



KALAYAAN

justice for migrant domestic workers

Low Pay Commission
6th Floor
Victoria House
Southampton Row
London
WC1B 4AD

13th September 2013

Dear Sir/Madam,

Re: Kalayaan's response to Low Pay Commission Consultation 2014

We are writing to submit Kalayaan's response to the Low Pay Commission's consultation for the 2013 report.

Kalayaan

Kalayaan is a charity which provides advice and support to migrants who come to the UK on the domestic worker. These are workers who have entered the UK with an employer to work in that employer's private household. The unregulated, hidden and isolated nature of domestic work mean that these workers are particularly vulnerable to abuse and exploitation. The domestic worker visa was granted in 1998 in response to a 10year campaign led by domestic workers, Kalayaan and trade unions. The domestic worker visa allowed domestic workers the right to change employers one in the UK and provided them with protection under UK employment legislation.

Changes to the domestic worker visa

In 2011, the UK Border Agency launched a consultation on the migrant domestic route with a view to making changes to the domestic route which existed since 1998. The resulting changes which came into effect on the 6th of April 2012 permits domestic workers to come to the UK with their employer for a maximum of 6 months with no possibility of renewal. In addition, domestic workers cannot change employers even where their employment and human rights are violated by their employer. Kalayaan opposed these changes as we believed they would significantly reduce domestic workers access to support and protection. Kalayaan was concerned that removing the protections offered under the existing visa regime, in particular the right to change employer would lead increased abuse with no real possibility of seeking redress. Domestic workers arriving in the UK since April 2012 are in effect tied to their employer.

Domestic workers in the UK on the 6th April 2012 are permitted to continue to work under the provisions of the old visa regime.

Areas to be addressed

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Registered charity in England and Wales n. 1146596
Registered company in England and Wales n. 7968872

In answering the Low Pay Commission's consultation letter, Kalayaan will specifically focus on the experiences of migrant domestic workers in the UK and will specifically address the following questions:

- What has been the impact of the NMW? Has this impact varied, and if so how (for example by sector, type and size of business or groups of workers (including women, ethnic minorities, migrant workers, disabled people, older workers, and those who are unqualified)?
- What is your view of the Commission's position that the current arrangements for the accommodation offset should be retained, and that it intends to recommend staged increases in the offset towards the value of the hourly adult rate of the NMW when economic circumstances mean the real value of the NMW is tending to rise?
- How far is there compliance with the NMW? Do particular groups experience problems with NMW compliance (for example apprentices or interns/others undertaking work experience)? Where there is non-compliance are there implications for the NMW rates, or other implications (for example for the quality and accessibility of official guidance on the NMW, or for the enforcement work of HMRC)?

National Minimum Wage: Low Pay Commission Report 2012.

Kalayaan was disappointed that Migrant Domestic Workers were not specifically acknowledged in the Low Pay Commission Report 2012, however we were grateful for the opportunity to meet with representatives of the Commission on the 3rd of September and the opportunity for migrant domestic workers to meet Commissioners in November this year.

The National Minimum Wage and Immigration Policy

Domestic workers arriving in the UK on a valid domestic worker visa are entitled to the NMW, as codified in the Immigration Rules¹. The UK Border Agency has made this clear in various publications, namely documents for an application for entry clearance to the UK and subsequent applications for further leave to remain in the UK. The UK Border Agency has also produced a leaflet² which is to be distributed to domestic workers by Consular staff at British Embassies and Consulates abroad when an application for entry clearance is made. This leaflet explains a domestic worker's rights in the UK (including the right to be paid the NMW) as well as where to seek help whilst in the UK. In Kalayaan's experience, the vast majority of domestic workers registering with us have never been given any information on their rights within the UK by embassy staff abroad. It is also common in Kalayaan's experience that the vast majority of domestic workers are not called for interview for their entry clearance application. It is common for their employers to be interviewed instead and domestic workers often do not know what documents were submitted for entry clearance or what these stated.

¹ [Immigration Rules – Part 5 - Rule 159A\(v\)](#)

² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/ecis/ecg/dworkers-informationsheet.pdf>

When clients register with Kalayaan without their passport or other identification, Kalayaan caseworkers send an application for a Subject Access Request, which allows us to retrieve copies of a client's immigration file from the Home Office. Rather worryingly, Kalayaan has noticed a large proportion of applications for further leave to remain which do not comply with the NMW, yet these applications are still approved despite it being clear that there isn't compliance. The application form for further leave to remain³ clearly states that an employer must confirm they are complying with the National Minimum Wage in their supporting documentation.

The changes to legal aid has significantly reduced the opportunity of migrant domestic workers to seek redress through employment tribunals. They are now only eligible to avail of legal assistance and take a case against their former employer in very limited circumstances. Moreover, although domestic workers coming to the UK under the new 'tied' visa can theoretically seek redress through employment tribunals, it is almost impossible given that they are only permitted to remain in the UK for a maximum of 6 months. Only one of the 53 domestic workers on the tied visa is currently taking a case against their former employer.

Kalayaan is particularly concerned about further proposed changes to the legal aid regime which would impose a residency test of one year legal residence. This would serve to deny all domestic workers on the new visa the right to redress for violations of employment rights including not being paid the NRM as they are only permitted to remain in the UK for 6 months.

As you will see from the figures below, the number of people on the new 'tied' visa coming to Kalayaan is significantly less than that of people on the old visa. However, the number of visas granted to domestic workers since April 2012 has not decreased significantly. It is therefore likely that the lower numbers of people seeking assistance from Kalayaan is as a result of greater control exerted by employers on domestic workers e.g. not permitting them to leave the employers house or domestic workers who are aware of the terms of their visa may believe that there is little point in seeking assistance given the fact that few opportunities for redress are open to them.

The figures below demonstrate that Kalayaan clients on the new visa were more likely to experience exploitation in the work place than those on the old visa. 32% received no salary at all compared with 1% on the old visa and greater numbers were 'on call', received no day off and worked in excess of 16 hours a day.

KALAYAAN REGISTRATION FIGURES – April 2012 to August 2013

Total registrations: 326

Domestic worker visa: 212

Diplomatic DW: 21

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http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/flr/flro_formnew0420091.pdf - page 26

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Tied visa: 53

Other (child trafficking, missing persons, ILR, other visa) – 35

45 clients of 326 came specifically for employment advice.

ORIGINAL DW VISA

Financial statistics April 2012 – August 2013: (n= 212)

Type of exploitation	%
Working seven days a week with no time off	39
Had to be 'on call' 24 hours a days	30
Worked 16 hours a day or more	24
Received a salary of £50 or less per week	26

Salaries received April 2012 to August 2013: (n=212)

- Received no money at all : 1%
- £1 - £49 per week received : 26%
- £50 - £99 per week received : 12%
- £100 to £149 per week received : < 1%
- £150 to £199 per week received : < 1%
- £200 or more per week received : 15%
- Did not provide any data : 39%

19% of old visa clients reported not being paid regularly.

TIED DW VISA

Financial statistics April 2012 – August 2013: (n=53)

Type of exploitation	%
Working seven days a week with no time off	73
Had to be 'on call' 24 hours a days	55
Worked 16 hours a day or more	51
Received a salary of £50 or less per week	21

Salaries received April 2012 to August 2013: (n=53)

- Received no money at all : 32%
- £1 - £49 per week received : 21%

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- £50 - £99 per week received : < 1%
- £100 to £149 per week received : < 1%
- £150 to £199 per week received : 0%
- £200 or more per week received : < 1%
- Did not provide any data : 40%

24% of Tied visa clients reported not being paid regularly.

The number of people on diplomatic domestic worker visas seen by Kalayaan is a small proportion of our total client group. However, of those that have registered with Kalayaan from April 2012 – August 2013, 58% received a salary of less than £100 per week, far below the NRM. This is of particular concern given that most diplomat employers claim diplomatic immunity in any employment case brought against them.

DIPLOMATIC DW VISA

Financial statistics April 2012 – August 2013: (n=21)

Type of exploitation	%
Working seven days a week with no time off	57
Had to be 'on call' 24 hours a days	43
Worked 16 hours a day or more	29
Received a salary of £50 or less per week	43

Salaries received April 2012 to August 2013 – Diplomatic visa clients (n=21) %

- Received no money at all : <1%
- £1 - £49 per week received : 43%
- £50 - £99 per week received : 14%
- £100 to £149 per week received : <1%
- £150 to £199 per week received : 0
- £200 or more per week received : <1%
- Did not provide any data : 29%

29% of clients on the Diplomatic Domestic Worker visa reported not being paid regularly.

Accommodation Offset

Kalayaan is strongly in favour of maintaining the current accommodation offset. Kalayaan operates a free and informal job posting service for employers. We therefore have considerable contact with employers who seek to advertise jobs with us and it is our experience that many employers would like to charge more for live-in

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accommodation and food they provide to their domestic worker. We believe that the accommodation offset provides protection against excessive salary deductions from this already vulnerable group of workers.

We recommend however that no money should be deducted from the National Minimum Wage for accommodation and food but only from earnings in excess of the NMW.

Family Worker Exemption

Kalayaan is concerned that domestic workers are included under the Family Worker Exemption, which we understand was created to ensure that au pairs would be exempt from the NRM. As this will be dealt with in depth in the Atleu submission we will not discuss this further in our submission.

Referrals to employment solicitors April 2012 – Aug 2013:

Kalayaan made 41 referrals in total to employment solicitors:

9 settled - £57,000 total (£6333 average) These are cases that were newly registered and referred within the above time period.

16 have been advised only and no further action has been taken

9 claims have been issued in the tribunal (2 are listed for hearing before end of 2013)

2 clients unable to find representative (no trafficking, no pro bono availability)

1 case was withdrawn

1 case is awaiting funding for counsel's opinion

1 client is awaiting to be seen by a solicitor

1 client unable to contact

Please do not hesitate to contact us if you require further information.

Yours sincerely,

Catherine Kenny
Karan Singh