

**Addendum to “Taking Back Control of our Borders?”
by the Human Trafficking Foundation**

**Making the UK Unattractive to Traffickers
The Business Argument**

The Human Trafficking Foundation

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The Business Argument

This addendum report provides more detail to the recommendations, relating to business, that can be found in Part Four of the HTF Report, Taking Back Control of our Borders. However the more detailed input within this addendum report, from a variety of stakeholders, does not necessarily reflect the views of the HTF Trustees.

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Summary

As the Government consults on the creation of a new Single Enforcement Body and also works to reposition the UK in the global economy outside the EU, it is critical the Government does so with a view to ending exploitation in our labour markets. The primary pull factor for modern slavery is the potential for financial gain; it is a highly lucrative business generating \$150bn per year globally according to most recent estimates.¹ High profile cases in recent years have shown traffickers successfully infiltrate the UK labour market to carry out their exploits.² Thus, preventing modern slavery requires making the labour market much more hostile to traffickers. There is significant overlap between sectors where victims of modern slavery are found and those sectors where lesser violations of employment law occur, such as non-payment of minimum wage, unlawful deductions from wages, health and safety law; and/or business and tax regulations occur. Interviews with experts showed there is a need for better scrutiny in setting up and closing businesses and of tax arrangements and enforcement of business regulations to identify those businesses used to provide a cover for criminality. Enforcement by HMRC and regulation by Companies House need to be strengthened to enable identification of companies involved in trafficking. The Government has recently consulted on proposals to increase corporate transparency and reform the role of Companies House. These proposals should be implemented swiftly. Further consideration should also be given to the role of transparency in identifying and preventing modern slavery.

The Gangmasters and Labour Abuse Authority (GLAA) provides a greater level of scrutiny in sectors which fall under its remit, however, it lacks the resources needed to provide effective oversight of the expanded range of businesses nationwide. The proposed single enforcement body for employment rights has the opportunity to make a big difference to scrutiny of employment standards if it pulls together all the relevant aspects of employment, including tax, and covers all sectors of the labour market vulnerable to modern slavery. However, to be effective it will need the resources and powers to be proactive in inspecting and investigating thousands of businesses and bring about redress for victims of modern slavery and other workers whose employment rights are breached.

Businesses can do much more to address modern slavery in their supply chains, but current systems make it difficult to bring criminal prosecutions against companies for modern slavery offences. Accountability for exploitative companies must be improved through non-criminal as well as criminal proceedings for the UK truly to create a hostile environment to modern slavery. Non-criminal sanctions, including those in Article 6 of the EU Anti-Trafficking Directive must be made available for companies which engage in modern slavery or who fail to publish a modern slavery statement under section 54 of the Modern Slavery Act.

¹ <https://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm>

² In Operation Fort, the UK's largest modern slavery prosecution, perpetrators were able to routinely supply exploited labour to retailer supply chains with little risk of detection, as reported in *OPERATION FORT What businesses should learn from the UK's largest slavery prosecution* <https://www.antislaverycommissioner.co.uk/media/1421/iasc-operation-fort-review-june-2020.pdf>

Recommendations:

Companies House and HMRC need to take further action to tackle those companies exhibiting exploitative workplaces likely to harbour modern day slavery. The below recommendations could help alleviate the present challenges.

1. Incorporate into the Modern Slavery Act a wider range of sanctions, and safeguards for businesses that engage in exploitation as per Articles 5 and 6 of the EU Anti-Trafficking Directive and implement through strengthening the existing infrastructure, including:

- a. Connecting all immigration records with national insurance numbers (as has been done with EU Settlement Scheme) to enable monitoring by the proposed Single Enforcement Body and HMRC of the level of payment to migrant workers and entitlement to welfare benefits**
- b. Non-criminal sanctions for companies who engage in modern slavery or fail to publish modern slavery statements under Section 54 of the Modern Slavery Act**
- c. The expansion and extra resourcing of the Gangmasters and Labour Abuse Authority (GLAA) so it can take on more cases including investigating umbrella companies**
- d. More checks by Companies House when limited companies are created**
- e. Proactive investigations by HMRC into businesses with poor working practices that could be evidence of links to exploitation**
- f. Close collaboration and information-sharing between the proposed Single Enforcement Body and HMRC**

Links between tax and trafficking

“Where you have low-level issues with areas such as PAYE avoidance, if you scratch the surface you are very likely to find more serious violations.”³ Meredith McCammond, Low Income Tax Reform Group (LITRG)

With such huge challenges and weaknesses in our immigration controls, perhaps the most powerful tools at the Government’s disposal are measures to make the labour market more hostile to traffickers - directly, via tackling exploitation and supply chains, and indirectly by making the UK uninviting to criminal enterprises of any shape or form.

The latter point is critical as there is significant overlap between sectors where victims of modern slavery are found and those sectors where lesser violations of employment law (such as non-payment of minimum wage, unlawful deductions from wages), health and safety law, and/or business and tax regulations occur. These include those working in areas such as “car washes, nail bars, domestic staff and also construction and agriculture.”⁴ It should be made plain that the vast majority of small businesses are properly managed and operate within the law.

Around one-in-ten workers report that they are not given a payslip, and there is a pattern of the same groups (young people, older workers, migrant workers) being at greatest risk of each type of labour market violation suggesting that those on the receiving end of one form of non-compliant behaviour often also see other rights infringed.⁵ Indeed, the Low Income Tax Reform Group highlighted the links of labour exploitation to tax fraud, *‘labour market exploitation very often manifests itself in problems with Pay As You Earn (PAYE).’⁶*

Strengthening corporate transparency to target criminal enterprises

“The UK is seen as bit of a free for all [and] doesn’t do itself any favours”⁷

The shadow economy was estimated a few years ago as approximately 10 per cent of GDP in the UK.⁸ The greater speed and lower costs involved to create a limited company compared to most Western nations, is recognised as “an essential underpinning of our entrepreneurial economy”⁹ that stimulates growth, employment, and means the economy is resilient. But anti-fraud experts have asked: “can the current regulatory regime for companies – which is already considered ‘light touch’ by some commentators – actually facilitate the commission of financial crime?”¹⁰

³ Meredith McCammond, LITRG, Interview, October 2020

⁴ Meredith McCammond, LITRG, Interview, October 2020

⁵ <https://www.resolutionfoundation.org/publications/from-rights-to-reality/>

⁶ <https://www.litrg.org.uk/latest-news/submissions/191002-good-work-plan-establishing-new-single-enforcement-body-employment>

⁷ Interviewee, 2020

⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286334 Schneider and Williams (2013) Or MAC 2014

⁹ <https://www.fraudadvisorypanel.org/wp-content/uploads/2015/04/Abuse-of-Incorporation-November-2012.pdf>

¹⁰ <https://www.fraudadvisorypanel.org/wp-content/uploads/2015/04/Abuse-of-Incorporation-November-2012.pdf>

A lack of effective controls and enforcement, means that there are broadly no real ramifications for companies engaging in questionable practices. For example, ‘phoenix’ companies who set themselves up, build up debts and then disappear and reappear repeatedly under a new guise to avoid paying debts with little accountability. With Companies House as a non-active entity in many respects and the Insolvency Service - there to investigate wrongdoing – described to us as “fairly toothless”.¹¹

The Fraud Advisory Panel said the UK’s light touch approach to incorporation¹², with almost zero due diligence, had led to it being used by “serious criminals (such as drug dealers) to shield their criminal enterprises”¹³ It described prosecuting a corporate offence as ‘often impossible’ – and raised concern that in one year when around 3 million companies registered with Companies House, only 165 investigations were undertaken by the Insolvency Service from 3,523 complaints with 1,151 undertakings or disqualifications made against directors. In the same year there was only one criminal prosecution for failure to pay the minimum wage.

More checks need to be in place when limited companies are created. The Fraud Advisory panel noted in 2012 that those selling shell companies in the UK were less likely to comply with identity rules than providers in many other countries, including tax havens such as Jersey and the Cayman Islands. Meanwhile it was suggested that criminals abroad “often channel money through UK-registered entities because they appear to many people as more legitimate than tax haven-registered companies.”¹⁴

A lack of effective controls and enforcement mean that there are broadly no real ramifications for ‘phoenix’ companies, where companies are re-started after insolvency. The risks to workers by phoenix companies were highlighted by David Camp of Stronger Together, an organisation leading in supporting businesses to improve practice internationally. He noted that phoenixing is regularly reported in Leicester (where there have been well publicised recent cases of poor employment practices verging on modern slavery) with businesses changing their legal entity at regular intervals to avoid treasury liabilities and so that workers do not build enough service to gain employment rights.¹⁵

The ALP advises that “the counter-balance to a flexible labour market is to ensure that employers comply with the minimum protections for workers and that these are enforced.”¹⁶ Instead the ALP, MAC and others found limited incentives to comply alongside “serious gaps in protection” with obstacles for employees or customers to challenge poor practices and, that fundamentally “UK labour law is not providing a minimum level of protection in all cases resulting in a playing field that is not level.”¹⁷

¹¹ Anonymous, Interview Oct 2020

¹² The process of constituting a company as a legal corporation

¹³ <https://www.fraudadvisorypanel.org/wp-content/uploads/2015/04/Abuse-of-Incorporation-November-2012.pdf>

¹⁴ <https://uk.reuters.com/article/uk-britain-finance-crime/british-shell-companies-linked-to-52-money-laundering-scandals-idUKKBN1D918B>

¹⁵ David Camp, Stronger Together Interview Oct 2020

¹⁶ October 2019 GOOD WORK PLAN: ESTABLISHING A NEW SINGLE ENFORCEMENT BODY FOR EMPLOYMENT RIGHTS - SUBMISSION BY THE ASSOCIATION OF LABOUR PROVIDERS (ALP)

¹⁷ *ibid*

“The relative ease with which companies can be incorporated in this country is believed to have made the UK particularly vulnerable to the abuse of incorporation to commit fraud. This has prompted some leading commentators to describe the existing company incorporation regime as being ‘little short of a petri dish for incubating fraud’” ¹⁸

The UK government recognises that “regrettably the same factors that make our framework successful make it attractive to exploitation” and has recently consulted on proposals to increase corporate transparency and reform the role of Companies House.¹⁹ The Government reforms include: introducing an obligation on bodies that fall under the Anti-Money Laundering (AML) regulations to report discrepancies between the public register of companies and the information they hold on their customers; permit cross-referencing of Companies House data against other data sets; allow limited partnerships to be “struck off” following a court order; give Companies House power to query, and possibly reject, company names before they are registered; reform how and under what circumstances Companies House issues certificates of good standing; and that all company directors will have to verify their identity with Companies House before they can incorporate.²⁰

There have been calls for years for Companies House to perform a more robust gatekeeper function. The Government’s recent proposals are very welcome but should be implemented and done so swiftly and further consideration given to the role of transparency in identifying and preventing modern slavery.²¹ The proposals come subject to the spending review but could be financed through increasing the minimal fees charged to incorporate a company.

A 2020 Stronger Together report warned that the collusion model –previously carried out with fake universities and colleges - is likely to be reinvented on a large scale with the new skilled worker visa scheme and could see people manipulated into paying large fees or bribes for a job in the UK which may or may not be genuine.²²

The increasing trend²³ in false self-employment is another strategy being used to exploit both workers and the system. Fraudulent employers use the vagueness in legislation to treat a low paid worker as self-employed when the true nature of his/her engagement is that of employment. This model particularly affects migrant workers in low-skill occupations -placing workers in a very vulnerable position with no ability to claim the National Minimum Wage or many other employment rights.²⁴ There is evidence from Unite²⁵ that a significant proportion of construction industry workers are bogusly ‘self-employed,’ with 47% of those construction

¹⁸ <https://www.fraudadvisorypanel.org/wp-content/uploads/2015/04/Abuse-of-Incorporation-November-2012.pdf>

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925059/corporate-transparency-register-reform-government-response.pdf

²⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925059/corporate-transparency-register-reform-government-response.pdf

²¹ Department for Business, Energy and Industrial Strategy [Corporate Transparency and Register Reform Government Response to the consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities](#) September 2020

²² David Camp The impact of the new immigration system on human trafficking in the UK 2020

²³ <https://www.litrg.org.uk/sites/default/files/191002-LITRG-response-Single-enforcement-body-FINAL.pdf>

²⁴ Migrants in low skilled work – MAC, 2014

²⁵ <https://unitetheunion.org/news-events/news/2018/july/construction-bogus-self-employment-rises-again/>

workers treated as self-employed, even though all evidence on the ground would point to many of them being under direct commands. We were also told that nail bars are another sector where false self-employment is rife.²⁶ Both the construction and beauty industries - nail bars in particular - have had significant numbers of reports of worker exploitation and modern slavery in recent years.²⁷

“The relative ease with which companies can be incorporated in this country is believed to have made the UK particularly vulnerable to the abuse of incorporation to commit fraud. This has prompted some leading commentators to describe the existing company incorporation regime as being ‘little short of a petri dish for incubating fraud’”²⁸

Umbrella companies or PAYE umbrellas, are companies that self-employed contractors can join as an alternative to setting up their own limited company. They are seen often in long supply chains such as in the food and agricultural sectors, but can lead to tax avoidance and exploitation of workers. While there is no evidence of a direct link to slavery, “There are ongoing problems with some umbrella companies showing a complete disregard for the rules.”²⁹ While many sectors with fraudulent umbrella companies are overseen by the widely praised GLAA, it was noted that they are not a tax enforcement agency, and do not cover all sectors and the HMRC had a ‘poor track record’ on keeping fraudulent umbrella companies in check.

As the Resolution Foundation recognises, “Today’s labour market looks nothing like it did even a decade ago. ... Laws and regulations designed to protect workers often lag behind labour market developments.” This ‘lag’ is likely to be exacerbated by Brexit with the GLAA noting that, “The predominant factor which is likely to change the intelligence picture concerning labour exploitation over the next few years is the process of the UK leaving the EU”.³⁰

Taken altogether, by tackling the above problems of financial crime, and making it harder to commit these offences, the UK can significantly reduce human trafficking in the form of labour exploitation.

More proactive enforcement

The Resolution Foundation noted that “in recent years the government has taken important steps to ensure that employment rights are fit for the modern world. But rights are only worth the paper they are written on ... if they can be enforced³¹.” The LITRG also write that

²⁶ Meredith McCammond, LITRG, Interview Oct 2020

²⁷ GLAA Construction industry profile: <https://www.gla.gov.uk/media/5073/industry-profile-construction.pdf> GLAA Beauty Industry Profile <https://www.gla.gov.uk/media/5070/industry-profile-beauty-services.pdf>

²⁸ <https://www.fraudadvisorypanel.org/wp-content/uploads/2015/04/Abuse-of-Incorporation-November-2012.pdf>

²⁹ <https://www.litrg.org.uk/sites/default/files/files/171010-LITRG-response-Director-LME-FINAL.pdf>

³⁰ <https://www.gla.gov.uk/media/3537/external-nature-and-scale-of-labour-exploitation-report-final-version-may-2018.pdf>

³¹ <https://www.resolutionfoundation.org/publications/from-rights-to-reality/>

the best way for low-paid positions to be protected is “through effective state enforcement.”³²

A MAC report looking at low skilled work not only noted the concern about the exploitation of migrant workers in the sector but also that lack of effective enforcement was critical and led to many employers not complying with the relevant legislation. They estimated based on the rate of National Minimum Wage inspections during the first thirteen years since introduction in 1999 it would take 250 years to inspect every employer and that the tiny number of visits, prosecutions and no-application of harsh penalties provided next to no incentive to comply.³³ One stakeholder effectively told us the HMRC was “useless”, with criticism ranging from inactivity to too many departments being involved and the need for a simplification of the tax and employment models.

The MAC also gave an example of where, despite widespread exploitative practices in Peterborough during an “18-month period, of all the agencies in Peterborough taken to employment tribunals, only four or five agencies were successfully closed. Some of those agencies that had closed had restarted and were now trading under a different name.”

There is too little scrutiny or investigation of tax and NI and PAYE compliance, which provides a cover for criminality and exploitative practices. A clear recommendation is that the HMRC needs to be better resourced and focused around proactive investigations and enforcement against unscrupulous employers and businesses with evidence of tax and NIC failings and related links to exploitative work practices. As the LITRG conveyed to HTF and in its submission, “labour market exploitation very often manifests itself in problems with tax and National Insurance”³⁴ and HTF agrees that the Government is missing a trick in overlooking this problem that has clear links to a range of other more serious criminality like modern slavery and could act as a genuine deterrent.

One stakeholder told us, “We have three Turkish barbers and three nail bars in our small High Street. How they can legally cover their rates overheads, employment costs and make a profit I do not know. Criminal gangs launder dirty money through cash businesses – and if these gangs can do that whilst also bringing these workers into the UK, charging them to do so and paying them next to nothing, then they will do it – that’s the business. There is a wholesale absence of enforcement in the UK – to combat money laundering, minimum wage evasion, gross worker exploitation, modern slavery, yet it’s there in your face in every high street and throughout sector after sector – from construction to waste. Our labour market compliance and enforcement system seems to be broken.”³⁵ Modern day slavery is known to take place in high risk sectors such as nail bars³⁶ and barbers³⁷ - the same places where money laundering is understood to be taking place. Also there will always be a struggle to identify at the border people being brought to the UK to be exploited in these industries, by targeting

³² <https://www.litrg.org.uk/latest-news/submissions/191002-good-work-plan-establishing-new-single-enforcement-body-employment>

³³ Migrants in low skilled work – MAC, 2014

³⁴ <https://www.litrg.org.uk/latest-news/submissions/171010-informing-labour-market-enforcement-strategy-201819-0>

³⁵ David Camp, Stronger Together Interview October 2020

³⁶ <https://www.independent.co.uk/news/uk/crime/modern-slavery-nail-bars-bath-case-jailed-police-staffing-vietnamese-uk-britain-forced-labour-a8137031.html>

³⁷ <https://www.bbc.co.uk/news/uk-england-london-51534749>; <https://www.telegraph.co.uk/news/2018/08/12/traditional-turkish-barber-shops-using-slave-labour-warns-police/>

money laundering the UK will become an unattractive place to set up exploitative businesses and thus prevent trafficking.

There is too great a reliance on employees knowing about HMRC's cash in hand reporting service and coming forward and it is not clear how often HMRC follow up on these reports. In more exploitative conditions a worker won't anyway have the freedom or resources to report. Moreover, there is no route for workers to report 'false self-employment' and no protocol in place for dealing with those who telephone HMRC presenting false self-employment.³⁸ Reporting routes need to be more straightforward for all types of infringements – with ideally one central gateway created- and clear protocols of what the HMRC does as a consequence also need to be put in place.

Enforcement by HMRC and regulation by Companies House need to be strengthened. Successive Governments have pledged to address issues of money laundering, tax evasion and fraud, but efforts thus far have done little to uncover criminals engaging in modern slavery.

Single Enforcement Body

'If one were starting from scratch, it is unlikely that one would design state labour market enforcement along its current lines' - The Director of Labour Market Enforcement³⁹

As part of the Government's welcome aim to improve labour markets, workers' rights and tackle criminality, the Government has proposed the formation of a single labour market enforcement body as part of their Good Work Plan. This would bring together bodies such as the National Minimum Wage disputes team (HMRC), Labour exploitation (Gangmasters and Labour Abuse Authority) and the Employment Agency Standard Inspectorate (EAS) under one 'roof', alongside looking at umbrella companies and holiday pay for vulnerable workers, to ensure the state can effectively protect vulnerable workers and create a level playing-field for business.⁴⁰ By uniting the resources of the existing bodies under one organisation, this will indeed help to improve dealing with cut-crossing issues and provide more flexibility to move and tackle emerging risks more efficiently.

The LITRG felt that although long term this move was welcome, in the immediate present, they felt government should concentrate efforts on implementing some of the "desperately needed changes that have been recommended by various experts and specialists, including [the Director of Labour Market Enforcement,] Matthew Taylor, the Low Pay Commission and the DLME."⁴¹

While the creation of a single enforcement body (SEB) for employment rights was broadly supported by stakeholders and seen as an opportunity to make a big difference to scrutiny of employment standards, their support came with the proviso that it would only be successful

³⁸ <https://www.litr.org.uk/sites/default/files/180531-LITRG-response-Employment-status-FINAL.pdf>

³⁹ <https://www.litr.org.uk/sites/default/files/191002-LITRG-response-Single-enforcement-body-FINAL.pdf>

⁴⁰ <https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights>

⁴¹ <https://www.litr.org.uk/sites/default/files/180531-LITRG-response-Employment-status-FINAL.pdf>

if properly funded and resourced, if it had effective powers (for example to investigate and award outstanding wages and compensation) and ambition to be proactive, and had a clear information sharing and collaborative approach.

Flex have highlighted that we need sufficient resourcing for labour inspection to meet the ILO recommended ratio of one inspector per 10,000 workers but that the UK is currently only at 0.4% per 10,000.⁴² The Association of Labour Providers (ALP) have emphasized this point stating that the Government “spends £1 per working person per year on enforcement.”⁴³ Increased resources need not put a drain on public finances since tackling exchequer fraud may well lead to increased tax revenue and rogue businesses could be required to pay for the time it takes to identify and correct the breach – a model already in existence in respect of enforcement of health and safety laws.⁴⁴

There appears to be no coherent, co-ordinated national strategy to address the exploitation and non-compliance risks facing vulnerable workers and the first obstacle is that the definition of a vulnerable workers doesn’t even formally exist.⁴⁵ The Resolution Foundation found that the type of firm and especially the business model it chooses to adopt could predict non-compliant behaviour, certainly more so than the personal characteristics of workers themselves, so strategic targeting can be achieved when budgets of this body stay relatively small.⁴⁶

We heard repeated recommendations for the new Single Enforcement Body (SEB) to expand the Gangmasters and Labour Abuse Authority’s licensing of labour providers to other high-risk sectors, recognising the GLAA’s “positive impact in stamping out vicious and bad working practices in the sectors in which they operate.” It was noted that business sectors already under the GLAA’s statutory licensing schemes supported the model due to its facilitation of a fairer competitive environment. Extension of the remit should be focused on sectors predisposed to fraudulent practices and widespread exploitation such as hand car washes, fast fashion garment manufacturing, construction, social care, nail bars and barbers, cash only restaurants and takeaways, and recycling.

⁴² <https://www.labourexploitation.org/news/will-new-single-enforcement-body-ensure-decent-work-all>

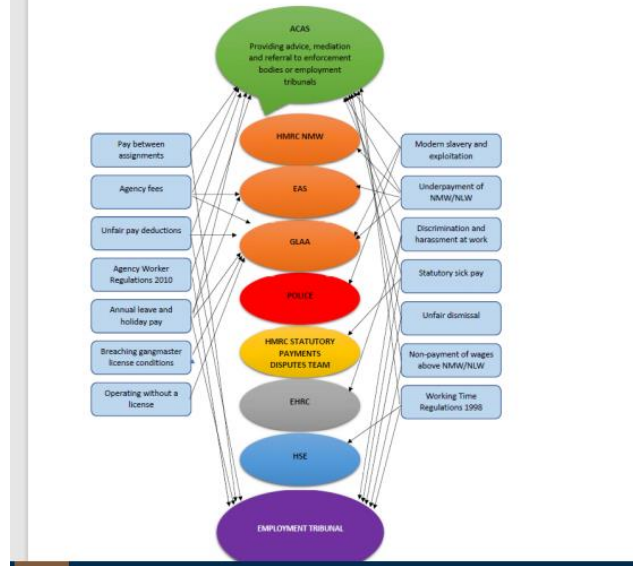
⁴³ October 2019 Good Work Plan: Establishing A New Single Enforcement Body For Employment Rights - Submission By The Association Of Labour Providers (ALP)

⁴⁴ October 2019 Good Work Plan: Establishing A New Single Enforcement Body For Employment Rights - Submission By The Association Of Labour Providers (ALP)

⁴⁵ Ibid

⁴⁶ <https://www.resolutionfoundation.org/publications/from-rights-to-reality/>

Figure 1: State enforcement of employment rights landscape



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The complexity of the current enforcement system means collaboration is key. Bringing functions of several agencies together in a Single Enforcement Body will help, but there will still be a need for wider collaboration. ALP has recommended there should be defined joint local authority and policing roles in monitoring some sectors at risk such as nail bars and restaurants and the MAC report agreed saying “there may be opportunities to be exploited by HMRC in engaging with local authorities to share information about local businesses.”⁴⁸ It was lamented by some stakeholders that the Single Enforcement Body is likely to only incorporate the minimum wage section of the HMRC and not the tax side. The LITRG was unclear how the crossovers in employment rights regarding minimum wage and tax enforcement would work separately since you rarely get one without other. Collaboration and information-sharing between the Single Enforcement Body and HMRC will therefore be essential in light of the cross cutting areas such as false self-employment, illegal travel schemes, non-provision of pay documents and the GLAA licensing around tax and NIC.⁴⁹ As LITRG made clear, minimum wage breaches “often go hand-in-hand with bogus self-employment but these cases may be largely invisible to minimum wage compliance officers as they will not appear in official data.”⁵⁰ Contacts and relationships with charities on the ground such as Citizens Advice, TaxAid and trade organisations were also recommended.⁵¹

Creation of the SEB brings agencies together into one body. While the Gangmasters Licensing and Abuse Authority (GLAA) received considerable praise for the effective work they do to collaborate and proactively focus on exploitation, the same could not be said for certain other

⁴⁷ P12 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817359/single-enforcement-body-employment-rights-consultation.pdf

⁴⁸ MAC 2014 report

⁴⁹ <https://www.litr.org.uk/sites/default/files/files/171010-LITRG-response-Director-LME-FINAL.pdf>

⁵⁰ *ibid*

⁵¹ *ibid*

UK bodies. One stakeholder stated that they couldn't decipher what the Employment Agency Standards Inspectorate actually enforced since they have barely any resource and do not regulate umbrella companies. We recommend the GLAA should provide the model for the new Single Enforcement Body.

The LITRG is clear that the labour market exploitation very often manifests itself in problems with Pay As You Earn (PAYE).⁵² They felt PAYE compliance and enforcement at employer level had been left out and needed to be examined, accompanied by adequate funding for resources. It was suggested by some interviewees that it needed to be recognised that the HMRC weren't that effective at enforcing PAYE regulations and so should have been considered as part of labour enforcement considerations. This exclusion means the best compromise is for effective data and intel sharing between the two organisations. This seems critical in light of cross cutting areas such as false self-employment, illegal travel schemes, non-provision of pay documents and the GLAA licensing around tax and NIC, in light of the GLAA's limitations in knowledge of tax investigations.⁵³

The LITRG suggested that the three enforcements bodies that would fall under SEB should look to The Pensions Regulator (TPR) for best practice who are "widely regarded as successful and effective at enforcing the auto enrolment programme. Not only do they seem to actually use the powers they have, but they are also not afraid to divulge details of how they have used them. This sends out a strong message and helps to act as a disincentive to employers considering ignoring their obligations."⁵⁴

While collaboration is key, a focus on outcomes around workers' rights should also herald a new safeguard to ensure that personal information about workers given to labour inspectorates is not passed to the Home Office for the purposes of Immigration Enforcement. FLEX have highlighted that such mechanisms already exist in Amsterdam, the USA, and Brazil and there is broad consensus in the anti-slavery sector that this would prevent the status quo where few foreign national victims come forward and ensure immigration concerns don't undermine Government efforts to stamp out criminal enterprises and exploitation.⁵⁵

The Government could also create tax incentives for those companies that choose to better pay their workers. For example, could the government create VAT cuts or a similar tax incentive,⁵⁶ for those companies that choose to pay their workers at least the living wage?

Compensation, Remedies and Sanctions

The ALP points out that the worker groups who are systematically at higher risk of labour market violations, are also the ones least able and likely to take a case to an Employment Tribunal. David Camp stressed to us the need for all workers to have a proportionate,

⁵² <https://www.litrg.org.uk/latest-news/submissions/191002-good-work-plan-establishing-new-single-enforcement-body-employment>

⁵³ <https://www.litrg.org.uk/sites/default/files/files/171010-LITRG-response-Director-LME-FINAL.pdf>

⁵⁴ Ibid

⁵⁵ <https://www.labourexploitation.org/news/will-new-single-enforcement-body-ensure-decent-work-all> FLEX

⁵⁶ https://www.livingwage.org.uk/sites/default/files/Recommendations%20for%20Living%20Wage%20Leadership_1.pdf

effective and accessible route to achieve remedy – one that removes cost and pressure from the employment tribunal system by providing simpler and earlier resolution. Both ATLEU⁵⁷ and FLEX⁵⁸ have also spoken about the limitations on reclaiming unpaid minimum wage salaries under employment tribunals and the lack of a civil remedy for victims.

He highlighted that in Leicester there had existed the Phoenix business model where everyone was employed for short periods and never built enough time for workers' rights. However even when individuals did have access to remedy via the tribunal system, employees are obliged to initiate action themselves⁵⁹, and the process is protracted often taking years, with a likely minimum of six months, and be expensive.

In 2013 the Government introduced a cost for bringing an employment tribunal claim starting at £390 to take the administratively simpler 'level 1' claims to a full hearing. However when the median award in Wages Act cases in 2011-12 was £400, the starting fee of £390 would deter claimants.⁶⁰ Although this was removed in 2017, even when workers won a tribunal claim, the employers often never paid up, with the awards only enforceable via a county court. A 2013 BIS study stated that only 49% had been paid their award in full.⁶¹ The Government in the last few years has started to name and shame and enforce penalties on those who don't pay up.⁶² ALP however recommended creating an alternate speedy dispute resolution 'perhaps by a 'fast track' employment tribunal with increased use of phone and Skype/Facetime meetings.'⁶³

While stakeholders welcomed Government making the right noises there was a frustration that many reviews and recommendations had yet to come to fruition. The ALP submission to government pointed out that in 2012 the Minister of State for Agriculture and Food announced plans to "introduce administrative fines and penalties for low-level and technical minor offences, including a measure similar to a Repayment Order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed." ALP noted that "This has yet to be implemented."

ALP recommended that the new SEB should be able to apply civil penalties to unpaid awards from which claimants should be paid. Non-payment should act as an exploitation indicator and also lead to an automatic enforcement visit.

Whilst civil powers have a key role, it was broadly recognised that criminal sanctions were required, particularly for those employers who aimed to evade capture through phoenixing etc. and for systematic failure to pay minimum wages. While the Government has increased the HMRC's NMW enforcement budget to £26.3m in 2019 from £13.2m in 2015/16 and

⁵⁷ The concerns re civil remedy made by ATLEU in their submission to the Home Affairs Select Committee inquiry in 2017 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/modern-slavery/written/89080.pdf>

⁵⁸ <https://www.labourexploitation.org/publications/flex-working-paper-access-compensation-victims-human-trafficking>.

⁵⁹ MAC 2014 report

⁶⁰ Ibid

⁶¹ BIS 2013 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf

⁶² <https://www.gov.uk/government/news/nearly-200-employers-named-and-shamed-for-underpaying-thousands-of-minimum-wage-workers>

⁶³ October 2019 GOOD WORK PLAN: ESTABLISHING A NEW SINGLE ENFORCEMENT BODY FOR EMPLOYMENT RIGHTS - SUBMISSION BY THE ASSOCIATION OF LABOUR PROVIDERS (ALP)

raised the financial penalties, and that has seen HMRC in 2017/18 taking action against over 1000 businesses, levying financial penalties of £14m, since 2010 there have been a measly total of seven prosecutions for breaches of the NMW law.⁶⁴

There is a broad view across the sector that monies seized under confiscation powers and proceeds of crime should be used to compensate victims. The Fraud Advisory Panel's response to government highlighted that "over £1.8bn has been taken from criminals using Proceeds of Crime Act (POCA) powers since 2002, with billions more recovered via deferred prosecution agreements. There would appear to be a significant amount of money that has been taken from those on the wrong side of the law, which should be put back exclusively into compensating victims and preventing crime."⁶⁵

Prosecutions are challenging for a range of reasons including employers disappearing or having no assets, or employees have self-employed status. Pam Bowen from the CPS emphasized the challenges of bringing criminal prosecutions for modern slavery against businesses. There were possibilities around corruption or bribery offences but these all have a very high threshold. However, a handful of successful cases exist such as the charges against Mohammed Rafiq's company which supplied beds to John Lewis.⁶⁶

While it is difficult to bring criminal prosecutions for modern slavery offences against companies it needs to be easier for exploitative companies to be held accountable through non-criminal as well as criminal proceedings.⁶⁷ Both NGOs and lawyers HTF spoke to felt the business sector could do far more and that more regulation enforcement within the business sector was needed. One legal expert HTF spoke to stated "There is a lot the business sector can do to tackle modern slavery. Sanctions, penalties and safeguards should be incorporated into the Modern Slavery Act, for example incorporating Articles 5&6 of the EU Directive." He was concerned that with Brexit this could get lost. Non-criminal sanctions, including those in Article 6 of the EU Anti-Trafficking Directive should be made available for companies which engage in modern slavery or who fail to publish a modern slavery statement under section 54 of the Modern Slavery Act.

HTF welcomes the Government's recent announcements that mandate that businesses with a turnover of over £36 million publish their slavery statements.⁶⁸ Ideally it would be advantageous if companies with small turnovers were included in this policy. However, until it becomes evident that this policy is properly enforced on these larger companies, there is no point broadening the scope.

Introducing joint responsibility would encourage the top of the supply chain to take an active role to tackle labour market breaches through the supply chain and act as catalyst in an "evolution from extractive to responsible capitalism."⁶⁹ The US already has such laws in place

⁶⁴ [PQ 215216](#)

⁶⁵ <https://359zpa2vui8h3p4u7j2qlmg-wpengine.netdna-ssl.com/wp-content/uploads/2020/10/FAP-Response-to-HMT-Economic-Crime-Levy-Final-13Oct20.pdf>

⁶⁶ <https://www.independent.co.uk/news/uk/crime/bed-factory-owner-who-employed-slave-workforce-jailed-27-months-a6870761.html>

⁶⁷ Legal Expert, Interview October 2020; Pam Bowen, CPS, Interview September 2020

⁶⁸ <https://www.gov.uk/government/news/new-tough-measures-to-tackle-modern-slavery-in-supply-chains>

⁶⁹ October 2019 Good Work Plan: Establishing A New Single Enforcement Body For Employment Rights - Submission By The Association Of Labour Providers (ALP)

and could be a model to examine in setting this up.⁷⁰ A mixture of certification of suppliers , a limit on the number of layers in a supply chains, embargoing non-compliant producers (so-called ‘hot goods’⁷¹) alongside strong enforcement could also be used to tackle exploitation in supply chains. However in response to the Government consultation asking about “the temporary embargo of ‘hot goods’ to disrupt supply chain activity where significant non-compliance is found;” the LITRG stated, “New laws are not needed, enforcement of existing laws is needed. Sir David was right to single out UK fast-fashion manufacturing. However, no new laws or powers are needed to address the endemic criminality in this sector. All that is needed is a collaborative enforcement programme between the GLAA, DWP Fraud, HMRC NMW, HMRC Fraud, Immigration Enforcement and the Insolvency Service. All that is needed is the will of Government to direct this joint activity on 100-200 businesses. This can and should be done today without any new law.”

More could be done to empower the worker, especially when enforcement is still underfunded, and the onus falls largely on the employee to take their employers to task for breach of employment. As well as providing more information around rights when producing worker visas, there are a range of other routes to empowering workers to know their rights. ALP has a range of suggestions including the fact that employers “currently have a legal duty under the Health and Safety Information for Employees Regulations to display the 2009 approved poster in a prominent position in each workplace or to provide each worker with a copy of the approved leaflet. This poster should have key employment rights added to it.” They also suggest Acas should be renamed and rebranded with a name that is clear to all such as “The Employment Rights Helpline”.

To further protect a particular group at risk of exploitation, the Government should consider providing asylum seekers, currently effectively unable to work for at least the first year, the right to work after six months as recommended by the Lift the Ban coalition.

The lack of connected data on workers

A number of stakeholders we spoke to, including Professor Bell from the MAC, and David Camp from Stronger Together, suggested some sort of automation of records so individuals can be tracked, perhaps tying national insurance numbers to national databases, might be a method to better coordinate data across national systems and spot exploitation. Although consideration would need to be given to protecting against misuse of this data. There are already systems that prevent workers’ identities from being shared with immigration such as in the USA and Brazil.

Scandinavian models in Sweden and Denmark were recommended where we were told “they have a register number – for everyone, citizen and migrant – and you need that number for everything, so it’s like an ID number. The great advantage is it can be linked across all data sets. And it works because of a trust in government in these places and very tight restrictions

⁷⁰ <https://www.sgs.com/en/news/2018/10/confronting-slavery-in-the-supply-chain-the-us-approach>

⁷¹ <https://www.litr.org.uk/sites/default/files/files/171010-LITRG-response-Director-LME-FINAL.pdf>

to access that data.”⁷² The advantage of this system would be an employer could be logged as paying employees a certain amount and if the employee is receiving less, this could then be identified and acted upon. These models need to be examined by the Government and then considered for the UK, with an understanding the data security and transparency would be key to any identity system set up.

Preventing modern slavery requires efforts to make the labour market more hostile to traffickers. Fortunately, there is a lot more that businesses and the Government can do to ensure early intervention, monitoring and appropriate enforcement of modern slavery offences and employment and business regulations making the UK a less attractive place for would-be traffickers.

⁷² Prof. Brian Bell, Chair of Migration Advisory Committee, Interview September 2020

APPENDIX 1 | INTERVIEWEES

Border Force

Prof. Brian Bell, Chair, Migration Advisory Committee

Caroline Haughey QC

David Brightling, Australian Border Force

David Camp, Stronger Together

DCI David Birrell, International Crime Coordination Centre

Deighton Pierce Glynn Solicitors

East European Resource Centre

Jennifer Burn, Anti-Slavery Australia

Jordan Cummins, CBI

Hon. Lisa Singh, Minderoo Foundation

Immigration Law Practitioners Association

Luis C. de Baca, Former US Ambassador-at-Large to Monitor and Combat Trafficking in Persons

Markella Papadouli, AIRE Centre

Meredith McCammond, Low Income Tax Reform Group

Meri Ahlberg, Focus on Labour Exploitation (FLEX)

Pam Bowen, Crown Prosecution Service

Petr Torak MBE, Compas Charity

Phil Brewer, retired Detective Superintendent, Metropolitan Police

Police Officer from National Policing

Riel Karmy-Jones QC

Nancy Esiovwa, founder of Bradford Survivor Alliance

Survivor "E"

Tony Smith, Fortinus Global Ltd, Global Border Security Consultant. Former DG UKBF. Chairman of IBMATA

Written respondents

A21

Latin American Women's Rights Service (LAWRS)

Grace Wong, Australian Border Force

Field study

Day visit to Stansted Airport, 18 October 2020

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