

# INDEPENDENT REVIEW OF THE OVERSEAS DOMESTIC WORKERS VISA

BY JAMES EWINS

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*“Abuse of domestic workers, whether UK or EEA nationals, those on an [overseas domestic workers] or other visa, or those who have entered the UK illegally, is an abhorrent crime and will not be tolerated here in Britain” – Lord Bates, 13 March 2015*

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## EXECUTIVE SUMMARY

### TERMS OF REFERENCE

1. The terms of this review are set out at Appendix 1 and summarised as follows:

*The purpose of the review is to consider whether the arrangements for the overseas domestic workers visa are appropriate, given the Government's commitment to tackling modern slavery.*

2. The review is to be evidence-based, and must include consultation with Non-Governmental Organisations, law enforcement bodies and other interested parties inside and outside of Government.

3. It is required to focus on four specific areas:

- 3.1. Arrangements for **issuing** overseas domestic workers visas and whether there is evidence that they lead to trafficking or slavery;

- 3.2. The **terms** of overseas domestic workers visas;

- 3.3. The **identification and provision of support to victims** of exploitation who are in the UK on overseas domestic workers visas; all

- 3.4. **Effective prosecution** of perpetrators of such exploitation,

all of which are to be considered in the light of the need to **maintain the integrity of the immigration system**.

4. The review will include **diplomatic overseas domestic workers visas**, the specific provisions of which are dealt with separately.

5. The particular concerns of the Government in relation to overseas domestic workers visas were set out at the time the review was commissioned as follows:

*"We do not believe that there is persuasive evidence that the tie to an individual employer has led to an increase in abuse. However we do recognise the importance of the concern over the visa tie and that there are different opinions about the evidence. We have therefore asked for this fully independent review of the overseas domestic workers visa route, which will include looking at the impact of the visa tie."*

6. The review is to conclude with this report, which includes recommendations to the Home Secretary. The recommendations are set out in the body of the report and are listed in full in Appendix 6. The key recommendations are set out at paragraphs 10 - 13 below.

### THE FUNDAMENTAL QUESTION

7. The fundamental question for this review is **whether the current arrangements for the overseas domestic workers visa are sufficient to protect overseas domestic workers from abuse of their**

**fundamental rights while they are working in the UK, which includes protecting them from abuse that amounts to modern slavery and human trafficking.**

8. One of the aims of this review is therefore **to bring about circumstances in which the lives of overseas domestic workers in the UK are brought out of the relative shadows in which they currently exist and into an open and legal framework in which their situations are better known, understood and consequently supported and where they can receive the proper protection of the law.** As a general aim, this has received universal support from all contributors to this review.
9. However, this review also acknowledges that **the Government's immigration policy and the integrity of the immigration system as a whole are highly relevant** in reaching a fair and balanced conclusion.

#### THE FIRST KEY RECOMMENDATION - THE VISA TIE

10. On the balance of the evidence currently available, this review finds that **the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK** (see paragraphs 65 - 87). In particular:
  - 10.1. The review recommends that **all overseas domestic workers be granted the right to change employer** (paragraph 90) **and apply for annual extensions, provided they are in work as domestic workers in a private home** (paragraph 93).
  - 10.2. The review finds that **such extensions do not need to be indefinite**, and that **overseas domestic workers should not have a right to apply for settlement in the UK** in order to be adequately protected (paragraphs 107 - 110).
  - 10.3. The review recommends that **after extensions totalling up to 2 ½ years, overseas domestic workers are required to leave the UK** (paragraphs 99 - 106).
11. **These recommendations do not relax entry current requirements of the overseas domestic workers visa at all. Neither do they provide a general right for overseas domestic workers to apply for indefinite leave to remain in the UK.** However, it **does extend the period during which an unskilled non-EEA worker can work as a domestic worker in a private household in the UK from 6 months to (up to) 2 ½ years.** This reviews finds that **this extension is the minimum required to give effective protection to those overseas domestic workers who are being abused while in the UK** and is therefore the necessary consequence of inviting roughly 17,000<sup>1</sup> potentially vulnerable individuals into the UK every year. Such victims need the freedom to change employment, which in turn requires that they stay for long enough to be able to find safe alternative employment.
12. Since this review finds that, in granting that right, **it is both impractical and invidious to discriminate between seriously abused, mildly abused and non-abused workers**, the consequence is that it must be granted to all overseas domestic workers. In recommending a universal right to change employment, this review recognises the following three groups of beneficiaries:

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<sup>1</sup> the average for the last 3 years is nearer 16,000; however, in view of the upward trend, the figure of 17,000 is used;

- 12.1. Firstly, there is a real possibility, perhaps likelihood, that **many overseas domestic workers will not avail themselves of that right**. Those overseas domestic workers who are in a good relationship with their employers will arrive, work and return happily with their employers in the manner the visa was designed to facilitate, just as many overseas domestic workers did before 2012 and many have done since then. The Government's provisional estimation that many overseas domestic workers leave the UK within 15 days of arrival supports that contention.
- 12.2. Secondly, however, **for those who are abused in any way at all, the universal right will give them a real and practical way out of that abuse without the current possibility of a subsequent precarious immigration status and threat to livelihood**.
- 12.3. Thirdly, it is acknowledged that **an unintended consequence may well be that there are those who avail themselves of the universal right without having suffered any abuse at all**. However the pre-2012 figures suggest that the number of such workers will be low<sup>2</sup>, and by legitimising their status, they will continue working, paying tax, and will be visible to the UK authorities during their extended (but limited) stay. **Such an unintended consequence is of limited detriment compared to the benefit of the central intended consequence**.

#### THE SECOND KEY RECOMMENDATION - INFORMATION MEETINGS

13. Second, this review finds that such essential changes to the terms of the visa referred to above can only be of practical help to overseas domestic workers if those workers are empowered and enabled to avail themselves of these and other rights. Therefore, **overseas domestic workers must be given a real opportunity to receive information, advice and support concerning their rights while at work in the UK**. This will enable those overseas domestic workers who are victims of abuse to be identified as such - probably to self-identify - and will empower them to take practical self-help steps to leave such abuse, and will offer them support in doing so. This will put them in the best place to hold their abusive employers to account on a civil and/or criminal basis. To this end:
- 13.1. This review recommends the introduction of **mandatory group information meetings for all overseas domestic workers who remain in the UK for more than 42 days** (paragraphs 122 - 132).
- 13.2. These **meetings should be funded by an increase in the visa fee** (paragraphs 133 - 134 and Appendix 5) .

#### DATA, INFORMATION AND INTELLIGENCE

14. This review relies on the currently available evidence. As is set out in this report, there is a significant and compelling body of evidence that supports its conclusions and recommendations. However, this review acknowledges that there is no empirical quantitative data available to show whether the rate of abuse of those who enter the UK on overseas domestic workers visas has increased or decreased since the imposition of the visa tie in 2012. But it is important to emphasise that this review has based its conclusions upon positive evidence, not upon the absence of such evidence (see paragraphs 19 - 23).

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<sup>2</sup> see paragraph 91.1

15. This review recognises that with the introduction of entry/exit data from UKVI, it should be possible to collate such data with information drawn from overseas domestic workers visa applications, as well as applications to change employer and renew the visa as well as data from overseas domestic workers who enter the NRM. **This review strongly urges the Government to collate and analyse such data to provide a clearer quantitative understanding of how the visa operates.**
16. Further, **implementation of this review's recommendations will provide data, information and intelligence which will enable the police, Immigration Enforcement or the proposed Director of Labour Market Enforcement, to take intelligence-led steps to investigate and pursue those who abuse overseas domestic workers with criminal, civil or immigration sanctions.** Tasking such entities to take active steps to initiate enquiries into such abuse will require other measures beyond the scope of this report. However, **it is the clear finding of this review that none of the basic protections of overseas domestic workers' fundamental rights should be conditional upon the worker initiating any such enquiry themselves, especially where the Home Office will have sufficient data to do so** (see paragraph 56). This review concludes that informed, empowered and safe workers will be more likely to support or even initiate such enquiries than embattled, insecure and frightened workers.
17. **This is not the first time that the Government has been urged to change the rules relating to overseas domestic workers,** a fact which has not been lost on numerous contributors to this review. However, **this review has not taken such previous proposals as a starting point. This review has deliberately gone back to first principles and applied those principles to the evidence currently available.** The fact that the conclusions accord to a considerable extent - but with some notable exceptions - with previous recommendations adds further weight to the argument in favour of the changes proposed.

## **PART 1: INTRODUCTION**

### **SCOPE OF THE REPORT**

18. It must be acknowledged at the outset that this is an area that has received significant attention over recent years. The research, commentary and other engagement - from academics, foundations, NGOs, parliamentarians, Government, European and other international organisations and individuals - provides a wealth of background information, research and opinion. The purpose of this report is not to analyse or restate this historic material in detail. The various reports that have been considered are included in Appendix 2 and they have been relied upon as appropriate in addressing the specific matters upon which this report is required to focus.

### **EVIDENCE AND CONSULTATION**

19. The evidence which is relied upon is set out in Appendix 2 to this report. This review is not a fresh piece of research and it has not set about to create new evidence, but rather to gather such existing evidence and bring it to bear upon the specific issue of the overseas domestic workers visa and abuse of overseas domestic workers who are working in the UK on this visa.
20. The distinct lack of cogent or robust data and evidence as to the extent of such abuse has already been highlighted in the executive summary. Apart from some primary data as to applications for overseas

domestic workers visas and further applications by holders of pre-2012 overseas domestic workers visa for extensions and settlement, the numbers involved, in particular the prevalence and nature of abuse of overseas domestic workers, are largely unknown.

21. While some attempts have been made to use other data to give indications of such numbers, such as figures from the National Referral Mechanism (the NRM) or the International Passenger Survey, for various well documented reasons, none of these statistics gives a reliable insight into the true level of abuse of overseas domestic workers at any particular level. The simple point is, despite the imminent ability to collate and analyse entry and exit data<sup>3</sup>, none of those involved in this area, either in Government or outside, have any idea what such data may reveal as to overseas domestic workers' *actual* length of stay, the *actual* extent of any overstaying, much less the *actual* reason for such overstaying, whether that be abuse or not, and if so, what level of abuse is suffered by how many. Everyone is substantially in the dark as to the true extent of the issue.
22. Individual cases, and groups of cases, have come to light through the actions of NGOs, the Immigration Enforcement teams and overseas domestic workers themselves. These individual cases are good evidence. They represent matters of vital importance for the individuals involved, and each such case helps inform the overall picture of life as an overseas domestic worker in the UK. But it is, on any view, a very incomplete picture.
23. Several important points flow from this:
  - 23.1. Whilst it is inappropriate to draw *positive* evidential conclusions from *quantitative* data that does not exist, it is equally wrong to draw *negative* conclusions in the absence of such data (i.e. we cannot conclude any given level of abuse does or does not take place).
  - 23.2. Caution must be exercised before attempting to draw *quantitative* evidential conclusions from partial *quantitative* data, or such data that is self-selecting or of very small sample sizes (i.e. we can conclude from such data that some abuse takes place, but not how much).
  - 23.3. Despite the caution that must be exercised, the *qualitative* data that exists is, in many cases, the best available evidence.

## PART 2: THE FACTUAL FRAMEWORK

### BACKGROUND

24. First and foremost, it is an undisputed elementary principle that all employees, including overseas domestic workers, are entitled to the respect and protection of their fundamental rights while at work in the UK.

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<sup>3</sup> the Government has been collecting such data since earlier this year, but the exact timetable of its ability reliably to use that data is currently unknown

25. Second, it is well established UK policy<sup>4</sup> to admit certain migrant domestic workers to the UK in limited circumstances via the overseas domestic workers visa scheme, and this policy was re-iterated when the visa rules were changed in 2012. The rationale of this policy can be summarised as follows<sup>5</sup>:

*An overseas domestic worker's entry to the UK is permitted because their employer is entering the UK and needs/wants to bring their domestic employee with them.*

26. Third, the review has heard no coherent argument that the ODW visa should be abandoned. Indeed the Home Office has made it clear that specific consideration as to whether there should continue to be such a visa or not is *outside* the scope of this report. It was decided by the Government as recently as 2012 not to abolish the visa. Views expressed to this review as to why the visa was not abolished include it having been politically and economically unacceptable as well as diplomatically unfeasible to do so, and that it would in all likelihood have led to an increase in workaround practices and possibly illegal immigration. Having said that, it is also acknowledged by the Government that the visa itself is counter-intuitive to its own policy of raising skill levels of immigrant workers, reducing access to the UK for non EEA unskilled immigrants, and restricting their numbers generally. Consequently, the question for this report is not whether there should be an overseas domestic workers visa, but what it should look like.
27. Before moving on to that question, however, it is important to note the various motivations that underlie employers' sponsorship of overseas domestic workers. Benign motivations include familiarity and continuity of employment, such as where an overseas domestic worker acts in a carer's role for young, elderly or infirm family members, or in a role as a cook or housekeeper. However, it is clear that in some instances, more malign motivations are at play. In the recent case of *Tirkey v Chandok*<sup>6</sup>, the Employment Tribunal found that the employers had chosen to bring an overseas domestic worker to the UK "because no [UK-based employee] would have accepted the intended conditions of work, either as to physical conditions, workload or payment/non-payment" and that the employers "were willing to deceive the High Commission to enable the [overseas domestic worker] to travel to the UK, both as of the length of time which [she] has been employed, the conditions in which [she] would be working and living, the salary which she was to be paid and her hours of work (all of which we find were falsely represented to the High Commission)". There is no basis upon which to speculate as to the extent to which overseas domestic workers' employers have more benign, as opposed to malign, motivations.
28. There are c.17,000 successful applications for overseas domestic workers visa each year<sup>7</sup>. Home Office figures confirm that 16,756 such people were granted overseas domestic workers visas in 2014. It has been suggested<sup>8</sup> that the best available indication of average length of stay is just 15 days, which is the average length of visit by nationalities most commonly associated with sponsorship of overseas domestic workers. It is to be hoped that the recently introduced exit checks will enable more reliable data to be collated in due course, but there is none available now.

<sup>4</sup> even before its introduction into the Immigration Rules in 2002

<sup>5</sup> stated in substantively similar terms in the Home Office overseas domestic workers visa consultation document in 2011

<sup>6</sup> ET/3400174/2013, judgment dated 17.9.15

<sup>7</sup> see figures for 2008-14 at Appendix 3

<sup>8</sup> letter from Lord Bates to Baroness Royall of Blaisdon, 13 March 2015

**VULNERABILITY OF MIGRANT DOMESTIC WORKERS**

29. Applicants for overseas domestic workers visas are predominantly migrant domestic workers, i.e. they have already moved from their country of origin to the place from which they come to the UK. Such workers are widely - if not universally - acknowledged to be in a position of special vulnerability. The reasons for this include:
- 29.1. their predominant motivation, and consequently their mentality, is often one of relative desperation: being unable to find adequate (or any) work in their own community/country, they have left that country to find other work abroad in order to make remittances back home - sometimes as little as £25 per week - for the general living, health and education costs of their relatives;
  - 29.2. they are, by definition, not working in their home community and do not have the safety net of their friends and family and other social support networks;
  - 29.3. they are often working in locations where culture and language are, at best, unfamiliar, and more often represent a significant barrier to wider social interaction and a cause of social exclusion or marginalisation;
  - 29.4. they often work long hours, limiting the opportunities to develop social or other connections or interactions in their local community and they often lack knowledge of wider networks of support;
  - 29.5. they often do not have knowledge of their legal rights;
  - 29.6. they predominantly work in private homes, not a public workspace, in which public oversight and regulation is difficult;
  - 29.7. the work they undertake is often part of an informal economy, in which pay is not made through bank accounts and income is not declared to tax authorities;
  - 29.8. their permission to enter the UK rests solely on their employer's professed want/need of them, and they therefore have a consequent dependency on that employer, which extends to their legal status in the UK;
  - 29.9. they have no recourse to public funds;
  - 29.10. in the case of those employed by diplomats, there is the further layer of diplomatic immunity which can give employers the appearance (if not the reality) of impunity.
30. Therefore, the logical and practical conclusion is this: **it is current UK policy to allow employees with a special vulnerability to enter and work in the UK through the overseas domestic workers visa scheme.**
31. It must be emphasised that special vulnerability does not mean that exploitation of migrant domestic workers is endemic. There are likely to be many examples of healthy employer-employee relationships. And it follows that, in the absence of a failsafe filtering process (see paragraph 54), of the 17,000 or so

migrant domestic workers (and their employers) entering the UK each year, some will be in healthy relationships and some will not, a fact conceded by the Government<sup>9</sup>.

32. The actions of employers in some of the abusive relationships will pass the thresholds of civil and/or criminal liability in the UK. Of course, the same is true of many groups of people entering the UK, from tourists, to students, to other employees. And whether or not those groups are especially vulnerable - as migrant domestic workers are - or not, it is not disputed that, while in the UK, the Government has a fundamental obligation to give protection, rescue and relief to victims of abuse and to hold perpetrators to account.
33. Furthermore, in view of the *special* vulnerability of migrant domestic workers, there is an inescapable duty of care towards them that they be afforded *special* protection. That special protection must:
  - 33.1. be tailored to meet the particular vulnerabilities of migrant domestic workers;
  - 33.2. be available to migrant domestic workers not just as a right in law but in real, practical and effective ways.

#### THE VICTIMS

34. Before considering the particular aspects of the overseas domestic workers visa, it is vital to begin by concentrating on those for whom this report was commissioned. The reason for, and focus of, this report is first and foremost the victims of abuse who are in the UK on overseas domestic workers visas. It is their welfare, protection, rescue, relief and recovery that is the first consideration of this review.
35. Furthermore, it has been a fundamental principle of this review that their stories should, in the absence of evidence to the contrary, be believed. Of course, with issues such as indefinite leave to remain in the UK at stake<sup>10</sup>, there is scope to suspect an individual's motivation in recounting any given story. However, as has been repeatedly - if somewhat belatedly - appreciated in various similar contexts, including child abuse and domestic violence, much is to be gained by at least starting with belief in what a victim says, and only doubting that belief if subsequent evidence requires it.
36. The victims' stories which have informed this review have come first hand from migrant domestic workers introduced by Kalayaan and Justice 4 Domestic Workers as well as indirectly through case-studies, experiences and stories recounted in various reports, research and submissions as well as statistical presentations based upon such stories. Whilst it is impossible to rule out any exaggeration or fabrication at all, the first-hand one-on-one interviews conducted by the author of this report<sup>11</sup>, in which overseas domestic workers were forensically questioned in order to challenge both the specific truth of the events they recounted as well as their credibility in general, gave a clear and compelling picture of what it means to suffer abuse while on an overseas domestic workers visa in the UK. The evidence under such questioning was consistent with the stories contained in published material considered by this review. Whilst appreciating that this is qualitative, not quantitative, evidence, it is for

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<sup>9</sup> Statement by Home Secretary Theresa May, Written Ministerial Statements, 29 February 2012, Column 35WS

<sup>10</sup> although for those on the pre-2012 visa, that is less of an issue

<sup>11</sup> the details of such interviews are the subject of an express undertaking of confidentiality given by the author - suitably anonymised details can be provided if required

that reason that the stories and the experiences of victims - their evidence - form a central foundation of this review.

#### **THE ABUSE**

37. Whilst the terms of this review are specifically focussed on the abuses legally defined as human trafficking and modern slavery, the review cannot ignore the reality of the continuum of exploitation in this context, from slavery and forced labour at one end to, for example, more minor breaches of employment and health and safety law at the other.
38. It has repeatedly been emphasised by contributors, and acknowledged by the Government<sup>12</sup>, that the review must take account of the full spectrum of exploitation and abuse, as to do otherwise would be to work on a false and distorted basis, and in all likelihood result in recommendations that unfairly focus on one problem to the disadvantage of another. It may also lead to a misdirected application of resources to focus solely on one, extreme type of abuse, which although qualitatively more significant, may be quantitatively less so.
39. Therefore, mindful of the need to address modern slavery and human trafficking in particular, this review will nonetheless include consideration of abuse more generally, including the following types of abuse:
  - 39.1. Physical and sexual violence;
  - 39.2. Threats to the victim or his/her family;
  - 39.3. Psychological, emotional and verbal violence (insults, humiliation, degrading treatment, psychological manipulation);
  - 39.4. Isolation (contact not allowed with the outside world or the family);
  - 39.5. Deprivation of food;
  - 39.6. Sleep deprivation;
  - 39.7. Denial of private life and intimacy;
  - 39.8. Excessive working hours, including during the night;
  - 39.9. Confiscation of identity documents;
  - 39.10. Non-payment of wages or grossly inadequate wages;
  - 39.11. No access to health care and medical treatment;
  - 39.12. Freedom of movement limited to meeting the needs of the employer;
  - 39.13. Threat of deportation;
  - 39.14. Assertions by employers of their impunity.

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<sup>12</sup> Lord Bates in answer to a written question from Baroness Cox (8 June 2015) - HL314

40. As has been made clear above, robust data of the extent of such abuse simply does not exist. However, the evidence cannot be dismissed as merely anecdotal. The graphic accounts of abuse contained in various reports considered by this review (see paragraph 72) are not repeated here, but are fully borne in mind, and reference to those reports is recommended to those who are not acquainted with the abuse suffered. Therefore, whilst it would be inappropriate to draw conclusions as to extent, it is quite proper - indeed it is necessary - to acknowledge that such abuse is a reality for some, albeit that the scale is undetermined.
41. Furthermore, drawing on similar areas of hidden abuse, such as domestic violence and child abuse, it is not unreasonable to work from the assumption that what is currently seen and known is highly unlikely to be the full extent of the abuse. In reality, as has been acknowledged in numerous similar contexts, it is more likely to be 'the tip of the iceberg'.
42. By way of comparison, the most recent findings of the Office of National Statistics on the Crime Survey for England and Wales<sup>13</sup> clearly identify under-reporting as a significant phenomenon in certain areas, including serious sexual assault and domestic violence. It is generally recognised that the UK woke up to the phenomenon of domestic violence in the 1980s, yet even some 20 years later, Home Office statistics suggested that only 35% of such abuse was being reported, and some research put the figure as low as 23%. Whilst it would be inappropriate simply to apply levels of under-reporting in such other spheres to overseas domestic workers, in the absence of other quantitative evidence, such comparisons are perhaps the most informative illustrations that can be found. Many of the characteristics of such victimisation which are thought to underlie that high level of under-reporting are also present amongst overseas domestic workers, such as social isolation, ongoing fear of the perpetrator, embarrassment and shame, thinking that they would not be believed or that the police could not help, or simply a general fear of authority, including the police. Contributors have provided evidence of overseas domestic workers having been told that their employers controlled the police (as may have been the actual experience of overseas domestic workers in other countries).

### **PART 3: ARRANGEMENTS FOR ISSUING OVERSEAS DOMESTIC WORKERS VISAS**

43. The first specific area of inquiry is the application process leading to the issuing of overseas domestic workers visa abroad. The majority of applications come from Gulf states (70% of applications are from Saudi Arabia, UAE, Qatar, Kuwait and Oman). The figures from the Home Office for the last 6 years, indicating the country in which the visa application was resolved, are set out at Appendix 4. The application process is the first point of contact between the migrant domestic worker and the UK authorities. Currently, about 85% of applications are granted. The application is therefore, for the vast majority of applicants, the introduction to forthcoming entry to the UK.
44. The application process is primarily intended to ensure that the overseas domestic workers visa is granted according to the Immigration Rules. Those rules themselves are expressed by the Government

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<sup>13</sup> Crime Statistics, Focus on Violent Crime and Sexual Offences, 2013/14, 12 February 2015;

to represent protections<sup>14</sup> for migrant domestic workers who apply for an overseas domestic workers visa. The particular protections, in this context, that are relied upon by the Government are:

- 44.1. Applicants must have worked for their current employer for at least the 12 months immediately prior to their application, providing evidence such as pay-slips, contracts, tax certificates, and, where applicable, the visa of the employer.
  - 44.2. There is a requirement that the applicant and her<sup>15</sup> employer have entered into a contract of UK employment, in the terms of the template contract as set out at Appendix 7 of the Immigration Rules.
  - 44.3. This has been added to by a further assurance from UKVI that all Entry Clearance Officers (ECOs) will assess whether he/she is satisfied that the National Minimum Wage will 'genuinely be paid'.
  - 44.4. All applicants are provided with an information letter, available in multiple languages, detailing their rights and responsibilities and indicating where to get help should they need it.
45. Furthermore, a pilot interview programme has been implemented in West Africa, in which all applicants are asked more details about their application in a remote video-link interview with a UKVI officer in Sheffield. These interviews include specific questions as to the applicant's role, pay, practical arrangements and whether they have suffered abuse. This review has been provided with a sample of ten transcripts of such interviews.
46. Although attempts have been made to witness the application process and interviews covertly *in situ*, that has not proved practical, since UKVI is unable to predict with sufficient certainty when any such interviews may be taking place.
47. The Home Office has stated that the system for applying for, considering and granting/refusing visas is as follows:
- 47.1. Commercial partners take receipt of the applications at visa application centres (VACs) but such commercial partners are not involved in any aspect of the visa decision making process, nor in giving advice to applicants.
  - 47.2. All potential overseas domestic workers are handed an information sheet setting out their basic rights and sources of help while in the UK. The information sheet is available in English, Tagalog, Urdu, Sinhalese, Hindi, Amhari, Arabic and Indonesian Bahasa. The information sheet is handed over during the visa application process at a VAC, while the applicant is providing her biometric data, and is alone. However, it is accepted that UKVI does not oversee the provision of the information sheets or check that they have been understood.
  - 47.3. Once applicants have submitted their application and biometric data at the VAC, their application is transmitted to a decision making centre to be processed and assessed by the ECOs, all of whom are UKVI personnel.

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<sup>14</sup> see Home Office "ODWs Review – Top Lines",

<sup>15</sup> this report adopts the feminine, not to exclude the masculine, but to recognize the statistical prevalence of female overseas domestic workers

- 47.4. Once the applications are processed by ECOs, they are returned to the applicants either via the VAC where they submitted their application or through a pre-paid courier service.
48. The Home Office has recently drafted an information sheet for employers setting out their obligations while in the UK, which it intends to provide to all prospective overseas domestic worker employers. Presumably it will be distributed by commercial partners at the VAC, in the same way as the employee information sheet. That document sets out a summary of the employers' obligations to their employees while in the UK. This is to be welcomed, as this review has received evidence indicating a misunderstanding by employers as to their employees' rights in the UK. In one case which was brought to this review's attention, the employer's belief and assertion that his employee was not entitled to any redress against him was so brazen, that he made a submission to that effect before a UK Employment Tribunal.
49. As to the decision making process itself, the Home Office has stated the procedure as follows:
- 49.1. Once received from the VAC, all overseas domestic workers visa applications are assessed on paper by the ECO. If the ECO determines that an interview is required, then one is conducted. Interviews are conducted on a targeted basis where the ECO has identified concerns through specific information or intelligence. All such interviews are conducted by ECOs, not commercial partners.
- 49.2. The interview may be with the overseas domestic worker or the overseas domestic worker's employer depending on the reason for the interview.
- 49.3. The majority of cases will be decided without an interview, although precise data as to how many interviews are in fact conducted is not available.
- 49.4. As part of the the pilot scheme being run in West Africa, *all* applicants are interviewed by video-link with a UKVI officer in the UK. Whilst the deterrent effect of such interviews has been acknowledged by Her Majesty's Inspectorate of Constabulary, it is necessarily resource intensive.
50. The Home Office accepts that – other than in the pilot scheme – UKVI does not, as a matter of course, ask questions about any past abuse in the employer/employee relationship, but simply checks that the visa rules are met including as to a previous employment relationship, that terms of the employment contract meet the requirements of the pro-forma contract at Appendix 7 of the Immigration Rules, and that accommodation arrangements are acceptable.
51. There is a large amount of evidence that has been collated by various groups concerning how the application and interview process works in practice<sup>16</sup>. Some of the evidence reports that:
- 51.1. Some interviews are undertaken by private contractors to whom visa services are outsourced.
- 51.2. Some interviews appear to take place in the presence of the employer.

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<sup>16</sup> including reports from Human Rights Watch, Kalayaan and Justice 4 Domestic Workers.

- 51.3. Some applicants do not understand the documents that were signed during the interview (including the contract of employment) and, moreover, their ability to understand was not verified during the interview.
- 51.4. Some applicants were coached, even threatened, by their employers before and during their interviews to give certain answers and sign documents.
52. Some of this evidence appears to conflict with what the Home Office asserts the actual procedure and practice to be. For example, whereas some overseas domestic workers have reported being interviewed in the presence of their employer, the Home Office assert that all interviews with overseas domestic workers are conducted *without* the employer present. And whereas some overseas domestic workers report that they did not understand documents which they were asked to sign during an interview, the Home Office asserts that interviews are conducted in a language that the applicant can understand, which will be English if possible, and that interpreters will be used if necessary. It is further asserted by the Home Office that it is a standard part of the interview process to confirm at the start that the applicant can understand the interviewer (and interpreter when one is used) and at the end of the interview that he/she has understood all of the questions.
53. Some of this apparent conflict may be explained by the respective roles of commercial partners at VACs and of UKVI ECOs, and a possible confusion as to whether the applicant was being interviewed by UKVI or simply providing information at a VAC. In any event, it is accepted by the Home Office that most applicants will not be interviewed, and therefore their only interaction with the application process will be with a commercial partner at a VAC, not a UKVI ECO.
54. It has been suggested by some contributors that *every* applicant for an overseas domestic workers visa should be personally interviewed by UKVI, alone, and this is the only way to ensure that applicants are given the opportunity to speak openly and honestly about their situations, both past and prospective in the UK, and to receive clear information about their rights without the over-bearing presence of an employer. It is obvious that such universal interviewing would require a significant increase in resources to be deployed. Moreover, it does not seem certain that such a policy would necessarily have the desired results for the following reason. It can safely be assumed that the employer wants the employee to come to the UK, they being the sponsors of the visa application. It can also be assumed that most applicants want to come to the UK with their employers as it represents a continuation of their employment and income, which is itself the underlying reason for their having left their country or origin. These fundamental assumptions remain, whether or not the relationship has been, is or will be abusive. In fact, an employee in an abusive relationship may well consider that her chances of escaping and receiving justice are greater in a liberal democratic state such as the UK. For these reasons alone, the motivations of both the overseas domestic worker and the employer are likely to be aligned in every case to hide from a UKVI ECO any matter that may jeopardise the success of the visa application.
55. The application process is nonetheless a significant opportunity for information to be provided to *every* overseas domestic worker and every employer concerning their rights and obligations under UK law. The current information provided to overseas domestic workers is available in several languages, however, since it is provided at the VAC, the Home Office is unable to verify the circumstances in which it is given, or to verify that it is able to be understood by the overseas domestic workers who receive it. Similar criticisms could be levelled at the proposed information sheet for employers.

56. Furthermore, the application process represents a significant opportunity for specific information and intelligence to be gathered and fed back into the process, especially in the case of repeat applications and in the context of risk profiling generally. So, the prospect of entry/exit data being available raises in turn the prospect of employers who have previously breached the terms of their visa being called for interview and potentially denied a future visa. Even relatively simple automated analysis of visa applications, entry/exit data and applications for changes of employment will enable the Home Office to identify, for example, any employer who is repeatedly bringing overseas domestic workers to the UK who do not return with him or her but go to work for someone else (or perhaps go off the radar completely). Such an employer could be automatically flagged as fitting the profile of a potential repeat offender, possibly a trafficker. It is acknowledged that the move from fitting such a profile to establishing a criminal case to answer is not straightforward, and would require police/immigration enforcement to investigate. And until such data is available, it is not possible to comment on the requirements of proportionality, since the numbers involved are not known.
57. Nonetheless, the Home Office, UKVI and the police must share such information and decide, for example, whether UKVI will interview such an individual upon any subsequent application, whether they will deny any future visa, or whether the police will investigate him or her upon any return to the UK. Similarly, the employer of any worker who successfully applies to the NRM, or makes a successful claim against that employer in the Employment Tribunal should have his UKVI file appropriately marked. Decisions of the Employment Tribunal are public decisions and it would not appear to be unduly complicated or onerous to require, or at least encourage, Employment Tribunals and practitioners to pass on details of decisions concerning overseas domestic workers to the Home Office. Such employers could be investigated, and upon any subsequent visa application for entry to the UK, potentially denied a visa or even arrested upon arrival. Again, a proportionate response can only be gauged when such information is used and investigations ensue. IN any event, these steps are not complicated, and can and should happen entirely independently of the worker herself.
58. UKVI have indicated that the existence of such a feedback loop is something that they are deliberately seeking to bring to employers' attention as a deterrent against abusive conduct. However, some NGOs have given evidence of repeat offences by some employers, indicating the need for improvement. In this respect, it is imperative that information and intelligence is effectively passed between the police, UKVI and Immigration Enforcement. The effectiveness of such an information/intelligence feedback loop should also encourage NGOs to pass relevant information to the Home Office for the same reasons. This will form an essential part of any future prevention strategy.

#### **ARRIVAL IN THE UK**

59. Arrival at UK Border Control represents a further opportunity to inform overseas domestic workers of their rights and opportunities to seek support. However, the practicality of doing so in the pressured bottle-neck of an airport or other port detracts from the feasibility and potential effectiveness of relying on that opportunity to any significant extent. Therefore, whilst steps can and should be taken to remind overseas domestic workers of the information provided during the application procedure, and to provide it again, perhaps in the form of the draft pocket-sized card currently under consideration at the Home Office, this should not be seen as the primary opportunity for provision of such information, but rather as an opportunity to restate the information previously provided.

### CONCLUSIONS ON THE APPLICATION PROCESS

60. Although the application process is a theoretically attractive opportunity to tighten the control of the overseas domestic workers visa, on balance, it does not appear in practice to present anything like the hoped for panacea. Motivations and limited resources weigh heavily against it doing so. Even a solution that mandated universal interviewing could not exclude every actual - much less every potentially - abusive employment relationship. And even if it could, it would raise complex practical and legal questions as to what UKVI could and would be under a legal obligation to do with the information on abuse that it obtained in the process, in circumstances where the victims may not want to take any action in their current overseas location, or perhaps at all.
61. The process can nonetheless be improved to the significant advantage of overseas domestic workers. The primary reason is that, despite the limitations of the application process, it does represent the first opportunity to provide universal, clear and comprehensive information to overseas domestic workers about their rights in the UK, and as such it is the first such opportunity for the UK to discharge its duty of care towards overseas domestic workers whom it decides to admit to the UK.

### RECOMMENDATIONS ON THE APPLICATION PROCESS

62. The following recommendations are therefore made:
- 62.1. All applicants for overseas domestic workers visas must be alone, that is, physically apart from their employer, whilst providing information to, and receiving information from, the VAC. The Home Office asserts that all biometric data is provided at the VAC *while the applicant is alone*, so what is being proposed must be feasible as it is in line with current UKVI policy. This must be *the universal practice and procedure for all applications, without exception*, and the contract with commercial partners providing services at the Visa Application Centres must specify this obligation in clear and enforceable terms to ensure that the UKVI is discharging this duty in practice. Compliance with this obligation should be rigorously, even independently, monitored. It was considered, as part of this review, that it may have been desirable to 'mystery shop' the application process with such 'mystery shoppers' wearing hidden cameras or microphones. Although it proved impractical to do so in the context of this review, consideration should be given to such methods in future, potentially with the assistance of local NGO's, to gain as accurate a picture as possible of the application process in practice.
- 62.2. All applicants for overseas domestic workers visas must be communicated with, by the employees of the VAC, and by the ECO if applicable, both in verbal and written form, in a language which they understand. Again, this must be the uniform practice and procedure for all applications, without exception, and UKVI's obligation in this respect must be expressly referred to in the UKVI contract with the commercial partners providing VAC services. Compliance with this obligation should also be rigorously, even independently, monitored.
- 62.3. All applicants for overseas domestic workers visas must be provided with clear information about their rights and obligations, along with practical steps to take in the event of suffering abuse while in the UK. The current information sheet should be expanded, along the lines of the draft employer's information sheet, and in line with the other recommendations made below.

The Home Office should work with stakeholders, including NGOs who have first hand interaction with overseas domestic workers, to redraft such an information sheet.

- 62.4. Finally, employers should also be given clear information about their rights and obligations, with an equally clear indication of the criminal, civil and future immigration consequences of a failure to discharge those obligations (i.e. they may be convicted, sued and/or have future visa applications denied). The proposed information sheet must be provided to every sponsoring employer in a language which they understand, and they should be required to provide a signed acknowledgment that they have received and understood that information. These conditions need to be included in the contractual obligations of commercial partners at VACs. Again, the Home Office is strongly encouraged to work with stakeholders to develop and finalise the drafting of such an information sheet.
- 62.5. The Home Office should develop and implement clear policy and practice which will ensure the effective sharing of information and intelligence drawn from applications for visas, applications to change employer, applications for extensions and entry/exit data when it becomes available. This policy and practice should also include information and intelligence drawn from other sources, including Immigration Enforcement, the police, NGOs and, in due course, the proposed Director of Labour Market Enforcement.

#### **PART IV: THE TERMS OF THE OVERSEAS DOMESTIC WORKERS VISA**

63. The next area of inquiry is as to the terms of the visa. The key objections raised to the current terms centre upon the conditions imposed in 2012, namely that the overseas domestic workers visa:
- 63.1. ties a worker to a specific employer;
  - 63.2. is for a 6 month maximum term;
  - 63.3. is non-extendable; and
  - 63.4. does not lead to a right to settlement/indefinite leave to remain.
64. Section 53 of the Modern Slavery Act 2015 makes specific provisions for amendments to the Immigration Rules to provide, in general terms, that an overseas domestic worker who is determined to be a victim of slavery or human trafficking shall be given leave to change employer (provided they continue to work as a domestic worker) and remain in the UK for at least (a further) 6 months. Those rules were laid before parliament on 17 September 2015.

##### **THE TIE TO A SPECIFIC EMPLOYER**

65. The tied nature of the overseas domestic workers visa, introduced in 2012, has been the central issue around which most of the debate about the visa has taken place. The Government is clear that the tie is there to preclude a domestic worker from remaining in the UK longer than her employer, as it is this relationship that is the very basis for the overseas domestic workers visa scheme. It is argued that it is therefore illogical to permit a worker to outstay her employer.
66. The fundamental questions through which to consider this issue are these:

- 66.1. What is the rationale for imposing the tie?
- 66.2. Does the tie result in any increased risk of abuse?
- 66.3. If so, is the increased risk of abuse created by the tie sufficient to outweigh the rationale for imposing it?
67. The argument has been fiercely debated. On the one hand parallels are drawn by various groups with the *kafala* system of sponsored/bonded labour present in some Gulf states (where many applicants for overseas domestic workers visas come from). On the other hand, the Government remains unconvinced that there is sufficient evidence to show that by adding the tie in 2012, there has been any *more* abuse than before 2012. And whereas Kalayaan and Justice 4 Domestic Workers point to the reduction in the number of referrals/clients they have received since the 2012 changes were implemented as evidence of increased abuse (i.e. fewer victims are coming forward, so more must be staying in situations of abuse), the Government suggests that such a reduction of referrals may instead be evidence that fewer overseas domestic workers are experiencing abuse. It is self-evident that this evidence alone cannot prove either position.
68. Looking at the evidence of tied visas generally, it is the widely - near unanimously - held view that where immigration laws tie a migrant domestic worker's status to a specific employer, the vulnerability of that worker to abuse, including to slavery and human trafficking, increases. The following non-exhaustive list of authorities for this proposition demonstrates the extent to which this view has been considered and supported:
- 68.1. House of Commons Home Affairs Committee Inquiry 'The Trade in Human Beings: Human Trafficking in the UK (May 2009):
- "[The pre-2012 visa] provides Migrant Domestic Workers with a vital escape route from exploitation as they are able to leave an exploitative situation without jeopardising their immigration status, seek advice, and if they wish they can seek assistance from the police or go to an employment tribunal... To retain the existing Migrant Domestic Workers visa and the protection it offers to workers is the single most important issue in preventing the forced labour and trafficking of such workers"*
- 68.2. OSCE - Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (June 2010):
- "The international community and community-based organizations recognize, however, that these policies do not guarantee sufficient protection to migrant domestic workers, especially if the legality of their stay is bound to a specific work contract or employer and the person cannot change employer or work sector."*
- 68.3. Centre for Social Justice (March 2013):
- "The CSJ therefore has serious fears over the changes made to the ODW visa on 6 April 2012. Under the new visa rules, a domestic worker arriving in the UK can only remain in the country if they stay with their original employer. This presents serious risks that the informal and unregulated nature of this form of work will increase, disempowering workers through*

*restricting their freedom to leave an abusive employer and fostering increased cases of modern slavery. An already hidden workforce is at risk of becoming almost invisible. Domestic workers with abusive employers are now left with three choices: to remain in the situation and submit to the abuse their job entails; to leave the UK and return home (this is very often not seen as a viable option for domestic workers who are under significant financial pressure with dependents at home); or to leave their employer and their home (many migrant domestic workers live with their employers) and face the prospect of living and working illegally in the UK.... The removal of this visa has increased the vulnerability of the 'already isolated and dependent worker' and removed any bargaining power they had over their employer through 'attaching' their immigration status to their employer."*

68.4. The UN OHCHR Special Rapporteur on Violence against women: Mission to the UK (April 2014):

*"Despite many positive developments, violence against women remains a pervasive challenge throughout the United Kingdom... I also received information on the high levels of abuse suffered by migrant domestic workers, including psychological, physical, and sexual abuse; low wages, or non-payment of wages; extremely long working hours; denial of time off and rest days; retention of passports; or being prevented from leaving their place of employment unaccompanied. Changes to the applicable visa system, has also further negatively impacted domestic workers and has led to new vulnerabilities."*

68.5. The Modern Slavery Bill Evidence Review (December 2013):

*"An area which the Panel feels demands particular attention is that of the rights of overseas domestic workers living and working in the UK. IN April 2012 fundamental changes were made to the overseas domestic worker visa, withdrawing the right of domestic workers to change their employer whilst they are in the UK. Effectively, a domestic worker's immigration status is directly linked to the individual employer who brings them into the country. A distinct danger arising from the removal of the right to change employer is that it exposes domestic workers to the risk of exploitation... the recommendation of the Panel is that the Joint Committee consider the reinstatement of the right to change employer in order to safeguard against exploitation."*

68.6. The Joint Committee on the Modern Slavery Bill (April 2014):

*"The difficulties faced by this group of workers appear to have been compounded by changes made to Immigration Rules in 2012 which had the net effect of removing their right to change employer, and thus denying them one means of removal from an abusive situation... One of the factors we found most distressing was that those who are contacted by these workers are now often unable to help as the victims are in effect tied to their employer.<sup>338</sup> Tying migrant domestic workers to their employer institutionalises their abuse; it is slavery and is therefore incongruous with our aim to act decisively to protect the victims of modern slavery... We recommend the Home Office reverse the changes to the Overseas Domestic Worker Visa. This would at the very least allow organisations and agencies to remove a worker from an abusive employment situation immediately. It would also enable the abuse to be reported to the police without fear that the victim would be deported as a result. This in turn would facilitate the prosecution of modern slavery offences."*

- 68.7. 'Am I Free Now?' Overseas Domestic Workers in Slavery – Virginia Mantouvalou (September 2015):

*“The single fear that interviewees that participated in this research unanimously voiced now that they are undocumented [i.e. are in the UK having left their sponsoring employer in breach of their visa conditions] was fear of the authorities, imprisonment and deportation. Their single hope was to become legal and be able to work in the United Kingdom for a period of time, in order to send some income to their dependents who are in in desperate economic need. It is to be hoped that the immigration rules will soon be changed and that this type of visa will not be reintroduced...”*

69. The prevailing international consensus is perhaps best summarised as follows:

*“The international community and community-based organizations recognize, however, that [overseas domestic workers visas] do not guarantee sufficient protection to migrant domestic workers, especially if the legality of their stay is bound to a specific work contract or employer and the person cannot change employer or work sector.”<sup>17</sup>*

70. Equally, a regime – such as that in the UK before 2012 – that permits a change of employer has been considered to be an example of best practice<sup>18</sup>, a view reinforced by the Home Affairs Select Committee in 2009.

71. The reasons for this are well rehearsed and can be summarised (non-exhaustively) as follows:

71.1. A migrant domestic worker is already in a weak bargaining position relative to her employer, so freedom to change employer helps to recalibrate the balance of power between employer and employee: employees can leave an abusive employer without breaching the terms of their visa and employers cannot truthfully threaten the employee with serious consequences as to their immigration status if they leave.

71.2. For those workers with knowledge or experience of the *kafala* system, the psychological, if not legal, comparison with a tied visa reinforces the employee’s perception of being ‘owned’ by an employer, or at least being trapped in an employment relationship, even where that relationship is abusive.

71.3. A tied visa risks creating a hidden undocumented workforce of escaped workers who are illegal, invisible and fearful, living outside the protection of the law – all of which increases their vulnerability to further abuse.

72. Various groups have collated and presented evidence to inform the debate concerning the tied nature of the visa. Some of that evidence is set out as follows:

72.1. Of a pool of 402 overseas domestic workers who registered from 2012-14, Kalayaan reported<sup>19</sup> proportional increases amongst those on post-2012 tied overseas domestic workers visas (120

<sup>17</sup> ‘Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude’ OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, (June 2010)

<sup>18</sup> ILO

out of 402<sup>20</sup>) in the amount of physical abuse, restriction of movement, excessive hours, inadequate pay, denial of access to their travel/identity documents and trafficking.

72.2. Human Rights Watch has produced a report<sup>21</sup> that details specific abuse amongst 33 migrant domestic workers, of who about half were on tied visas.

72.3. Virginia Mantouvalou has written a paper<sup>22</sup> which is based on interviews with 24 migrant domestic workers, which also provides further analysis.

73. This is important evidence. It is in the public domain and is not easily susceptible to a concise summary. It documents specific incidences of abuse in considerable and disturbing detail. As has been stated above, it is not the place of this review to create new evidence, however this significant evidence has been tested in the context of this review and the face-to-face interviews conducted (see paragraph 36) corroborated the nature of the abuse reported elsewhere.

74. In response to reliance on the Kalayaan and Human Rights Watch findings in order to support an argument that the introduction of the tied visa in 2012 has led to an increase in abuse, the Government has said:

*“...the reports used small samples. Kalayaan is a group set up specifically to provide support to abused workers. It is not surprising, therefore, that a high proportion of those who turn to them report abusive treatment. In addition, Human Rights Watch selected only workers who had experienced abuse for their report. They are not, therefore, a representative sample.”<sup>23</sup>*

75. Applying to this evidence the principles set out above<sup>24</sup>, it is important to be clear about what such evidence can and cannot do:

75.1. it can and does *illustrate* that some overseas domestic workers suffer horrendous abuse;

75.2. it does *suggest*<sup>25</sup> that there is a link between that abuse and the tied nature of the visa;

75.3. whilst identifying a clear phenomenon, it does not provide a robust indication of, and cannot *prove*, the quantitative prevalence of such abuse.

76. However, the fact that the evidence is not quantitatively robust does not mean that the abuse does not take place. On the contrary, there is *no* evidence that such abuse does *not* take place and it is accepted by all contributors that *some* abuse takes place. Therefore, the uncontentious evidential conclusion is that such abuse takes place but that the extent of such abuse is unknown. Consequently, the best available evidence as to the impact of the tied nature of the visa is the broad body of academic and other research and opinion and the evidence set out above. Indeed, this review has found no evidence

<sup>19</sup> Still enslaved: The migrant domestic workers who are trapped by the immigration rules (April 2014)

<sup>20</sup> it is fair to recognise that the pre-2012 group could include employees who chose to change employer for benign reasons, whereas the post-2012 cohort are more likely to be those who have suffered abuse.

<sup>21</sup> Hidden Away, March 2014

<sup>22</sup> 'Am I Free Now?' Overseas Domestic Workers in Slavery (September 2015)

<sup>23</sup> "Factsheet: Overseas Domestic Workers"; Home Office, November 2014.

<sup>24</sup> see §23 above.

<sup>25</sup> the prevailing consensus - see §69 - raises a reasonable expectation of such a link; the UK based evidence - see §72 - accords with that expectation; whilst the data is arguably too small and self-selecting to make this an *inevitable* conclusion, this review has not seen any evidence which supports a contrary finding (i.e. that there is no link at all);

that a tie to a single employer does anything other than increase the risk of abuse and therefore increases actual abuse and there is no evidence that it is neutral in its effect or that it reduces abuse.

77. The Government has put forward an argument to disassociate abuse with the tied visa as follows:

*“If escaping slavery was as simple as just changing employer, there would be no UK or EEA nationals who are victims of slavery.”<sup>26</sup>*

78. Indeed, escaping slavery is not always as simple as changing employer; but sometimes it is. And, in any event, not being able to change employer denies victims a clear and obvious self-help route out of their immediate abuse with the risk of becoming an illegal immigrant. That is an invidious choice. The effect of the changes under s.53 of the Modern Slavery Act 2015 for which Lord Bates was advocating are that a right to change employer is introduced, but that it is conditional upon the victim referring themselves to the (revised) National Referral Mechanism *and* receiving a positive finding that they are a victim of modern slavery or human trafficking. A period of grace is also provided for under s.53(6). These provisions, it is argued, will ensure that the offender is identified and can be investigated and, if appropriate, prosecuted and will be unable to re-offend. The concern of Lord Bates, expressed by Chief Constable Shaun Sawyer and Ian Cruxton at the National Crime Agency (NCA), was that without such a provision, victims could simply change employer and not inform anyone about the perpetrator.

79. This argument risks forgetting that, whilst protecting victims and combatting and preventing such abuse are equally important purposes, on a practical level the protection of actual victims of abuse precedes consequent prosecutions, and prevention of future abuse is informed by past actual abuse. The danger of the conditional approach embodied in s.53 is that the only route out of abuse puts the evidential burden on the worker/victim and is coupled with a threat of not only having lost their job but also becoming illegal immigrants if they fail to meet that burden and are not found to have been in slavery or to have been trafficked. There is a keenly felt risk of such victims being worse off for having asked for help. And furthermore, the proviso of s.53 only applies to slavery and human trafficking, not any other abuse on the continuum of exploitation referred to above.

80. The evidence in this regard is instructive and reassuring: abused workers overwhelmingly want their abusers to be brought to account, and are prepared to assist in that happening<sup>27</sup>. The barrier to engaging their assistance is not one of unwillingness. The key, therefore, is to understand how to empower overseas domestic workers, how to enable them to take control of their lives and how to support them to get out of their abusive situations such that their willingness to report their abuse and assist with prosecutions or civil actions is acted upon.

81. To understand how to engage victims to this end requires a proper appreciation of why they are here at all. It is in this context that the evidence is highly persuasive:

81.1. The dominant priority for many migrant domestic workers is to retain their legal immigration status wherever they are in order to continue to work and to remit money home to their dependents, whose economic needs are the primary reason that the migrant domestic worker has left them to work abroad.

<sup>26</sup> Lord Bates' letter of 13 March 2015

<sup>27</sup> this view was repeatedly stated by overseas domestic workers introduced through Justice 4 Domestic Workers and Kalayaan in response to direct questions from the author during this review

- 81.2. The evidence strongly indicates that what a victim of abuse most wants is to find an alternative non-abusive legal employer for whom to work, enabling remittances home to continue to be made uninterrupted. It should be recognised that victims are not particularly demanding in this respect, and are prepared to work in what many others would consider to be unacceptable conditions simply in order to remit money home.
- 81.3. Since that is the victim's priority, she will feel better able to consider her own position *vis-à-vis* her former employer if she is working and sending money home, but there is a risk that such alternative employment could be abusive.
- 81.4. The evidence received by this review strongly indicates that those victims who choose to make criminal and civil complaints against former abusive employers are those who are in safe and secure alternative live-in employment.
82. Evidence has been adduced which indicates that, as well as victims finding the NRM difficult to understand (even with the benefit of legal advice), they neither want, nor are well-served by the provision it offers. After 45 days, victims still need safe accommodation. Contributors have provided evidence of such accommodation being hard, if not impossible to find after the 45 day period, whereas accommodation would be provided at no cost to the Government as part of a victims' change of live-in employment.
83. It has been suggested that the concern expressed by Lord Bates, Chief Constable Shaun Sawyer and Ian Cruyton can be met by requiring any change of employer to be registered with the Home Office. This, it is said, would give the Home Office sufficient information to pass to the police to consider commencing an investigation. This review has received little resistance to such a proposal. Indeed, in the context of this review the Government has acknowledged that *"if overseas domestic workers were permitted to change employer, [registration of a change of employer] could help mitigate the possibility that they move into another abusive relationship."*
84. Evidence was sought as to the effect of requiring *more* information to be given upon a change of employer, specifically requiring the workers to state whether or not the reason for the change was abuse. Although not unanimous, the weight of opinion was against doing so. The principal argument was that the fact of moving employer alone should be a sufficient tip-off to the Home Office/police, since workers in general have an aversion to leaving an existing reasonable job unless absolutely necessary. Migrant domestic workers want to work, earn and remit money home, it is argued, and therefore in practice, employees are unlikely to change employer for any reason other than abuse of some level. The Government's response is that responding to such 'tip-offs' would require resources, although that was taken to be more a comment than a principled objection. It is not being suggested that the police should investigate every change of employment in case it was precipitated by abuse, but using the data generally could, for example, identify employers who had several workers leave their employment, which may well warrant further enquiries, perhaps of their former domestic workers.
85. As has been set out above, evidence has been provided that until a worker is settled in a new employment, she is unlikely to feel safe and secure enough to raise a specific complaint, and any requirement to report a reason for change of employment before then is likely to be met with a lie, or at least a watered down version of the truth. Of course, a voluntary 'further information' prompt upon registering a change of employer could not be objected to. Consequently, if a worker could and did

change employer, that alone should merit a response which could in the first instance be further enquiry and providing to the worker (at her new address) details of how to seek support in pursuing a complaint/claim against a former abusive employer.

86. In all of this discussion, this review returns the fundamental questions set out above:
- 86.1. The answer to the first question - **what is the rationale for imposing the tie?** - is clear and uncontroversial. An overseas domestic worker's entry to the UK is permitted *solely* because a specific employer is entering the UK and needs/wants to bring a specific domestic employee with him or her. Without the employer's need/want for that specific domestic worker, there is no other rationale - or indeed any other immigration route - for such a domestic worker to enter the UK. On this basis alone, the UK accedes to the need/want of the employer and allows the domestic employee entry to the UK. The tie is imposed to reinforce the (*only*) reason why the domestic employee is permitted to be in the UK, that is to give the employers what they want/need.
- 86.2. As to the second question - **does the tie result in any increased risk of abuse?** - the answer cannot be found either positively or negatively in data that simply does not exist. It can, however, be found in the abundance of evidence, both national and international, referred to above (see paragraphs 68 -76), and the answer is clearly 'yes'. The extent is unknown, but the phenomenon is clear: the presence of a tie to a specific employer places both real and perceived restrictions upon an overseas domestic worker's ability to seek protection of her fundamental rights while at work in the UK which increases her risk of abuse.
- 86.3. That makes the third question crucial - **is the increased risk of abuse created by the tie sufficient to outweigh the rationale for imposing it?** It is tempting to think that the absence of a quantitative answer to the second question precludes any meaningful answer to the third, because it requires a balancing exercise. But that is not right. In the absence of UK data, the balancing exercise of which the visa tie is the pivot point must be conducted on the basis of the available evidence. The balance is between, on the one hand, the fundamental rationale for allowing an overseas domestic worker into the UK – i.e. an employer's want/need for that particular employee; and, on the other hand, the increased risk of abuse (albeit unquantifiable) that the tie creates. Viewed in these stark terms, it cannot be said that an employer's expressed want/need can justify *any* material increase in the risk of abuse of their employee.
87. Put in practical terms, whilst the expressed want/need of a specific employer to bring a particular individual to the UK remains the fundamental reason for granting the employee a visa, the imposition of a tie imposes an unacceptable increase in the risk of abuse of that employee while in the UK. Accordingly, on the balance of the currently available evidence considered by this review, the tie to a specific employer should be removed.
88. It is hoped that, as result of other recommendations made in this report the effect of which will be to bring overseas domestic workers into a clear legal framework offering greater transparency and protection, a more refined analysis of the nature and extent of abuse will become possible. However, in circumstances where the current evidence provides a clear conclusion that the tie should be removed, it would be wrong to wait for such analysis before acting upon that conclusion. And even if this review had received evidence which showed that the tie caused only a small increase in the risk of abuse, the

balance of evidence would nonetheless lead to the same conclusion. Indeed, it appears that a contrary conclusion could only be reached upon clear evidence that a tie did not contribute *at all* to the risk of abuse which, while possible, would run contrary to the prevailing current understanding of its effect.

89. This analysis has already been accepted by the Government to a limited extent, and that acceptance formed the basis of the concession contained in s.53(2)(b) of the Modern Slavery Act 2015<sup>28</sup>. The Government concedes that having acceded to the wants/needs of certain employers and allowed them to bring their employees to the UK, there are circumstances when its responsibilities to such employees outweigh the original rationale for entry, and justify a different basis for the employee to remain in the UK.
90. However, the evidence points to the need not simply to lower the threshold at which that concession applies (i.e. not simply to those who have been determined to be victims of modern slavery or human trafficking through the NRM) but to remove it altogether. This conclusion is supported by the following points:
- 90.1. As noted above, not all abuse meets the NRM threshold of modern slavery or human trafficking (assault, false imprisonment, excessive work hours, low pay etc.) and the imposition of the current conditions do nothing for victims of such lesser/different abuse. In the absence of evidence as to the nature and extent of abuse of overseas domestic workers (and arguably even if such evidence existed), it would be arbitrary and invidious to impose a lower, or indeed any, threshold of abuse on a worker's ability to change employer.
- 90.2. The NRM is a very expensive mechanism for dealing with extreme exploitation and it brings with it uncertainty and delay. Where an NRM decision affects not simply the question of victimhood and potential support (for which the NRM was designed), but also goes to the very issue of a worker's immigration status then that will fuel a victim's real and perceived susceptibility to immigration enforcement action. The evidence of NGOs indicates that this alone is sufficient to dissuade some victims from engaging with the NRM in any event, potentially preferring to remain a legal immigrant in an abusive relationship rather than risk having their immigration status conclusively determined against them because they were not being sufficiently abused.
- 90.3. Evidence has been adduced which indicates that, as well as victims finding the NRM difficult to understand (even with the benefit of legal advice), they neither want, nor are well-served by the provision it is designed to deliver (see paragraph 82). After 45 days, overseas domestic workers still need safe accommodation. Contributors have provided evidence of such accommodation being hard, if not impossible, to find after the 45 day period.
- 90.4. Any condition on the right to change employer provides a potential line of challenge by defence counsel in any future prosecution of an abusive employer that the complaint was only made to secure longer residence in the UK.
- 90.5. By contrast, a general right to change employer empowers the victim to help herself is consequently light on resources and, on the evidence received by this review from NGOs and victims themselves, increases the prospects of the victim voluntarily pursuing a former abuser.

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<sup>28</sup> i.e. providing for a victim of modern slavery or human trafficking to change employer

91. Of course, removing the tie opens the unintended possibility of overseas domestic workers who are not subject to any abuse seeking to change employer. A number of points can be made in this regard:
  - 91.1. Government figures show that before 2012 - when there was a general right to change employers - applications to renew overseas domestic workers visas were running at the rate of just under 7,000 "...per year. These figures, however, do not reveal what proportion of renewals involved a change of employment. Furthermore, since there was no limit on the right to extend for a year at a time, the cohort of renewals would include those renewing their visas on a repeat basis i.e. it is not 7,000 of every annual intake who applied to extend, but 7,000 from successive previous annual intakes.
  - 91.2. Until a general right to change of employer is expressly granted and effectively monitored, no data can be collated to consider the extent to which such changes come about under pressure of threatened or actual abuse, or simply as a matter of free choice.
  - 91.3. Even with the implementation of rules pursuant to s.53 of the Modern Slavery Act 2015, data will only be available for those who meet (or apply to meet) the high hurdle of modern slavery and human trafficking.
  - 91.4. The unintended impact of un-merited changes of employer can be circumscribed by the imposition of appropriate conditions as to extensions and the maximum aggregate term of the overseas domestic workers visa (see below).
92. The evidence that this review has heard suggests that the re-employment process is entirely self-funding, as demonstrated by the pre-2012 position. Although some countries, such as Switzerland, operate a centralised employment agency for overseas domestic workers, for those on pre-2012 overseas domestic workers visas re-employment was - and is - found through private employment agencies. Employers pay the relevant fee, and the agency plays an important role in overseeing the welfare of those they place. There would, it is accepted, be some cost to the Government of processing the registration such changes.
93. For the avoidance of doubt, it is not the conclusion of this review that the removal of the tie should allow the overseas domestic worker to do any type of work other than domestic work in a private household. Whilst some have advocated for overseas domestic workers to be given wider permission, such a proposal does not appear to give proper weight to the underlying rationale of the overseas domestic workers visa and concessionary basis for entry to the UK in the context of wider immigration policy. It is not for this review to challenge the wider immigration policy of restricting immigration of unskilled labour from outside the EEA, but rather to focus on what is necessary to give effective protection to overseas domestic workers. On this point, the balance of evidence does not require general access to a wider range of employment.
94. However, the Government should nonetheless give consideration to the interaction between this condition and the effect of a residence permit granted on the basis of discretionary leave to a survivor of human trafficking who is helping police with their enquiries. Such leave does permit work in other areas, which is welcome, but presents an arguably inconsistent approach. This should be regularised by granting all workers who have received positive NRM decision permission to work in other areas than

domestic service. To compel someone to return to the very setting in which they were formerly abused is wholly inappropriate.

#### **OTHER CONDITION: TERM, EXTENDABILITY, DURATION AND THE RIGHT TO SETTLEMENT**

95. The recommendation as to the removal of the tie from the visa does not necessarily lead to the conclusion there should not be any conditions at all on an 'untied' visa. Nor does it lead to the conclusion that the Government should necessarily revert to the pre-2012 visa regime. It is necessary to consider these other conditions with the same analytical approach:
- 95.1. What is the rationale for imposing the non-extendable 6 month term and denying a right to settlement?
- 95.2. Do these terms result in any increased risk of abuse?
- 95.3. If so, is the increased risk of abuse created by these terms sufficient to outweigh the rationale for imposing them?
96. As with the tie, the underlying rationale is clear and uncontroversial: these conditions are primarily justified by the alignment of the overseas domestic workers' visa with the visa conditions of their sponsoring employers as set out in the Immigration Rules<sup>29</sup>. However, if the tie is removed, that fundamental rationale also disappears. But it does not necessarily follow that removing the tie element of the visa should entitle an overseas domestic worker to an unlimited or unconditional stay in the UK. The underlying role of the visa, which is to grant a temporary permission to enter and work in the UK in a certain sector, and its place in wider Government immigration policy are significant factors that cannot rightly be ignored.

#### **THE INITIAL SIX-MONTH TERM**

97. As to the initial term, an argument has been raised that six months is insufficient time for an overseas domestic worker to avail herself of the protections to her fundamental rights that she deserves in the UK, and thus it increases the risk of abuse. In this regard, it is noted that the inability to establish social networks and gain access to information, advice and support as a consequence of the frequent movement of individuals is a recognised factor in increased vulnerability to abuse. However, this review makes specific recommendations which address this consequence directly, both before (see above) and after (see below) entry to the UK, and which do so well within the initial six month time-frame. *Subject to those recommendations being implemented*, the six month initial period should not of itself increase the risk of abuse. If the duration of the sponsoring employer's visitor visa were to change, the effect on the visa's initial term would need to be reconsidered, but this review does not address that scenario.

#### **EXTENSIONS AND MAXIMUM STAY**

98. In respect of the non-extendable nature of the visa, the argument is raised that if there is no extension above the initial six months, the intended effect of granting a right to change employer is almost entirely undermined. Again, the Government appear, in the drafting of s.53 of the Modern Slavery Act

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<sup>29</sup> at 159A(iii)(a)-(c)

2015, to accept this argument in principle and propose a further six month extension in specific situations of abuse.

99. However, even if an extension is acceptable in principle, it is necessary to ask what length of extension is appropriate in practice. Adopting the same approach as was used in respect of the tie, when considering the conditions as to extendability, maximum term and a right to settlement, the fundamental question is whether, on balance, they are compatible with the protection of the overseas domestic worker's rights. Importantly, however, such a principled approach does not require that such conditions be any more than the minimum necessary to protect those rights. There is a balance to be found between creating conditions that do not increase the risk of abuse, while accepting that the overseas domestic worker's right to remain in the UK is essentially temporary.
100. In this respect, an argument has been presented to the review that the opportunity for unlimited extensions and the right to apply for settlement constitutes the most comprehensive means of alleviating the vulnerability of those who have endured years of abuse and subservience. That may be true, but such an approach risks ignoring the balancing exercise referred to above. The right approach is not to focus on the most comprehensive solution, but to ask what extensions, what maximum aggregate stay and whether a right to settlement are *necessary* for the effective protection of an overseas domestic worker from abuse of her fundamental rights, in view of wider UK immigration policy.
101. The central concern of this review is that, from an overseas domestic worker's perspective, any extension of the visa upon a change of employer should not place the overseas domestic worker under undue pressure to accept unsafe alternative employment. After all, the underlying rationale of a right to change employer is to give the overseas domestic worker a safe way out of an abusive situation, of which safe re-employment is an essential part. In order to make the right to change employer effective in practice, the duration of any extensions must be of sufficient length to give the overseas domestic worker both sufficient incentive and reasonable prospects of finding such alternative employment. In looking for evidence to inform this issue, there is currently no reliable or comprehensive data available as to the current length of stay of overseas domestic workers. In particular, there is no data indicating how many overseas domestic workers are leaving their employers and/or finding alternative employment, or for what duration they are staying in such alternative employment. This is in large measure because all such overseas domestic workers will, if they arrived after 2012, be in breach of their visas by doing so. If they have remained in the UK, they will have irregular immigration status and will be working in a hidden economy, almost entirely out of view, and therefore outside of the protection of any UK authorities. The pre-2012 data referred to above is arguably becoming increasingly stale and was based on a fundamentally different visa regime, and in any event does not indicate the aggregate length of stay of any individual overseas domestic worker.
102. Furthermore, there is no way at this stage to gather any data as to the impact that increased provision of information to overseas domestic workers both at the application stage (see above), and after arrival (see below) will have in empowering overseas domestic workers to avoid abuse while remaining with their current employers, or to choose to leave that employer. And even when such data becomes available, there will be no previous baseline data to compare it with.
103. But the absence of quantitative data does not mean that there is no evidence upon which to base an informed view. From an overseas domestic worker's perspective, if she arrives on a six month visa and

changes employer during that six months, she needs to know that there are reasonable prospects of finding alternative employment. The Migration Advisory Committee is not tasked to focus on the roles potentially undertaken by this group of potential employees in its assessment of skills shortages. The evidence on this area is therefore drawn from a number of employment agencies<sup>30</sup> who have experience placing pre-2012 overseas domestic workers in employment. Their evidence can be summarised as follows:

- 103.1. There is a demand for and shortage in the supply of experienced workers available to fill especially live-in but also live-out roles such as housekeepers, cooks, nannies, companions and carers.
  - 103.2. The pre-2012 overseas domestic worker workforce is reducing in size and aging, further fuelling the shortage, and pushing up salaries.
  - 103.3. Although some EEA nationals do apply for some of the same types of job, such applicants often lack the required experience of domestic service and are generally less inclined to accept live-in positions or roles that overseas domestic workers are willing to undertake.
  - 103.4. The salary range for such positions is c.£350-£600 per week, depending on whether it is live-in or live out, in London or not.
104. These agencies are clear that relevant experience is a significant factor in meeting the requirements for such positions, and that there is a disparity in such experience between EU and overseas domestic worker applicants. Therefore, despite the omission of such roles from the shortage occupation lists, there is nonetheless cogent evidence that alternative employment is available for overseas domestic workers who seek to change employer while in the UK.
105. As to the period of availability that an overseas domestic worker needs to offer in order to secure such a position, the commercial reality of an employer paying an agency fee for securing the services of such a person requires, in the evidence of some agencies, that a longer period of prospective employment is offered. It has been emphasised that this is particularly the case in circumstances where the employer is necessarily taking a risk by employing an overseas domestic worker who has escaped from a previously abusive employer and therefore comes without any references. Placing such employees is not as easy as placing others, it is said, and placing them for short periods is impossible. If this is correct, failure to make overseas domestic workers available for a longer period of time would substantially undermine the effect of a right to change employer.
106. There are some parallels with other forms of employment of overseas 'unskilled' workers, such as au pairs. Au pairs from certain non-EEA countries can come to the UK under a two-year Youth Mobility Scheme work permit, and they often stay with a single employer for between one and two years. However, the evidence that has been provided from the employment agencies suggests that employment of more mature overseas domestic workers tends to work on longer periods - some suggesting 3 or even up to 5 years. In the absence of more detailed evidence it is recommended that, in order to provide overseas domestic workers with a meaningful alternative employment to which removal of the tie will provide access, there needs to be the potential for an overseas domestic worker to stay in the UK for up to 2 years beyond the initial 6 month term.

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<sup>30</sup> evidence was received from 8 employment agencies listed in Appendix 2 who specifically place domestic workers

**RIGHT TO SETTLEMENT**

107. However, the evidence does not, on balance, appear to justify a longer maximum stay or a right to settlement. The argument for unlimited extensions and the potential right to apply for indefinite leave to remain claims that to impose *any* ultimate limit of such extensions will, in effect, simply delay the point at which undue pressure from an employer increases and will, at that point, increase the risk of abuse to an unacceptable level. However, the recommendations of this review as to the provision of information to overseas domestic workers both before and after entry to the UK, are relevant here. If implemented – *but obviously not unless implemented* - those recommendations will ensure that every overseas domestic worker knows her rights including her employment rights with her current and any future employer and her right to change employer. The evidence received by this review suggests that with the provision of such information, overseas domestic workers' vulnerability to abuse will be significantly reduced. Such workers will be empowered to take self-help steps themselves, understanding the significantly greater scope that they have to leave an abusive relationship and find work elsewhere. Each overseas domestic worker will also be aware, from the outset of her stay, of the need to make plans and take decisions concerning her options after her maximum stay expires. Importantly, all such decisions will be informed and will be able to be taken from a position of safety and security.
108. It is acknowledged that some, maybe many, such domestic workers would like to stay longer, and some may find subsequently working in another country a less pleasant prospect. It is also acknowledged that workers who stay in employment will be making a contribution to the UK, both socially and economically. It is interesting to note that Government figures indicate that the percentage of overseas domestic workers being granted indefinite leave to remain under the pre-2012 visa peaked in 2013 at about 7% of applications (excluding dependents). The numbers involved were small (c.1,200 plus dependents), but it is not known the extent to which those applicants were victims of abuse.
109. However, none of those arguments appears to justify, from a perspective of protecting overseas domestic workers' fundamental rights while in the UK, permission to remain permanently in the UK. The current overseas domestic workers visa simply is not, and should not be understood to be, a route to permanent residence in the UK, unless either the Government changes its general immigration policy or such a change is an unavoidable consequence of allowing overseas domestic workers into the UK in the first place, because it is necessary to protect such workers' fundamental rights. The evidence suggests that empowerment of overseas domestic workers will bring their employment in the UK within the realm of effective oversight and protection. The visa rules, amended in accordance with this review's conclusions, and consistent with wider immigration policy, are consistent with that oversight and protection.
110. It is in this context that reference should be made to the argument put forward to this review by some, that the UK should indeed be, in effect, an international refuge. This argument advocates not merely permission for, but encouragement of, abused or potentially abused individuals such as overseas domestic workers to come to the UK to live and work permanently within the relative safety and with the benefits that the UK has to offer in a global context. The ethical attractiveness of such a stance in isolation is unanswerable. However, such questions necessarily form part of a far broader moral and political framework which it is beyond the scope of this report to analyse and assess. This review takes

account of current wider immigration policy as it applies to overseas domestic workers in particular, and challenges that only insofar as is necessary to protect such workers, but not on a broader level.

#### **RECOURSE TO PUBLIC FUNDS**

111. This review has received some evidence that indicates a need to alter the basic principle that overseas domestic workers should have no recourse to public funds. That evidence focuses first on the need to ensure that an abused overseas domestic worker perceives that fleeing from her situation is a viable proposition, not one that will result in homelessness and destitution. On the other hand, the review has received evidence that such transitions, on the pre-2012 visa, were generally undertaken successfully without the need for Governmental support, there being a relatively healthy private re-employment market and a supportive network of co-workers to help with the transition. It is hoped that the provision of information meetings as referred to below will reinforce that position, and accordingly this review does not recommend, at this stage, that the general 'no recourse to public funds' condition be amended, *provided the other recommendations are accepted*. The situation will then need to be subject to ongoing, possibly independent, review.
112. The Government should nonetheless give consideration to the interaction between this 'no recourse to public funds' condition, which would remain in effect even under the provisions of s.53 upon a conclusive grounds decision of the NRM, and the effect of a residence permit granted on the basis of discretionary leave, for example to a victim who is helping police with their enquiries. Such leave *does* permit the recipient to have recourse to public funds. In circumstances of such extreme abuse as to result in a positive conclusive grounds decision, recourse to public funds is plainly appropriate as victims may well require more than another job to aid their recovery. The provisions of s.53 should be amended accordingly. A possible model for such an amendment is the Destitution Domestic Violence Concession granted to victims of domestic violence, which gives access to public funds for a limited period.

#### **HEALTH INSURANCE, THE HEALTH SURCHARGE AND EXEMPTION FROM NHS CHARGES**

113. Paragraph 12 (1) of the written terms and conditions of employment at Appendix 7 of the Immigration Rules specifies that the employer must provide and meet the costs of comprehensive sickness insurance. Accordingly, and since there is no current right to extend the visa beyond 6 months, there is no requirement on overseas domestic workers to pay the immigration health surcharge, and they are not exempt from NHS charges.
114. The recommendations above include a right to change employer, and a requirement to evidence that change with a further employment contract in the terms of Appendix 7. This gives rise to the question of whether it is more appropriate for an overseas domestic worker who remains in the UK for longer than the initial six months to have sickness insurance provided by her employer, or to pay the immigration health surcharge - it being clear that they should not *both* be payable (as some contributors have experienced).
115. It should first be recognised that access to, and interaction with, health professionals is an important protection for overseas domestic workers. Indeed, it may be the route by which they are identified as victims of abuse, which is the first step to them escaping such abuse and the perpetrators being

brought to account. Evidence has been presented to the review that the fact of an employer taking out an insurance policy in an employee's name can create a further mechanism of control over that employee which is open to abuse, and can restrict vital access to healthcare services and personnel. It is therefore recommended that the Government make changes to the relevant provisions from a requirement of comprehensive sickness insurance to the payment of the immigration health surcharge by the employer as part of the Appendix 7 terms of employment. The increased level of information, advice and support recommended below substantially meets the concern that any such payment would in fact be reclaimed, with menaces or otherwise, from the employee.

#### **CONCLUSION AS TO THE TERMS OF THE VISA**

116. This review concludes that the current terms of the overseas domestic workers visa are incompatible with the necessary protection of overseas domestic workers' fundamental rights while in the UK. In particular, the effect of the tie to a specific employer, coupled with the absence of any general right to extend the initial six month term severely restricts the opportunity - and thereby creates a practical barrier - to overseas domestic workers seeking the basic protection provided by an ability to leave an abusive employer. The Government has recognised, as enacted in s.53 of the Modern Slavery Act 2015, the need to relax such rules in certain cases. However, the pre-condition attached to such concession by s.53 - a positive conclusive grounds decision - is an unacceptable threshold, that acts more as a barrier in practice. Not only does it create an undesirable hierarchy of abuse, but the fear of not reaching that threshold and the impracticality of finding work for the limited six month extension that is offered under the concession create a practical disincentive to those who may otherwise apply.
117. The review therefore concludes that all overseas domestic workers should have an unconditional right to change employer, and to apply annually for extensions of their visas. Whilst the arguments for overseas domestic workers to have a right to unlimited extensions while in work are coherent and not without merit, the review finds that such provision is not necessary to protect overseas domestic workers' fundamental rights, and accordingly a maximum stay is recommended. The evidence available indicates that a maximum of 2 ½ years, being a further 2 years on top of the initial six months, should provide the requisite protection. It follows that a right to settlement is not necessary either.

#### **RECOMMENDATIONS AS TO THE TERMS OF THE VISA**

118. It is therefore the recommendation of this review that the terms of the overseas domestic workers visa be amended to provide for:
- 118.1. An initial term of six months (or shorter if the sponsoring employer leaves the UK before then).
  - 118.2. A right to change employer, but limited to domestic work in a private household, that is not conditional upon claiming or proving any form of abuse.
  - 118.3. A period of 28 days grace to find another employer, during which an overseas domestic worker not in work will not be deemed to be in breach of the immigration rules by virtue of not being in work.
  - 118.4. A requirement to register any change of employer with the Home Office (with the option to give a reason for the change).

- 118.5. The right to apply for extensions of up to 12 months each, up to a maximum of 2 ½ years, with no right to settlement.
119. Within this framework, there are consequential requirements that will assist in the regulation and protection of those overseas domestic workers who remain beyond the initial six month period:
- 119.1. Upon informing the Home Office of a change of employer, the overseas domestic worker must provide a copy of the new UK contract of employment, which must comply with the terms of Appendix 7 of the Immigration Rules.
- 119.2. Upon any application for an extension, the overseas domestic worker must provide the Home Office with evidence of her current contract and her recent pay, in the form of payslips, demonstrating that she has been paid at least the minimum wage.
- 119.3. Upon any application for an extension, the overseas domestic worker must also provide the Home Office with evidence that her employment has been registered with HMRC as soon as the obligation to do so arises.
120. For the sake of completeness, on the basis of the above recommendations, this review finds no reason to alter the additional provisions made pursuant to s.53 for cases of extreme abuse (any such extension being in addition to the 2 ½ year maximum), save to permit recourse to public funds and work other than as a domestic worker in a private household for those who receive a positive conclusive grounds decision. This could be achieved by granting discretionary leave to remain to all such survivors.
121. It is recommended that all overseas domestic workers are subject to the immigration health surcharge, not a private insurance requirement.

## **PART 5: IDENTIFYING AND PROVIDING SUPPORT TO VICTIMS**

122. The Government is committed to the effective identification and support of overseas domestic workers who are victims of abuse, especially those who are victims of modern slavery. The effective identification of victims has many significant barriers, some of which are inherent in the nature of the workers' roles, including:
- 122.1. they are working in private domestic dwellings, not public spaces;
- 122.2. they often work long hours;
- 122.3. they have very little, if any, contact with the outside world;
- 122.4. they are separated from their wider community by language and cultural barriers;
- 122.5. they often lack the information, advice and support, and therefore the confidence, to self-identify as victims.
123. Any effective system of identification and support of victims must address these barriers. If it does not do so, then such identification will rely on chance encounters with good Samaritans, such as the

nursery teacher in the case of *Folashade Taiwo*<sup>31</sup> or the concierge in the case of *Permila Tirkey*<sup>32</sup>. Furthermore, it is clear from victims' evidence that any system that relies upon the workers accessing information by making voluntary contact with any outside individual or organisation is fraught with difficulties such as limited (if any) permission to leave their workplace and limited (if any) access to a telephone or the internet.

124. In such circumstances, victims of abuse will often see no alternative to simply running away, sometimes in complete ignorance as to the consequence of that action. And as the law currently stands, unless they run to the NRM and receive a positive reasonable grounds decision, they risk forfeiting their legal immigration status either immediately, or very soon afterwards. As set out elsewhere, that represents a significant disincentive, and thus a barrier, to identifying and supporting victims of abuse amongst overseas domestic workers. Discussions with the Philippine Embassy have highlighted the reality of the plight of such individuals, who not infrequently end up seeking consular assistance due to their irregular immigration status.
125. Evidence from abused overseas domestic workers themselves, arguably although not conclusively supported by the statistics presented by Kalayaan, indicates that if they see real, effective opportunities for information, support and assistance, some and maybe many will self-identify as victims. As a consequence of doing so, they can be helped to find ways out of abusive relationships and they can seek legal redress and can support criminal prosecutions where appropriate. Equally, however, if there are no real opportunities for such support, overseas domestic workers have no incentive to engage in a process of self-identification, and simply run away into a hidden job in a hidden economy with the further vulnerability that that will involve. Rather than being incentivised to run into the shadows, such workers must be given the opportunity to find assistance in the light.
126. The evidence does not indicate that the assistance sought by overseas domestic workers who have suffered abuse is necessarily of the kind provided by a successful application to the NRM. The first hand and reported interviews with overseas domestic workers that have been considered in this review tend to point not to a group predominantly seeking Government provision by way of housing or benefits, but rather to a group seeking basic information, advice and assistance to find alternative paid employment as the foundation for taking further decisions as to their future. Those further decisions include regularising their immigration status (where applicable) and deciding whether to pursue or support criminal and/or civil legal remedies for their previous treatment, both of which are aims supported by the Government.
127. What is clearly needed, therefore, is a real, practically accessible opportunity for overseas domestic workers to obtain appropriate information and assistance. The opportunity to provide such information during the application process is considered above. Whilst compliance with the recommendations in that respect would constitute an important first step in informing overseas domestic workers of their rights and routes to seeking assistance, such simple provision of written information in a foreign country is not infallible, and is far from sufficient. It may not be understood; it may not be retained; and it may be of no practical use if the overseas domestic worker is denied access to the relevant sources of help by telephone, internet or visiting in person upon arrival in the UK.

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<sup>31</sup> *Taiwo v Olaiqbe* [2014] EWCA Civ 279

<sup>32</sup> ET/3400174/2013, judgment dated 17.9.15

128. Some contributors have suggested a system of universal or random spot checks at overseas domestic workers' places of work. However, these proposals are potentially resource intensive and carry the risk that attendance at a private home may be met with a perfectly legitimate refusal to grant entry (a problem well known to immigration enforcement officers).
129. To overcome these obstacles there is no substitute for a meeting attended by the overseas domestic worker in person, outside the home, after arrival in the UK. There is no reason why this needs to be an individual as opposed to group meeting; in fact there are good and practical reasons why a group meeting would be better. Furthermore, in view of the inadequacy of a voluntary system, as explained above, the evidence points to a mandatory condition of their entry into the UK for all overseas domestic workers to leave their places of work, with their employers' mandated permission, and attend such an information meeting.
130. The provision of such advice by mandatory attendance at such a group meeting would provide protection of overseas domestic workers' fundamental rights in the following ways, maximising the prospects of them disclosing any otherwise hidden abuse:
- 130.1. It requires the overseas domestic workers to leave her place of employment and thus reduces the immediate physical and psychological influence of her employer.
  - 130.2. It brings a group of overseas domestic workers into contact with each other, providing an early opportunity for developing a peer support network.
  - 130.3. It provides relevant information direct to the overseas domestic worker in a digestible form.
  - 130.4. It provides a practical opportunity for an overseas domestic worker to take an informed view about her circumstances and the options available to her.
  - 130.5. It thus empowers the overseas domestic worker to remove herself from any abusive situation in which she may find herself, and take informed decisions about bringing an abusive employer to account.
131. Devising the full details of such an arrangement is beyond the scope of this report, however the following elements appear to be essential:
- 131.1. Attendance at the meeting by all overseas domestic workers must be expressed, both to employers and employees, as a mandatory condition of both the employer's and employee's visas.
  - 131.2. The meeting should take place a short time after the overseas domestic worker's arrival in the UK. It may be that a requirement to attend within, say, 42 days of arrival, unless the overseas domestic worker has left the UK before that date, would filter out those staying for a short period of time, thus meeting an argument of proportionality - although, of course, it is not currently known how many overseas domestic workers stay for less than 42 days and this period should be reviewed when such data becomes available.
  - 131.3. The meeting should take place at a location and be hosted by an entity that is clearly independent of Government, especially the police and UKVI. This is because of the fear of authority that some overseas domestic workers – perhaps especially those who are being

abused - will often experience, and the need to overcome that fear to allow information, advice and assistance to be effectively communicated to them.

131.4. At the meeting, the overseas domestic workers should bring their passports and UK employment contracts with them to register their attendance. This will reinforce the message that all such workers have a right to possess such documents.

131.5. Attendance should be cross-checked with UKVI arrival/exit data, to ensure that every overseas domestic worker attends such a meeting, with records of non-attendance to be collated by or provided to the Home Office. This will enable to the Home Office to take steps to investigate the reasons for any non-attendance.

131.6. The meeting should provide impartial information and advice as to: (i) the overseas domestic workers' fundamental rights while in the UK, including as to the terms of the overseas domestic workers visa and their terms of employment; (ii) where and how to disclose any failure by their employers to comply with those rights; and (iii) the options available to overseas domestic workers who have suffered abuse of their rights both as to leaving the abusive situation, finding alternative employment and seeking appropriate criminal and/or civil redress against their employer.

132. Further consideration could be given to using such meetings for the following additional information and registration:

132.1. registration with HMRC for tax and NI;

132.2. assistance in opening a bank account;

132.3. registration with a GP.

133. Clearly implementing such meetings would have cost implications, and the current scarcity of funding from within Government is recognised. Again, it is beyond the scope of this report to provide a detailed costed proposal. Having said that, the rough details at Appendix 5 suggest that it would cost no more than £50 per person. The source of funding could be a marginal increase in the current visa fee of £324. The Government has indicated that the use of such fees is restricted by s.68 of the Immigration Act 2014, however, s.68(9)(c) permits visa fees to be used for functions in connection with immigration and nationality. Such meetings would appear to fit within that definition in any event, but would certainly do so if they were a mandatory condition of the visa itself, pursuant to the Immigration Rules.

134. The review has heard concern that a £50 fee increase may well be visited indirectly upon the overseas domestic workers themselves. However, if the improved provision of information, advice and assistance are effective, then such a consequence is but one of the abuses that the overseas domestic worker will be empowered to prevent. Furthermore, it is considered that the relative benefit of the meeting outweighs this risk and sum involved.

#### **CIVIL CLAIMS AND LEGAL AID**

135. The Government rightly acknowledges that forms of abuse that fall short of modern slavery or human trafficking will require overseas domestic workers to use other channels to seek redress from their

employers. Such an approach forms part of the Government's laudable aim of forcing employers' respect for overseas domestic workers' fundamental rights by providing employees with a means of redress. Examples of successful redress would also send powerful messages of deterrence to would-be abusive employers and more judgments such as that in the recent case of *Tirkey v Chandock*<sup>33</sup> would, if brought to the attention of employers, act as a significant deterrent.

136. It is necessary to reiterate here the evidence that points to a victim's ability to change employer and obtain safe and secure alternative employment - which includes safe and secure alternative accommodation - as perhaps the most significant factor in facilitating channels of redress against abusive employers. Lawyers who take on such cases<sup>34</sup> have given evidence to this review, both by way of their general experience and specific case studies, in strong support of that proposition. They report that the inherent uncertainty and instability of a victim of a tied visa often renders it impossible in practice for them to pursue claims.
137. However, even when a victim is safely re-employed and housed, she still needs a practical route to redress. This review was unable to identify any other such channels of redress which were readily available to overseas domestic workers. The obvious candidate for such redress is the Employment Tribunal. The Government is subject to the obligation contained in s.47 of the Modern Slavery Act 2015 - Legal Aid for victims of slavery - and to its obligation under Article 15 of the European Convention on Action Against Trafficking. However, practitioners express concern, sometimes utter dismay, at the difficulty they experience in obtaining - and retaining - Legal Aid funding in practice. In view of the legal provisions cited above, practitioners should not have to resort to the onerous and time-intensive procedure of applying for exceptional funding for such cases. The Government must give clear guidance to the Legal Aid Agency to comply with its current obligations to grant legal aid to all victims of slavery or human trafficking - including overseas domestic workers - to pursue claims in the Employment Tribunal and from the Criminal Injuries Compensation Scheme, and ensure that this legal aid is routinely granted in practice.
138. Legal aid is only available for overseas domestic workers if the matter falls within the scope of Legal Aid, Sentencing and Punishment of Offenders Act 2012 or if Exceptional Case Funding criteria are met. If the proposed residence test - i.e. limiting legal aid to those who have been lawfully in the UK for 12 months - is implemented<sup>35</sup>, then this would affect overseas domestic workers (although not those who were found to be victims of trafficking and modern slavery). Currently, therefore, save in the limited circumstances of modern slavery and human trafficking set out above, overseas domestic workers are forced to seek redress in the Employment Tribunal as litigants in person. The Employment Tribunal is an alien environment for most UK citizens, let alone an overseas domestic worker whose English language skills are often limited. The fees and remission process alone is reported to be sufficiently complex to act as a barrier to some. And when faced with a legally represented employer, the barrier to access to justice becomes practically insurmountable to an overseas domestic worker. This consequently gives employers a further both real and perceived layer of impunity. Although it is arguable that some reliance can be placed on the significant goodwill of and pro bono work from the Employment Law Bar, this leaves overseas domestic workers seeking to enforce the rights which they have as a matter of UK

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<sup>33</sup> ET/3400174/2013

<sup>34</sup> including ILPA, ATLEU, Chris Randall, Freshfields Bruckhaus Deringer LLP pro-bono department, Parosha Chandran, Chris Milson, Caroline Haughey

<sup>35</sup> itself dependent upon the Government's appeal against last year's judicial review decision

law being made to feel like the objects of charity, rather than as valued individuals deserving of the protection of their fundamental rights while they live and work in the UK. This is particularly so where the Government knows that they are an inherently vulnerable group from before they arrive.

139. The question of whether the Employment Tribunal is accessible to litigants in person generally is a broad one that goes beyond the scope of this review. Whilst this review appreciates how the Government might find it hard to justify the provision of legal aid to overseas domestic workers to make claims in the Employment Tribunal in circumstances where other UK workers have no such entitlement, nonetheless, if the Government's commitment to enabling overseas domestic workers to hold their employers to account is to have teeth, claims in the Employment Tribunal must be an effective channel of redress. And the special vulnerability of overseas domestic workers cannot be ignored in this respect. Practitioners find it hard to imagine how anything less than full legal representation will enable such claims to even get off the ground. The conclusion, unattractive and unpalatable as it may be in the current age of austerity and cuts to legal aid, is that *some* legal aid provision must be made to enable overseas domestic workers *who are not victims of slavery or human trafficking* to be legally represented to take their cases to the Employment Tribunal and create an adequate body of case law to kick-start overseas domestic workers' access to obtain redress more generally and without representation. It is therefore recommended that the relevant provisions be amended to grant legal aid a limited number of such overseas domestic workers - initially, say, 20 per year - to enable their Employment Tribunal cases to proceed..
140. The exemplary deterrent effect of such cases would then need to be leveraged. Accordingly, what is proposed is that the Government support, financially, the provision of specialist 'non-legal aid' support and assistance to help overseas domestic workers make effective use of the Employment Tribunal as litigants in person and follow the leading cases that will be decided pursuant to the recommendation above (see paragraph 139). As a particularly vulnerable group of employees, overseas domestic workers need this extra spring-board to make the general provision of the Employment Tribunal accessible to them in practice. This specialist 'non-legal aid' support and assistance should also apply to overseas domestic workers seeking redress from the Criminal Injuries Compensation Scheme and could, for example, take the form of specifically trained staff at Citizens Advice Bureaux in areas where there are significant numbers of overseas domestic workers. Alternatively, the model of the Money Advice Service could be used, albeit on a significantly smaller scale. Since compliance with UK employment law is a fundamental condition of the visa pursuant to Appendix 7, it would appear possible to fund such support from an increase in the visa fee, if necessary. A further increase of £50 would generate a £850,000 fund annually.
141. The Government should also consider exempting overseas domestic workers from the proposed two year limit on claims to enforce the minimum wage in an Employment Tribunal. This is because overseas domestic workers' employers do *not* form part of the group (i.e. UK businesses who had acted in good faith) whose exposure to unknown liabilities was the mischief that the limit was designed to prevent, and they are unduly prejudiced by the limitation, to the advantage of unscrupulous employers.

#### **CONCLUSION AS TO IDENTIFICATION AND SUPPORT**

142. Considerable resources would be needed to attempt universal or even random attendance at overseas domestic workers' individual places of work to attempt to identify all abused workers. Moreover, such

attempts would prove fruitless if entry to the home were refused, or if the employer did not permit a private interview with an overseas domestic worker. Even if granted, such interviews would take place within an employer's home and would therefore be unlikely to give an abused overseas domestic worker confidence to speak freely about her situation.

143. Rather than trying to design and implement a strategy which attempts to identify specific overseas domestic workers who are being abused, the evidence points to empowering overseas domestic workers to self-identify and exercise self-help. That requires giving them an opportunity, outside the physical and psychological influence of their employers, to hear sufficient information, advice and be given sufficient support to self-identity, where appropriate. Provision of information at the point of application alone is inadequate to empower overseas domestic workers to self-identify themselves as victims of abuse in the UK, or seek help if they are indeed abused.
144. To overcome the actual or potential barriers that would prevent an overseas domestic worker availing themselves of such an opportunity, attendance to receive information, advice and support at a meeting in a neutral location after arrival in the UK must be a mandatory requirement of both employers' and employees' visas.
145. If the Government is to make the Employment Tribunal an accessible channel of redress for overseas domestic workers, the provision of legal aid must be improved, both in respect of those whose abuse hits the MRN threshold, and for those for who it does not. To do otherwise is to render overseas domestic worker's employment contracts unenforceable, reinforcing employers' impunity.

#### **RECOMMENDATIONS AS TO IDENTIFICATION AND SUPPORT**

146. This review recommends that the visa fee be increased to fund regular meetings for all overseas domestic workers who remain in the UK for more than 42 days on the following basis:
- 146.1. Every overseas domestic worker who remains in the UK for more than 42 days shall attend an information, advice and support meeting.
- 146.2. Attendance at such a meeting shall be a mandatory condition of both the employer sponsoring the overseas domestic workers visa and the overseas domestic worker herself.
- 146.3. The meeting shall be held at a neutral location (i.e. not a Government, UKVI or police building).
- 146.4. The meeting shall provide overseas domestic workers with information about their rights while at work in the UK, including their rights and obligations under the visa rules regarding a change of employer and any application for extensions to their visas, as well as the limitations on their rights.
- 146.5. The meeting shall also provide overseas domestic workers with advice as to how to enforce those rights in the context of criminal as well as civil remedies, providing details of legal advisors, specialist Citizens Advice Bureaux and civil society groups with specialist experience in this area.
- 146.6. The meeting shall provide details of how overseas domestic workers can access specific support and services while in the UK, including health services, banking etc.

- 146.7. This information shall be provided in a language that the overseas domestic worker can understand.
147. The Home Office/UKVI and the meeting organisers should co-ordinate entry, exit and meeting attendance data to identify any overseas domestic worker who remains in the UK longer than 42 days and has not attended the mandatory meeting, and the Home Office should pass that data on to the relevant authorities to pursue further investigations.
148. The Government must ensure that Legal Aid is provided in a timely manner for all overseas domestic workers who have received positive conclusive grounds decision from the NRM to make claims in the Employment tribunal or from the Criminal Injuries Compensation Scheme.
149. The Government should provide Legal Aid to fund 20 new cases per year of overseas domestic workers who are not victims of modern slavery to establish clear precedent as to an overseas domestic worker's rights to enforce her contract of employment.
150. The Government should support, with funding (possibly from an increased visa fee), a non-legal aid support service to facilitate and support overseas domestic workers' access to Employment Tribunals and the Criminal Injuries Compensation Scheme, possibly through specialist CAB advisors.
151. The Government should exempt overseas domestic workers from the two-year limit on enforcing payment of the national minimum wage.

## **PART 6: EFFECTIVE PROSECUTION OF OFFENDERS**

152. The views of criminal practitioners align with the view taken in this report, that it is unhelpful in the context of a review of the overseas domestic workers visa to address crimes under the Modern Slavery Act in isolation. Most criminal cases which involve crimes of human trafficking – and, going forward, modern slavery – will include other offences as well, such as rape, false imprisonment, assault, kidnapping etc. So, the Government's commendable policy of ensuring that employers who abuse their overseas domestic workers should be brought to account must therefore address the broad range of abuse, not simply the prosecution of modern slavery offences.
153. This review has heard clear evidence from NGOs and legal advisors of the extent to which overseas domestic workers in abusive relationships must receive specific assistance to overcome the physiological barriers preventing them from approaching any authority to make a complaint or pursue a claim. This review has repeatedly been told, with case studies in support, that the key to doing so is to enable the employee to change employer and find safety and security in alternative employment. Case studies have been provided of employees who do not have that security either being deported during proceedings, disappearing, or ceasing to engage because they have illegally moved into further abusive employment relationships. On the other hand, evidence has been provided from legal advisors working in this specific area which indicates the far higher likelihood of overcoming such barriers from a position of safety and security provided by alternative legal employment without a threat of deportation, sometimes in a matter of months.
154. The recommendations set out elsewhere in this report, specifically as to the right to change employer and the provision of information to overseas domestic workers, are considered by practitioners to be

the central most important factors in improving the prospects of successful prosecution. The reasons for this are relatively straightforward:

- 154.1. Empowering overseas domestic workers with information, advice and support will empower them to self-identify as victims of abuse and crime and engage voluntarily and more willingly in any civil and/or criminal proceedings from the outset.
  - 154.2. The ability to change employer will mean that such potential witnesses in criminal proceedings will already be removed from the situation in which they were abused, further empowering them to participate in holding their abusers to account.
  - 154.3. The ability to change employer without having had to make, much less prove, their status as victims removes the defence's argument that they only made the complaint in order to stay in the UK.
155. However, lawyers who practice in this area have suggested further improvements which could make prosecutions more effective, which would not only bring justice and redress in individual cases, but would send a strong exemplary deterrent message to other potential offenders.
- 155.1. First, overseas domestic workers who are victims of abuse – and therefore the most important potential witnesses - should be given a single point of contact within the relevant police force at the outset of their case. This 'best practice' helps to avoid them being interviewed multiple times, which itself can lead to a victim's credibility being impugned on the grounds of inconsistency. Furthermore, barriers of trust and language could be broken down by providing a single point of contact who spoke the victim's native language.
  - 155.2. Second, practitioners have to work within the law relating to disclosure. It must be understood by all agencies, including NGOs, that these rules exist to ensure a fair trial. Accordingly, any NGO who comes into contact with overseas domestic workers or holds themselves out as assisting overseas domestic workers - and certainly those who would seek any public funds to do so - should receive advice and training on disclosure in criminal proceedings, including public interest immunity, to avoid any difficulties that may otherwise arise and which could jeopardise any criminal proceedings.
  - 155.3. Third, police, the CPS, practitioners and judges would all benefit from more training and awareness of the plight and rights of as well as the issues facing overseas domestic workers. Whilst more training is happening through the work of the Independent Anti-Slavery Commissioner, training to provide both universal awareness and focussed expertise in these matters must be a higher priority for all members of the public justice system who have potential involvement in protecting overseas domestic workers' rights and bringing those who abuse such rights to account.

## **RECOMMENDATIONS**

156. The primary recommendation to improve prosecutions is to implement the recommendation as to the visa terms (i.e. removal of the tied visa) and improved provision of information (i.e. mandatory meetings on arrival).

157. It is further recommended that:

- 157.1. Every police force should have a Single Point of Contact for overseas domestic workers pursuing criminal complaints;
- 157.2. Every NGO working with overseas domestic workers should receive advice and training on disclosure in criminal proceedings, including as to public interest immunity;
- 157.3. The specific issues relating to overseas domestic workers must form part of universal police and judicial training as well as targeted training for lawyers and the CPS.

## **PART 7: DIPLOMATIC OVERSEAS DOMESTIC WORKERS VISA**

158. The situation of overseas domestic workers working for diplomatic households mirrors that of other overseas domestic workers and therefore much of what is said elsewhere in this review applies in equal measure to such situations. In particular, such staff should be expressly included in all the recommendations as to the improved provision of information, advice and support at the point of application and after arrival. Furthermore, such staff should also benefit from the right to change employer and the right to renew a visa up to 2 ½ years.

159. However, there are some particular extra features, helpfully summarised by the Organisation for Security and Co-Operation in Europe (OSCE)<sup>36</sup>:

*“Diplomatic agents who breach the host country’s law cannot be arrested, detained or prosecuted, unless there is a waiver of immunity. Their residences and private vehicles are inviolable and cannot be entered or searched. The recourse of and the assistance to a private domestic worker who is being abused or exploited by a diplomatic agent employer is significantly circumscribed. In some countries, the lack of prosecution hampers the access to assistance measures offered by the state, in particular when such support is conditional on the victim’s participation in criminal proceedings.”*

160. First, in this context, the obligations on employers (e.g. to provide a signed acknowledgment of receipt of the information sheet outlining their responsibilities towards overseas domestic workers and to facilitate all overseas domestic workers’ attendance at an information meeting within 42 days of arrival) must be made an explicit term of the sponsorship licence granted to any diplomatic mission or international organisation.

161. The particular concerns as to the diplomatic immunity of the employer also need to be addressed. The Diplomatic Missions and International Organisations Unit of the Protocol Directorate at the Foreign and Commonwealth Office has confirmed the current Government policy and practice in relation to abuse of overseas domestic workers in diplomatic households as follows:

- 161.1. Before any diplomatic mission can sponsor an overseas domestic workers visa, it must have been granted a licence to do so. One of the conditions of the licence is that the sponsoring mission must acknowledge that the Government *“may seek... a limited waiver of inviolability*

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<sup>36</sup> Handbook “How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers” published by the Office of the Special Representative and Co-ordinator for Combatting Trafficking in Human Beings

*and of immunity in order to enter your residence or premises to undertake compliance activity relating to your application or your sponsor licence*<sup>37</sup>.

161.2. Such sponsors are regularly reminded of their obligations under the Vienna Convention, which includes the terms and conditions of employment of overseas domestic workers.

161.3. In the event that the FCO is informed by the police or UKVI of allegations of mistreatment against overseas domestic workers in diplomatic households, they raise the matter with the mission concerned and, when requested to do so by the police or other law enforcement agency, seek waivers of immunity as outlined above.

161.4. If the offence alleged is serious (i.e. would attract a prison sentence of more than 12 months) and if the waiver sought is not forthcoming, the immediate withdrawal of the diplomat concerned is sought.

161.5. If the offence is less serious, or constitutes a breach of civil (employment) as opposed to criminal law, the allegations are brought to the attention of the respective Head of Mission, making it clear that if the diplomat or any of their dependants come to the FCO's attention again, they may consider asking for their withdrawal from the UK. The FCO describe this as the equivalent of a "yellow card" and as a general rule, two yellow cards will lead to a request for withdrawal of a diplomat from the UK.

162. It is first notable that the condition of the sponsorship licence referred to above has been considerably softened from the previous guidance<sup>38</sup> in which such a waiver was sought in advance as an express pre-condition of a sponsorship licence. The approach is in line with the successful claim for diplomatic immunity by the Saudi Arabian mission in London in a recent Court of Appeal case<sup>39</sup>.

163. Second, it is noted that in another Court of Appeal Case<sup>40</sup>, the court made findings that supported the overseas domestic workers in that case in the face of a claim for diplomatic immunity. In submissions to this review ATLEU, who represented the appellants in both cases, have pointed to the distinction between those overseas domestic workers who are employed by embassies (as in the *Benkharbouche* case), as compared to those who are employed by individual diplomats (as in the *Al Malki* case). Consequently, ATLEU propose that all overseas domestic workers who are to work in diplomatic households should, as condition of the sponsorship licence, be employees of the *mission*, not of *individual diplomats*. That proposal is endorsed by this review, and is understood to be currently under consideration by the Home Office/FCO.

## RECOMMENDATIONS

164. The recommendations as to the change in the terms of the visa (i.e. removal of the tie) and the implementation of mandatory information meetings apply with equal force in the case of employees in diplomatic households.

<sup>37</sup> a recent Addendum to Tier 2 and 5 Guidance for Sponsors at paragraph 4.33.

<sup>38</sup> version 04/15

<sup>39</sup> *Reyes & Suryadi v Al-Malki* [2015] EWCA Civ 32

<sup>40</sup> *Benkharbouche* [2015] EWCA Civ 33

165. Furthermore, it is specifically recommended that the conditions of the sponsorship licence be amended to require that:

165.1. all overseas domestic workers who are to work in diplomatic households are to be employed by the mission, not individual diplomats;

165.2. all missions be provided with, and provide signed acknowledgement of having received, the re-drafted Employers' Information Sheet.

## **PART 8: CONCLUSION**

### **EVIDENCE & DATA**

166. In response a question from Lady Royall, who asked whether more workers have been abused since the changes to the overseas domestic workers visa in 2012, Lord Bates replied as follows:

*"This is really a point about the evidence... We have had some evidence presented to us, and other evidence that points in another direction. The quality of the evidence is one of the things that we have asked James Ewins to look at in order to assess its veracity."<sup>41</sup>*

167. The evidence base and the data in support of arguments for and against the various conditions of the overseas domestic workers visa are at the heart of this review – although it is the *weight* of such evidence, rather than its *veracity* which is the focus in the absence of any prima facie reason for disbelieving it.

168. One of the difficulties encountered in this review has been the lack of robust quantitative evidence. Whilst the Government is currently aware of how many overseas domestic workers apply for and are granted visas, it does not yet know when they arrive, how long they stay and when - or if - they leave. If the issues relating to overseas domestic workers are to be better understood in future, then the Government must make serious inroads into the data deficit. It must, at the earliest opportunity, begin to collate and analyse - along with data currently available - further data as to:

168.1. the arrival of overseas domestic workers in the UK;

168.2. any change of employment of overseas domestic workers;

168.3. any application for extension of overseas domestic workers visas;

168.4. the departure of overseas domestic workers in the UK.

169. The data concerning each of these specific events in relation to individual cases should give the Government a far clearer picture enabling it to understand more clearly the nature and extent of this temporary immigration route.

170. Furthermore, there is no robust data available to show the extent of abuse of those who enter the UK on overseas domestic workers visas, let alone whether it has increased or decreased since the

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<sup>41</sup> Hansard, 25 Mar 2015 : Column 1446

imposition of the visa tie in 2012. Perhaps the most significant inroad into this deficit is to bring the plight of overseas domestic workers out of the shadowy realm of short stays and/or illegality into a more open, legal framework. The principal advantage to overseas domestic workers is obvious: they will no longer be consigned to lives that are essentially hidden not only from public view, but from the protection of the public justice system. That is a driving rationale for many of the recommendations of this review.

171. In an environment of legality and empowerment, more overseas domestic workers will be able to seek self-help remedies, including approaching the police to make criminal complaints and seeking other forms of redress, so long as those routes are available to them in practice. Such activities will, if supported and facilitated by the Government, make examples of abusive employers, sending a clear message of deterrence to other potential abusers with consequent preventative impact. And all the time, the Government should be learning more about overseas domestic workers, especially as to abuse suffered by them in the UK, enabling more directed, proportionate responses to be deployed as necessary.

#### **THE MORAL QUESTION**

172. It is impossible to conduct a review of an area of abuse by one person against another and ignore the moral issues involved. Although the conclusions of this review are firmly evidence-based, it would be wrong to ignore the moral argument that supports them. In this context the *moral* case for binding an inherently vulnerable overseas domestic worker to her employer is weak at best, and is further weakened when it is appreciated that the consequences of doing so increase the risk of harm to the overseas domestic worker. All employment relationships include a power dynamic, and there is little disagreement as to how that dynamic plays out in cases of the abuse of overseas domestic workers. The moral argument to redress that power balance and reduce the risk of abuse is compelling, and certainly outweighs the desire of the employer to have and continue an abusive relationship.
173. This review seeks to identify the minimum steps necessary to redress the power balance such that the overseas domestic worker is given proper protection of her fundamental rights while in the UK. In order to redress the balance, steps need to be taken on both sides. First, the overseas domestic worker needs to be enabled to access real, practical ways to escape from an abusive relationship, and take steps to seek redress. On the other hand, an employer needs to be given due warning as to the consequences of abusing his employee in the UK, and needs to fear the real and likely consequences of doing so. Just as the overseas domestic worker is empowered, so the employer's impunity must be removed, leading to both protection and prevention.

#### **THE MIGRATION ISSUE**

174. It is important to note that, at its heart, this is not a migration issue, and should not be characterised as one. The immigration figures available lend weight to the argument that the overseas domestic workers are not a statistically significant proportion of UK net migration (and to be clear, on the basis of the current regime in which their entry is limited to 6 months, they do not form part of the net migration figures at all, which are based on entry with an intention to remain for more than 12 months).

175. The Government figures confirm that, before the visa change in 2012, the contribution of overseas domestic workers to net migration figures was insignificantly small. The peak of 7% (excluding dependents) of overseas domestic workers claiming indefinite leave to remain occurred in 2013 (ILR was available after 5 years on the pre-2012 visa regime) and was made up of 1,194 overseas domestic workers. With their dependents, the total that year was 1,519. This represented a tiny proportion of the 2012 net migration figure of 212,000 - about 0.7% - and would be a smaller percentage still of the 2014 net migration figure of 318,000. Insofar as these small numbers are characterised as a migration issue, they should fairly be characterised as one that the Government has consciously chosen by allowing overseas domestic workers to accompany their employers in the first place.

#### **STAKEHOLDERS**

176. The civil society organisations who have engaged in this review are to be thanked for their tireless campaign to ensure that the plight of overseas domestic workers does not remain hidden. The Government are to be commended for their willingness to allow the overseas domestic workers visa to be subjected to an entirely independent review. This review does not accede to the full range of arguments of either the Government or the NGO community - the evidence led to a different conclusion.

177. However, from an independent perspective, this review frequently noted the goodwill that exists on both sides. Unfortunately, it was also noted how frequently that goodwill is undermined by a lack of trust and a resulting cynicism. Insofar as this review can offer an independent perspective on such relationships, it is clear that every contributor, both within Government and outside it, has brought to the review a genuine desire to help overseas domestic workers who are abused. Of course, everyone brings a different perspective, and many are working from different agendas and are subject to different constraints. Nonetheless, everyone involved is urged to work on the well-founded assumption that the ultimate goal of protecting overseas domestic workers from abuse is genuinely a shared one.

178. Finally, it is hoped that the recommendations in this review will be taken on board and implemented. They will go a long way to reducing the misery of those overseas domestic workers who suffer abuse at the hands of employers from whom some feel powerless to escape while here in the UK. But, as with any area of human behaviour, people's infinite ability to adapt and work around new regulations and practice demands that this area be kept under constant review. It is hoped that by giving overseas domestic workers more rights and a greater opportunity to exercise those rights, their fear of their employers and authority will reduce, and a more engaged and co-operative working relationship will ensue.

## APPENDIX 1 – TERMS OF REFERENCE

### ***Review of the Overseas Domestic Workers Visa***

*The purpose of the review is to consider whether the arrangements for the Overseas Domestic Workers Visa are appropriate, given the Government's commitment to tackling modern slavery.*

*The Review will include consideration of:*

- *Whether the arrangements for issuing Overseas domestic workers visa are effective in protecting potential victims from abuse;*
- *Whether there is any evidence that the terms of the Visa, including the link to the specified employer, have led to the trafficking or slavery of domestic workers;*
- *Whether the policies and processes for (i) identifying and (ii) providing support to victims of modern slavery amongst those who entered the country on an Overseas Domestic Workers Visa are effective, including whether there are any barriers to access to such support which need to be addressed. The Review should take account of the recent review of the National Referral Mechanism, but look specifically at the issue of access by holders of Overseas domestic workers visas.*
- *Whether the policies and processes for pursuing those accused of perpetrating modern slavery offences against those on an Overseas Domestic Workers Visa are effective; and*
- *The need to maintain the integrity of the immigration system.*

*In undertaking the Review, the Reviewer will:*

- *Consult with Non-Governmental Organisations, law enforcement bodies and other interested parties inside and outside of Government.*
- *Report with recommendations to the Home Secretary, together with supporting evidence, by end July 2015.*

**APPENDIX 2 – LIST OF CONTRIBUTORS & EVIDENCE RELIED UPON****REPORTS & WRITTEN MATERIAL**

1. 'The Trade in Human Beings: Human Trafficking in the UK' - House of Commons Home Affairs Committee, Sixth Report of Session 2008–09 (May 2009)
2. 'Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude' - OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (June 2010)
3. 'Ending the Abuse: Policies that work to protect migrant domestic workers' – Mumtaz Lalani/Kalyaan (May 2011)
4. 'Turning a Blind Eye' - Working Lives Research Institute (August 2011)
5. 'Consultation on Employment-Related Settlement. Tier 5 and Overseas Domestic Workers: (9 June- 9 September 2011) – Summary of Findings – Home Office
6. 'Human Trafficking Handbook' - Parosha Chandran (2011)
7. 'It Happens here' - Centre for Social Justice (March 2013)
8. 'Detecting and Tackling Forced Labour in Europe – Joseph Rowntree Foundation (June 2013)
9. 'Domestic Workers Convention, 2011 (No.189)' - International Labor Organisation (September 2013)
10. 'Establishing Britain as a world leader in the fight against Modern Slavery - Report of the Modern Slavery Bill Evidence Review' - December 2013
11. 'Hidden Away: Abuses against Migrant Domestic Workers in the UK' – Human Rights Watch (March 2014)
12. Report of the Joint Committee on the Draft Modern Slavery Bill - April 2014
13. 'Still enslaved: The migrant domestic workers who are trapped by the immigration rules' - Kalyaan (April 2014)
14. Review of the National Referral Mechanism for victims of human trafficking – Home Office (November 2014)
15. 'How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers' – OSCE (2014)
16. 'Calls to change migrant domestic worker visa conditions' House of Commons Library Standard Note: SN/HA/478 (March 2015)
17. 'Report of the UN Special Rapporteur on violence against women, its causes and consequences', Rashida Manjoo (May 2015)
18. 'Life Beyond the Safe House For Survivors of Modern Slavery in London' - Human Trafficking Foundation (July 2015)
19. 'Am I Free Now?' Overseas Domestic Workers in Slavery – Virginia Mantouvalou (September 2015)

**WRITTEN SUBMISSIONS AND REPLIES TO WRITTEN QUESTIONS**

20. The Home Office (including Migration Policy and Modern Slavery Units)
21. Justice 4 Domestic Workers (Marissa Begonia)
22. Chris Randall (Bates Wells Brathwaite)
23. Immigration Law Practitioner's Association (Alison Harvey)
24. Anti-Trafficking and Labour Exploitation Unit (Juliette Nash)
25. Anti-Slavery International (Klara Skrivankova, Aidan McQuaide)
26. Kalyaan (Kate Roberts and Catherine Kenny)
27. Joseph Rowntree Foundation (Frank Soodeen)
28. Anti-Trafficking Monitoring Group (Vicky Brotherton)
29. Salvation Army (Major Anne Read)
30. International Justice Mission (Abigail Jarvis)
31. Human Rights Watch (Izza Leghtas):
32. Amnesty International (Steve Symonds)
33. Rene Cassin (Oliver Moore)
34. The Housekeeping Company (Julia Harris)
35. Imperial Staff
36. Greycoat Placements
37. Massey's Agency
38. The Graham Agency
39. SupaCare Services
40. Domestic Ambassadors Ltd
41. Exclusive Household Staff Ltd
42. Frank Field MP
43. Diplomatic Missions and International Organisations Unit | Protocol Directorate | Room KG.01 | Foreign and Commonwealth Office
44. Irish National Employment Rights Authority

**MEETINGS**

45. Staff from the Home Office Modern Slavery Unit
46. Staff from the Home Office Migration Policy Unit
47. Justice For Domestic Workers (including meeting with 47 overseas domestic workers)
48. Kevin Hyland (Independent Anti-Slavery Commissioner)

49. London Evidence Forum – attended by (non-exclusive list):
  - 49.1. Kalayaan
  - 49.2. ATLEU
  - 49.3. Anti-Slavery International
  - 49.4. Anti-Trafficking and Labour Exploitation Unit
  - 49.5. Amnesty International
  - 49.6. Human Rights Watch
  - 49.7. Chris Randall
  - 49.8. Immigration Law Practitioners' Association
  - 49.9. Anti-Trafficking Monitoring Group
  - 49.10. The Housekeeping Company.
50. Kalayaan – (including on-on-one interviews with 4 overseas domestic workers)
51. Philippine Embassy - Office of the Labour Attache
52. Minister for Immigration (James Brokenshire) and Minister for Preventing Abuse and Exploitation (Karen Bradley)
53. Paul Yates – Freshfields Bruckhaus Deringer LLP
54. Parosha Chandran – Barrister
55. Chris Milson – Barrister
56. Caroline Haughey - Barrister

**OTHER MATERIAL**

57. 'Information about Domestic Workers' – Home Office (June 2015)
58. Immigration Rules
59. Guidance on Domestic Work in Private Households – Home Office
60. Employment Rights of Domestic Workers in Ireland – National Employment Rights Authority
61. Victims of Modern Slavery: Competent Authority Guidance – Home Office
62. Sample of overseas domestic worker interview transcripts from Home Office, Sheffield
63. Data on overseas domestic worker applications - Home Office
64. Data on overseas domestic workers' application for ILR – Home Office
65. Domestic Workers Convention, 2011 (No. 189) – International Labour Organisation
66. Modern Slavery Strategy – HM Government
67. Office of National Statistics on the Crime Survey for England and Wales Crime Statistics, Focus on Violent Crime and Sexual Offences, 2013/14, 12 February 2015

68. Radio 4 – Face the Facts – Britain’s Legal Slaves (15 February 2015)
69. Hansard

**APPENDIX 3 – HOME OFFICE STATISTICS**

Home Office figures for successful applications for overseas domestic workers visa per year:

|      |        |
|------|--------|
| 2008 | 16,659 |
| 2009 | 14,890 |
| 2010 | 15,360 |
| 2011 | 16,209 |
| 2012 | 15,548 |
| 2013 | 16,511 |
| 2014 | 16,756 |

**APPENDIX 4 - COUNTRIES IN WHICH OVERSEAS DOMESTIC WORKERS VISA APPLICATIONS WERE RESOLVED (2008-2014)**

|    | 2008         |     | 2009         |     | 2010         |     | 2011         |     | 2012         |     | 2013         |     | 2014         |     | Average      |     |
|----|--------------|-----|--------------|-----|--------------|-----|--------------|-----|--------------|-----|--------------|-----|--------------|-----|--------------|-----|
|    | country      | %   |
| 1  | Saudi Arabia | 24% | Saudi Arabia | 25% | Saudi Arabia | 25% | Saudi Arabia | 26% | Saudi Arabia | 27% | UAE          | 27% | UAE          | 30% | Saudi Arabia | 25% |
| 2  | UAE          | 18% | UAE          | 24% | UAE          | 23% | UAE          | 24% | UAE          | 25% | Saudi Arabia | 25% | Saudi Arabia | 25% | UAE          | 24% |
| 3  | Qatar        | 10% | Qatar        | 9%  | Qatar        | 11% | Qatar        | 12% | Qatar        | 12% | Qatar        | 16% | Qatar        | 13% | Qatar        | 12% |
| 4  | India        | 8%  | India        | 8%  | Philippines  | 8%  | Philippines  | 9%  | Philippines  | 9%  | Philippines  | 8%  | Philippines  | 8%  | Philippines  | 7%  |
| 5  | Kuwait       | 7%  | Kuwait       | 8%  | India        | 8%  | India        | 7%  | Kuwait       | 7%  | Kuwait       | 7%  | Kuwait       | 7%  | India        | 7%  |
| 6  | Bahrain      | 4%  | Philippines  | 6%  | Kuwait       | 7%  | Kuwait       | 6%  | India        | 6%  | India        | 5%  | India        | 4%  | Kuwait       | 7%  |
| 7  | Nigeria      | 4%  | Nigeria      | 3%  | UK           | 2%  | Nigeria      | 3%  |
| 8  | China        | 4%  | Malaysia     | 2%  | Malaysia     | 2%  | Malaysia     | 1%  | Oman         | 1%  | Oman         | 1%  | Nigeria      | 2%  | Malaysia     | 1%  |
| 9  | Malaysia     | 2%  | Oman         | 2%  | Oman         | 2%  | Oman         | 1%  | Egypt        | 1%  | UK           | 1%  | Jordan       | 1%  | Oman         | 1%  |
| 10 | Philippines  | 2%  | Egypt        | 1%  | Egypt        | 1%  | Egypt        | 1%  | Jordan       | 1%  | Thailand     | 1%  | Oman         | 1%  | Egypt        | 1%  |
| 11 | Pakistan     | 1%  | Jordan       | 1%  | Jordan       | 1%  | Jordan       | 1%  | Lebanon      | 1%  | Jordan       | 1%  | Thailand     | 1%  | Jordan       | 1%  |
| 12 | Oman         | 1%  | USA          | 1%  | USA          | 1%  | Italy        | 1%  | Thailand     | 1%  | Egypt        | 1%  | France       | 1%  | Italy        | 0%  |
| 13 | Brunei       | 1%  | China        | 1%  | Lebanon      | 1%  | Lebanon      | 1%  | Italy        | 1%  | France       | 1%  | USA          | 1%  | Lebanon      | 1%  |
| 14 | Egypt        | 1%  | Thailand     | 1%  | South Africa | 1%  | Thailand     | 1%  | Kenya        | 1%  | USA          | 0%  | Turkey       | 0%  | Thailand     | 1%  |
| 15 | Other        | 11% | Other        | 8%  | Other        | 7%  | Other        | 6%  | Other        | 5%  | Other        | 3%  | Other        | 3%  | Other        | 8%  |

**APPENDIX 5 – ESTIMATED COSTING OF THE INFORMATION MEETING****Meeting Size Estimate**

|                                      |        |             |
|--------------------------------------|--------|-------------|
| total applicants per year            | 17,000 |             |
| average per week                     | 327    |             |
| average per week-day                 | 65     |             |
| less number returning before 42 days | -50%   | <i>est.</i> |
| average attendance per day           | 33     |             |

**Meeting Cost Estimate**

|                    | <i>annual<br/>estimate</i> | <i>basis of estimate</i>  |
|--------------------|----------------------------|---|
| Staff costs        | £200,000                   | up to 5 at £40,000 each<br>commercial hire rates, 3 hours per day |
| meeting venue hire | £100,000                   | every week day of the year<br>£15 per applicant on administrative |
| other overheads    | £250,000                   | overheads, including translation costs                            |
| <b>TOTAL</b>       | <b>£550,000</b>            |   |
| rate per applicant | £32                        | based on 17,000 applicants per year                               |

## APPENDIX 6 - SUMMARY OF RECOMMENDATIONS

### RECOMMENDATIONS AS TO THE APPLICATION PROCESS

1. All applicants for overseas domestic workers visas must be alone, that is physically apart from their employer, whilst providing information to the VAC and whilst receiving information from them. The contract with commercial partners providing services at the Visa Application Centres must specify this obligation in clear and enforceable term to ensure that the UKVI is discharging this duty in practice. Compliance with this obligation should be rigorously, even independently, monitored.
2. All applicants for overseas domestic workers visas must be communicated with, by the employees of the VAC, and by the ECO if applicable, both in verbal and written form, in a language which they understand. UKVI's obligation in this respect must be expressly referred to in the UKVI contract with the commercial partners providing VAC services. Compliance with this obligation should also be rigorously, even independently, monitored.
3. All applicants for overseas domestic workers visas must be provided with clear information about their rights and obligations, along with practicable steps to take in the event of suffering abuse while in the UK. The Home Office should work with stakeholders, including NGOs who have first hand interaction with overseas domestic workers, to redraft the current information sheet.
4. Finally, employers should also be given clear information about their rights and obligations, with an equally clear indication of the criminal, civil and future immigration consequences of a failure to discharge those obligations and they should be required to provide a signed acknowledgment that they have received and understood that information. These conditions need to be included in the contractual obligations of commercial partners at VACs. Again, the Home Office should to work with stakeholders to develop and finalise the drafting of such an information sheet.
5. The Home Office should develop and implement clear policy and practice which will ensure the effective feed-back of information and intelligence drawn from the entry/exit data and change of employer/renewal applications to the application process itself.

### RECOMMENDATIONS AS TO THE TERMS OF THE VISA

6. The terms of the overseas domestic workers visa set out in the Immigration Rules be amended to provide for:
  - 6.1. an initial term of six months (or shorter if the sponsoring employer leaves the UK before then);
  - 6.2. a right to change employer, but limited to domestic work in a private household, that is *not* conditional upon claiming or proving any form of abuse;
  - 6.3. a period of 28 day grace to find another employer, during which an overseas domestic worker not in work will not be deemed to be in breach of the immigration regulations by virtue of not being work;

- 6.4. a requirement to register any change of employer with the Home Office (with the option to give a reason for the change);
  - 6.5. the right to apply for extensions of up to 12 months each, up to a maximum of 2 ½ years, with no right to settlement.
7. The Government further change the Immigration Rules to provide that:
- 7.1. upon informing the Home Office of change of employer, the overseas domestic worker must provide a copy of the new UK contract of employment, which must comply with the terms of Appendix 7 of the Immigration Rules;
  - 7.2. upon any application for an extension, the overseas domestic worker must provide the Home Office with evidence of her current contract and her recent pay, in the form of payslips, demonstrating that she has been paid at least the minimum wage;
  - 7.3. upon any application for an extension, the overseas domestic worker must also provide the Home Office with evidence that her employment has been registered with HMRC as soon as the obligation to do so arises.
8. All overseas domestic workers who receive a positive conclusive grounds decision from the NRM be given recourse to public funds and permission to work other than as a domestic worker in a private household for the duration of their stay.
9. The relevant provisions be amended to make all overseas domestic workers subject to the immigration health surcharge, not a private insurance requirement.

#### **RECOMMENDATIONS AS TO IDENTIFICATION AND SUPPORT OF VICTIMS**

10. The Immigration Rules be amended to provide that:
- 10.1. every overseas domestic worker who remains in the UK for more than 42 days shall attend an information, advice and support meeting;
  - 10.2. attendance at such a meeting shall be a mandatory condition of both the employer sponsoring the overseas domestic workers visa and the overseas domestic worker herself;
  - 10.3. the visa fee should be increased to fund such meetings.
11. The Government shall make provision for such meetings to be held through an independent entity, subject to the following specific conditions:
- 11.1. the meeting shall be held at a neutral location (i.e. not a Government, UKVI or police building);
  - 11.2. the meeting shall provide overseas domestic workers with information about their rights while at work in the UK, including their rights and obligations under the visa rules regarding a change of employer and any application for extensions to their visas, as well as the limitations on their rights;

- 11.3. the meeting shall also provide overseas domestic workers with advice as to how to enforce those rights in the context of criminal as well as civil remedies, providing details of civil society groups with specialist experience in this area;
  - 11.4. the meeting shall provide details of how overseas domestic workers can access specific support and services while in the UK, including health services, banking etc.;
  - 11.5. this information shall be provided in a language that the overseas domestic worker can understand;
  - 11.6. the Home Office/UKVI and the meeting organisers shall co-ordinate entry, exit and meeting attendance data to identify any overseas domestic worker who remains in the UK longer than 42 days and has not attended the mandatory meeting, and the Home Office shall pass that data on to the relevant authorities to pursue further investigations.
12. The Government shall ensure that Legal Aid is provided in a timely manner for all overseas domestic workers who have received positive conclusive grounds decision from the NRM to make claims in the Employment tribunal or from the Criminal Injuries Compensation Scheme.
  13. The Government shall provide Legal Aid to fund a limited number of cases, both as to overseas domestic workers who have received a positive NRM decision as to those who have not, to establish clear precedent as to an overseas domestic workers' rights to enforce her contract of employment in the Employment Tribunal.
  14. The Government shall support, with funding (possibly from an increased visa fee), a non-legal aid support service to facilitate and support overseas domestic workers' access to Employment Tribunals and the Criminal Injuries Compensation Scheme.
  15. The Government shall exempt overseas domestic workers from the two-year limit on enforcing payment of the national minimum wage.

#### **RECOMMENDATIONS AS TO THE EFFECTIVE PROSECUTION OF OFFENDERS**

16. Every police force shall have a Single Point of Contact for overseas domestic workers pursuing criminal complaints.
17. Every NGO working with overseas domestic workers shall receive advice and training on disclosure in criminal proceedings, including as to public interest immunity.
18. The specific issues relating to overseas domestic workers shall form part of universal police and judicial training as well as targeted training for lawyers and the CPS.

#### **RECOMMENDATIONS AS TO THE DIPLOMATIC OVERSEAS DOMESTIC WORKERS VISA**

19. The conditions of the sponsorship licence be amended to require that:

- 19.1. all overseas domestic workers who are to work in diplomatic households shall be employed by the mission, not individual diplomats;
- 19.2. all missions shall be provided with, and provide signed acknowledgement of having received, the re-drafted Employers' Information Sheet.