been expanded rapidly over the last three years, with little to no sector consultation. Focus on Labour Exploitation (FLEX) and The Association of Labour Providers (ALP) reported concerns both in-country and during the recruitment stage for migrant workers and highlighted the lack of Labour Market Enforcement within the Seasonal Worker Visa.⁵

Challenges Raised

Being permitted to live in the UK only for a limited time frame means that migrant workers do not have the time to learn how to navigate the system, join unions, or know their rights. Those on the Seasonal Worker Visas are ineligible for public funds; they therefore do not have a safety net if they have to leave an employer and reporting abuse means risking both their job and their accommodation in the UK.

FLEX explained that the Government's own evaluation of the scheme in 2019 found that over half of workers were not receiving their employment contract in their native language, a rule of the scheme, and revealed that workers are given inaccurate information at recruitment stage about accommodation.⁶ Furthermore, 4/15 workers were not provided with required health and safety equipment.

Echoing this, FLEX's research in Scotland in 2020 found that all the indicators of forced labour were met by the workers they surveyed who were on a Season Worker visa.⁷ FLEX's research also found a high rate of accommodation costs and additional unexpected subsistence deductions, coupled with initial travel costs from distant countries which can create vulnerability to debt bondage.

The Gangmasters and Labour Abuse Authority (GLAA) do not do welfare checks on farms, licencing only the Scheme Operators rather than the farms and the employers, and have no jurisdiction overseas to deal with the recruitment issues. This leaves the industry relatively hidden from scrutiny, putting workers at further risk of abuse and exploitation.

Recommendations

- > Better consultation and engagement with businesses and NGOs by the Government
- > More transparency in decision making and more monitoring of the scheme
- > Resourcing on monitoring and checks and ensuring accountability from license holders
- > The Seasonal Worker Visa must be amended so workers are free to change employers once in the UK
- > Provide accessible employment contracts for workers on the scheme in their own language⁸

⁴ The Seasonal Worker visa also enables people to come to the UK and work in Poultry from October-December the same year.

⁵ <https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

⁶ <https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019>

⁷ <https://www.labourexploitation.org/publications/assessment-risks-human-trafficking-forced-labour-uk-seasonal-workers-pilot>

⁸ <https://www.labourexploitation.org/news/migrant-workers-shouldn%E2%80%99t-be-paying-harvest-uk-crops>

Overseas Domestic Worker Visa

Employers can bring domestic workers to the UK if they have worked for them for over a year. The Overseas Domestic Worker Visa does not give workers recourse to public funds and constructs dependency on employers who provide both their accommodation and temporary status in the UK.

Before 2012, migrant domestic workers were allowed to change employers once in the UK, but there are now limitations whereby workers are only permitted to do so during the allocated 6 months their visas are valid, without the possibility of renewal. Finding new, safe employment within this restricted time period is difficult and means many workers have little choice but to remain in abusive working situations. The undocumented status of many migrant domestic workers who continue to stay in the UK after the visa expires often means that exploitation is not reported due to fears of deportation from the UK.

Challenges Raised

Voice of Domestic Workers described how the NRM cannot prevent continued abuse as the financial support is not enough to live on and the individuals in the NRM are not permitted to continue working so cannot support their families back home. Voice of Domestic Workers also raised how visas can only be extended up to 2 years after a Positive Conclusive Grounds Decision under the NRM and stated the need for routes to settlement under the visa and after the NRM.

Recommendations

- > Reinstate the pre 2012 conditions for the Overseas Domestic Worker's Visa
 - > The Home Office must permit all potential survivors of trafficking to find employment and continue to work while within the NRM
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Conclusion

While the forum explored a variety of exploitation, from fishers working in UK waters to workers in private homes, the cases across all sectors shared notable similarities and it was evident that the conditions of short-term labour visas leave migrant workers in the UK vulnerable to labour exploitation and abuse.

Amendments to these visas to; reduce dependency on employers, empower migrants to be able to exercise their rights and offer access to public funds to create a safety net if employment becomes exploitative, along with routes to visa extension or settlement could destabilise this precarity to exploitation. Similarly, a focus on strengthening labour market enforcement in these sectors and providing accessible guidance for migrant workers on where to report concerns in their workplace is essential to addressing labour exploitation in the UK.

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