



HM Government

# United Kingdom Labour Market Enforcement Strategy 2020/21

Interim Director of Labour Market Enforcement

Matthew Taylor

December 2021



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**Interim Director of Labour Market Enforcement**  
**Matthew Taylor**

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of the Immigration Act 2016

December 2021



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# Foreword

This is the first Strategy produced in my time as interim Director. I would like to start by commending the small but dedicated and skilled team who make up my Secretariat. It is a challenge taking on an important new role, especially on a part-time basis and with another demanding job, but the team has given me ample support, allowing me to focus my energies on the areas where I can add most value to the Office's work.

This is the third Labour Market Enforcement (LME) annual Strategy. It picks up many of the themes of the reports of my predecessor, Sir David Metcalf. Recurrent themes include:

- Endorsing collaboration between the enforcement bodies and other agencies while urging further joint agency data sharing and working;
- Noting increases in caseloads and actions but questioning whether the scale of prosecution and level of sanction is adequate; and
- Welcoming new methods to collect and analyse data but acknowledging we are still largely 'flying blind' when it comes to the underlying scale of non-compliance.

This Strategy was originally researched and written in winter 2019/20 and submitted to the Government in March 2020. The pandemic and the need for government to refocus its efforts on designing and implementing completely new support schemes for businesses and workers alike, have inevitably delayed the publication of this 2020/21 Strategy until now. In the interim, I have reviewed and modified some of my recommendations, before discussing and agreeing these with the Government. This should negate the need for a formal Government response. The vast majority of the text remains unchanged from March, but where there have been modifications in the intervening nine months, we have added comments or footnotes to acknowledge this. This delay has also necessitated revising the original timescales for implementation and these will be taken into account when reporting on progress in future Annual Reports.

Overall, I do not find that the pandemic or other changes since the spring undermine the validity of the recommendations made in this report. Indeed, the changes in the labour market due to COVID-19, and also a new immigration system and uncertainty around EU exit, only increase the risk of labour exploitation and requires an even greater focus on improving worker protection through effective labour market enforcement. In this Strategy, I continue to suggest a range of incremental measures to further improve the performance of the bodies but there are also themes and issues worth highlighting for the future of enforcement.

Firstly, the creation of a Single Enforcement Body (SEB) is an important opportunity to strengthen compliance and enforcement. I submitted a response to the Government's consultation document on the SEB and, at several points, this Strategy refers to the potential offered by the new body.

Secondly, the Government is implementing far-reaching reforms to the UK migration system enabled by departure from the European Union. All the four at-risk sectors on which we focus in the Strategy have a high proportion of migrant workers including from the EU. It is vital that the implications of migration reform for labour market regulation and enforcement are properly considered.

Lastly, the need – emphasised in the case study sectors – for a systemic approach to enforcement informed by high levels of stakeholder engagement and data analysis.

The Strategy makes a number of recommendations relating to the four at-risk sectors on which we have focused: social care, agriculture, construction, and hand car washes. The stand-out points are:

- In social care, the need for greater collaboration between the bodies and the local authorities which commission care services;
- For agriculture, the need to strengthen the licensing scheme;
- In construction, better understanding of labour non-compliance in a complex sector and the need to develop a stronger analytical and strategic framework for enforcement; and
- For hand car washes, the widespread nature of non-compliance in this sector and the need to explore mandatory national licensing.

We have used sector studies to understand non-compliance within the context of these particular industries and to explore how a tailored enforcement approach could be used to improve worker rights. Obviously many other sectors, including garment manufacturing, distribution, cleaning, hospitality and others, would also benefit from such focused analysis. My Office (ODLME) will continue to expand on this approach and examine other sectors to further this detailed sectoral view.

Overall, I believe that the recommendations made in this Strategy can have a genuine, lasting impact on the delivery of labour market compliance and enforcement. Very often the issues I have identified are having real and immediate impacts on thousands of workers. The previous LME Strategy for 2019/20, submitted to the Government in March 2019, only received a response from government in October 2020. The publication of this report has been significantly delayed but as the recommendations have already been agreed, I am hopeful that the Government will act more quickly this time so as not to undermine their stated commitment to enforcing labour standards.

In terms of the next stage of ODLME's work, I have offered the services of the Office to play a constructive role in shaping the SEB and other aspects of the forthcoming Employment Bill. We will also be pushing forward with our plans for a major and innovative research project on the scale and nature of non-compliance. It is also possible that the COVID-19 pandemic, and the steps being taken to mitigate its economic impact may generate new enforcement issues, as well as highlighting the challenges faced by vulnerable workers.

I began by thanking the ODLME team (led by Tim Harrison, and including Mark Birch, Louis Camp, Emily Eisenstein, Michael Flynn, Bethan Hunt, Rachael Lally and Ellie-May Leigh). I would like to end by thanking the many stakeholders who have engaged with us in developing this Strategy, particularly given the tight timetable we had for delivery. I also thank the staff of the three bodies I oversee who have been patient, thoughtful and open in discussing a wide range of issues.

As I said in my response to the SEB consultation, there may be no need for the ODLME to exist in the medium-term, especially if the new body is established at arm's length with an independent board; but, until that time, my Office and I are proud to play our role in the vital task of tackling non-compliance and exploitation.

A handwritten signature in black ink, appearing to read 'Matthew Taylor', with a large, sweeping flourish at the end.

**Matthew Taylor**  
**Interim Director of Labour Market Enforcement**

Originally submitted to HM Government on 31st March 2020.

Revised report resubmitted in December 2020.



# Table of Recommendations

	Lead Body	Recommendation	Delivery time (years from publication)			Relevant to single body design?
			1	2	3+	
<b>Section 4: High-Risk Sectors</b>						
<b>4.1: Social Care</b>						
<b>1</b>	<b>All Bodies</b>	<p>The Labour Market Enforcement (LME) bodies should strengthen their relationship with care regulators across the devolved administrations by:</p> <ul style="list-style-type: none"> <li>a) Raising their profile and ensuring their powers and remit are well-known in the sector;</li> <li>b) Providing active support in the training of inspectors, enabling them to spot the signs of labour exploitation; and</li> <li>c) Reviewing existing gateways and processes to ensure smooth intelligence-sharing and referrals between the LME bodies and the care regulators, including effective signposting to each other's complaints/whistleblowing routes.<sup>1</sup></li> </ul>				Yes
<b>2</b>	<b>BEIS and HMRC NMW</b>	<p>The Department for Business, Energy and Industrial Strategy (BEIS) with support of HMRC NMW (Her Majesty's Revenue and Custom National Minimum Wage) should continue to improve guidance around national minimum wage/national living wage (NMW/NLW), in collaboration with stakeholders, by:</p> <ul style="list-style-type: none"> <li>a) Promptly updating guidance following any significant legal or policy developments, and proactively disseminating this in a timely manner with a publicity campaign to reach both workers and employers; and</li> <li>b) Re-examining developing sector-specific guidance to address complexities in NMW guidance for those industries where the nature of work is atypical, including (but not limited to) social care.</li> </ul>				Yes (guidance role of the SEB)

<sup>1</sup> The Home Secretary has amended the timescale of the recommendation to three years in order to consider this proposal during the development of the Single Enforcement Body (SEB).

	Lead Body	Recommendation	Delivery time (years from publication)			Relevant to single body design?
			1	2	3+	
3	All Bodies	<p>The LME bodies should work closely with external partners, particularly within high-risk sectors, to find innovative ways to disseminate information and raise awareness of employment rights and enforcement among employers and workers.</p> <p>Specifically, within social care:</p> <p>a) The LME bodies should bring together an information pack of employer obligations for Local Authorities to pass on to those receiving direct payments for care needs; and</p> <p>b) The LME Bodies should target the dissemination of information resources for workers, including via skills providers, Skills for Care, and/or devolved worker registration schemes at the point of certification or training.</p>				
4	All Bodies	<p>The LME bodies should identify ways to actively and effectively support local authorities in their due diligence and monitoring of externally commissioned services with focus on workers' rights.</p> <p>Specifically, for social care, the LME bodies should consider the following methods but may find other ways of achieving the same aim:</p> <p>a) Develop a good practice guide that Local Authorities can easily incorporate into their procurement processes; and</p> <p>b) Raise awareness within Local Authorities of the enforcement bodies' powers, regulations, and common breaches to ensure a greater flow of intelligence and appropriate referrals where non-compliance is suspected.</p>				
5	BEIS and HO	I recommend that BEIS and Home Office (HO) work closely with The Department of Health and Social Care (DHSC) to ensure social care reform includes consideration of worker rights and enforcement, building on learning from the variability in social care models within the UK.				Yes (joint approach)
<b>Section 4.2 Seasonal Workers in Agriculture</b>						
6	GLAA	In line with my wider argument around robust voluntarism, the Gangmasters and Labour Abuse Authority (GLAA) should work with the sector to explore how it can lend credibility and support to the labour standards and compliance elements of high-quality certification schemes for growers. Working with a strengthened licensing system, this would allow the sector to be more confident about compliance throughout the supply chain, without relying on multiple, sometimes poor standard ethical compliance audits.				Yes (working with sector)

	Lead Body	Recommendation	Delivery time (years from publication)			Relevant to single body design?
			1	2	3+	
7	GLAA and HO	<p>GLAA and Home Office should:</p> <p>a) Review the licensing system and budget to include increased compliance inspections and routine visits; and</p> <p>b) Consider analysis of the effectiveness of the potential increase in unannounced visits in circumstances set out in the Government's response to the 2019/20 Strategy.<sup>2</sup></p>				Yes
8	GLAA	<p>The GLAA should review licensing data: what is collected, how it is analysed and how it is shared.</p> <p>a) <u>In the immediate term</u>: the GLAA should strengthen the licence holder database to improve the range and quality of information held, and to identify trends and indicators of risk to inform inspection policy, including the characteristics of licence holders and correlations with risks of non-compliance; and</p>				
	BEIS/HO/GLAA	<p>b) <u>In the longer term</u>: BEIS/Home Office should be ambitious and creative when designing the data collection and analytic functions of the Single Enforcement Body. They should draw on innovative practice such as the Health and Safety Executive's (HSE) and HMRC's risking models and consider how best to draw on expertise from outside Government.</p>				Yes (robust licensing)
	BEIS/HO/GLAA	<p>c) Within the Single Enforcement Body: the licensing function should be fully integrated into the data capability of the new organisation. BEIS/HO/GLAA should identify where streams of data around licensed labour providers and labour users can be usefully compared and combined to understand risk and identify non-compliance and target resources appropriately.</p>				Yes (use of data)
9	All Bodies	<p>The LME bodies should undertake analysis and work in partnership with academics and the Joint Slavery and Trafficking Analysis Centre (JSTAC) to fill key evidence gaps in understanding labour market non-compliance and the effectiveness of enforcement. This will be especially important to feed into the SEB development.</p> <p>Specifically, the DLME, in collaboration with the labour market enforcement bodies and other relevant organisations (including the facilitation of access to case information), will seek to review existing and past cases of severe labour exploitation to improve the understanding of how worker exploitation comes to light. This should consider:</p> <ul style="list-style-type: none"> <li>• Who do workers confide in? and</li> <li>• What opportunities are there to encourage people to report labour abuse?</li> </ul> <p>The findings should feed into the communication and engagement strategies for the enforcement bodies and the future SEB.</p>				

<sup>2</sup> The Home Secretary has made minor amendments to the wording of this recommendation to signpost the Government response to the 2019/20 Annual Strategy, and ensure wider proposals are considered in the development of the GLAA's new compliance strategy.

	Lead Body	Recommendation	Delivery time (years from publication)			Relevant to single body design?
			1	2	3+	
10	GLAA and HO	I encourage the GLAA and Home Office to engage with the Department for Environment, Farming and Rural Affairs (DEFRA) to consider the scope to include labour protection compliance as part of the relationship between the new farming subsidies systems and the protection of labour rights.				
11	GLAA	GLAA should continue to work closely with Immigration Policy to ensure the Seasonal Workers Pilot builds on its existing approach of incorporating prevention of exploitation within its programme.				
<b>Section 4.3 Construction</b>						
12	HO and BEIS	a) Home Office and BEIS, in partnership with ODLME, should investigate a sectoral approach into the design of the Single Enforcement Body, to bring together enforcement bodies and wider stakeholders to develop ways of identifying, analysing, mapping and effectively tackling non-compliance in particular industries.				Yes (sectoral approach)
	All Bodies	b) In the interim, the enforcement bodies should build on the Construction Protocol and ODLME will support work to develop the evidence base around the sector. Learning from this would then inform the development of the Single Enforcement Body.				Yes (sectoral approach)
13	GLAA	The GLAA should engage with the Local Government Association to understand whether it would be an effective prevention intervention to provide information to property owners when planning permission is granted for construction work on the signs of labour exploitation and how to report concerns. <sup>3</sup>				Yes (working with local government)
14	All bodies	Both in construction and in other high-risk sectors, the enforcement bodies should increase their promotion of instances of good practice where a brand/household name has identified and taken successful action against severe labour abuse within their supply chain. This is both to publicise the work within the industry and increase the deterrent effect. Development of the SEB should be mindful of existing barriers that might prevent the current enforcement bodies from doing this.				Yes
15	All Bodies	Across sectors, where the LME bodies identify severe labour exploitation, there should be an automatic and systematic review of the extended labour supply chain to: <ul style="list-style-type: none"> <li>a) Identify vulnerabilities and potential wider exploitation related to the initial case;</li> <li>b) Inform and educate the organisations in the supply chain about weaknesses in their systems; and</li> <li>c) Identify organisations where there is repeated failure of expected levels of due diligence.</li> </ul>				Yes (enforcement through supply chains)

<sup>3</sup> The DLME made this recommendation for the GLAA to take forward, but planning permission is the responsibility of Local Authorities. The Home Secretary has amended the wording to instruct the GLAA to engage with the Local Government Authority to explore if this proposal would be feasible for Local Authorities to take forward.

	Lead Body	Recommendation	Delivery time (years from publication)			Relevant to single body design?
			1	2	3+	
<b>Section 4.4 Hand Car Washes</b>						
16	BEIS/HO/GLAA	The Local Authority pilot scheme being developed by RCWS (in the New Year 2021) should be used to explore and test the effectiveness of interventions across the hand car wash sector. The Home Office should support the pilot through funding and independent evaluation, and if found to be successful it should be considered in the context of the single enforcement body. <sup>4</sup>				
17	All Bodies	Recognising existing work by HMRC NMW, all enforcement bodies should explore the opportunities to make greater use of innovative technologies such as predictive analytics to complement existing enforcement efforts to identify areas of risk, together building up expertise to feed into the SEB.				Yes (use of data)
18	GLAA and HMRC NMW	As per Recommendation 9, the LME bodies should undertake analysis and work in partnership with academics and JSTAC to fill key evidence gaps in understanding labour market non-compliance and the effectiveness of enforcement. This will be especially important to feed into the SEB development.  Specifically, the enforcement bodies and wider law enforcement should seek to better understand why so few referrals result in the identification of modern slavery offences, to help achieve a more efficient use of their resourcing.				
19	GLAA and HMRC NMW	GLAA and HMRC NMW should work more closely with NGOs who are active in the HCW sector, such as the Safe Car Wash app and the Modern Slavery Helpline, to improve the quality of the information and intelligence relating to non-compliance in hand car washes.				

<sup>4</sup> The Home Secretary has amended the recommendation wording to highlight that the Home Office and BEIS will utilise the findings of the hand car wash pilot to consider the licensing of hand car washes, before committing to rolling out licensing nationally.

# Section 1. Introduction

This is the third full Labour Market Enforcement Strategy, but the first under my tenure as Interim Director. The report builds on the previous two strategies and, as is to be expected, there are themes that run through all three of these.

This report falls in a period of change for the three enforcement bodies, with a new government and consequent new agenda, EU exit and the move towards a new immigration system in 2021, as well as the prospect of the Single Enforcement Body being introduced in the near future. In my view, this Strategy is even more important because of this uncertainty. The protection and enforcement of employment rights should be a high priority for the Government in these times of change, and a fundamental building block of the new systems being built.

The Single Enforcement Body offers an opportunity to have a different approach to enforcement and to root out some of the limitations of the current system. This Strategy provides some recommendations that can and should be implemented as soon as possible within the existing organisational arrangements, but many of the findings and recommendations have been developed with a view to feeding into the deliberations and debates around this future organisation.

This Strategy raises cross-cutting issues such as the potential labour market enforcement implications of changes to the immigration regime, state enforcement of holiday pay and concerns around umbrella companies. However, for the most part, this Strategy concentrates on the analysis of four at-risk sectors as identified by the DLME intelligence assessment from 2019/20:

- Care;
- Construction;
- Hand car washes; and
- Seasonal workers in horticulture.

Other sectors do, of course, remain a priority for the enforcement bodies, but the sector-based approach within the Strategy is a tool by which we can examine in detail why particular sectors are higher risk for labour abuses, current enforcement practices and how these might be improved. In particular, analysis of the four sectors has revealed both commonalities that enable vulnerable workers to be exploited, and also differences in the industry structure and labour organisation. These point to different, tailored enforcement approaches and tools being required to reduce the risk for workers.

By the end of March 2020, the Government response to the 2019/20 LME Strategy had yet to be published.<sup>5</sup> While there were a number of unsettling factors over 2019 such as the election and changes in ministers, this delay in response unfortunately reflects the lack of priority in advancing these issues. Given the important discussions and decisions to be made around the Single Enforcement Body, it is particularly important that the enforcement bodies and departments have clarity over the direction of travel and reflect upon the work of the ODLME since 2017, to pave the way for a more strategic, effective and outward looking system of enforcement.

At the time of writing this Strategy (March 2020), the global economy was in the grip of the start of the Coronavirus pandemic. The impact on daily life was only really beginning to be felt in the UK. Businesses and their workforces were being hit particularly hard. Government initiatives such as the Job Retention Scheme have been vital in maintaining some economic stability during this period, but it is clear though that new employment enforcement challenges will inevitably arise from this situation.

The reporting and recommendations in this Strategy were essentially completed before the COVID-19 pandemic. The focus of government has since been on responding to urgent needs across many areas of policy and delivery, seeking to alleviate the pandemic's impacts. That said, I believe that all of what I am recommending in this Strategy remains relevant and important such that once the COVID-19 threat has passed, these issues will need to be addressed by government and the enforcement bodies.

Although I set out a proposed work plan for ODLME for 2020/21 in Section 7, this itself will be heavily impacted by current events, pressures and priorities. In the immediate future, my focus will be on the ODLME supporting the three labour market enforcement bodies as best we can. As for so many, this will be a testing time where their knowledge, expertise and professionalism will come to the fore. They will need to adapt to the current challenges they are facing and ODLME will do likewise.

## 1.1 Role of the Director of Labour Market Enforcement

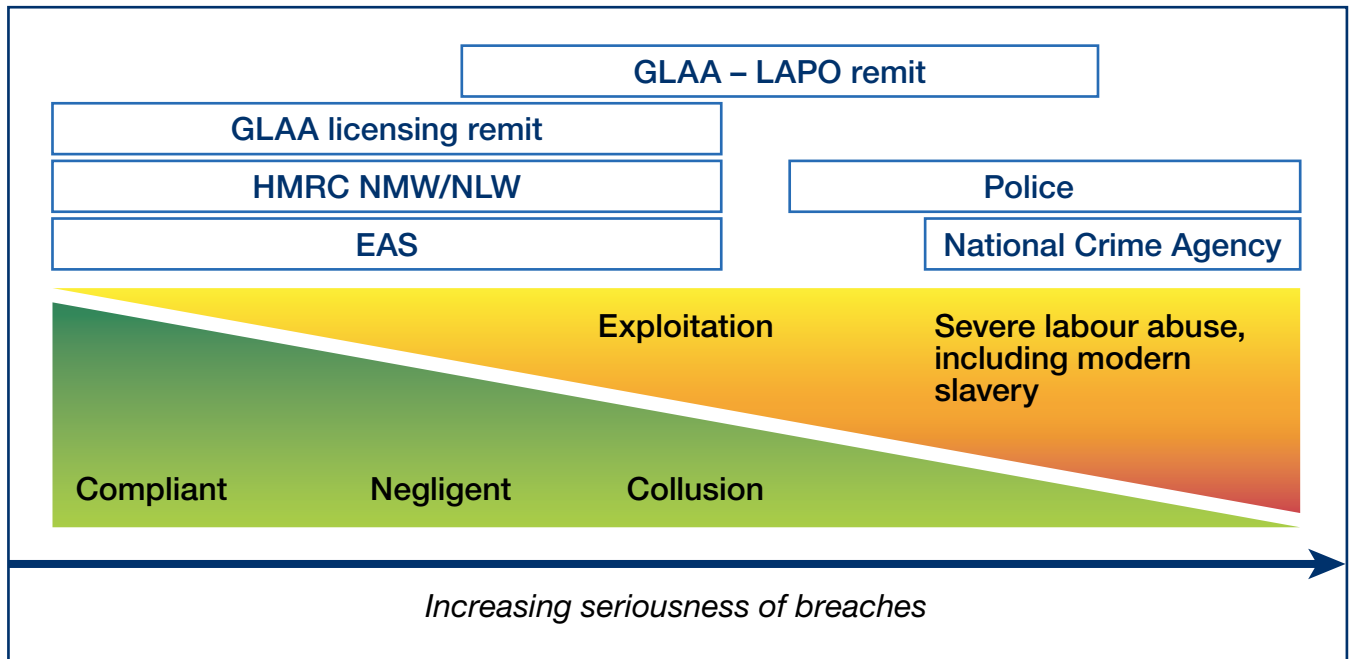
The Immigration Act 2016 provided for the appointment of a Director for Labour Market Enforcement, who is charged with bringing together a coherent assessment of the extent of labour market exploitation, identifying routes to tackle exploitation and harnessing the strength of the three main enforcement bodies: HMRC National Minimum Wage (HMRC NMW), the Gangmasters and Labour Abuse Authority (GLAA) and the Employment Agencies Standards (Inspectorate) (EAS).

The role covers the whole spectrum of labour market enforcement offences from minor mistakes and negligence, all the way to severe labour exploitation and modern slavery. Figure 1.1 sets out how my remit, and that of the enforcement bodies, spans the compliance spectrum.

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<sup>5</sup> The response was published in October 2020. <https://www.gov.uk/government/publications/labour-market-enforcement-strategy-2019-to-2020-government-response>

Figure 1.1: The spectrum of non-compliance



Under the legislation, the Director must:

- Produce an annual labour market enforcement strategy, approved by BEIS and Home Office Secretaries of State, to set priorities for the three main enforcement bodies;
- Develop the DLME Information Hub; and
- Produce an annual report setting out for ministers how, collectively, the enforcement bodies performed relative to the ministerially-agreed strategy from the previous year.

## 1.2 Timescales and methodology

I came into post as interim Director of Labour Market Enforcement in August 2019, and spent the autumn getting up to speed with enforcement issues and engaging with the Single Enforcement Body consultation<sup>6</sup>. My submission to the consultation (which is publicly available)<sup>7</sup> covered key issues to be resolved before establishing the SEB; and other measures that could improve the SEB's chances of success.

The December 2019 election and restrictions in the pre-election period leading up to this have meant that my Office and I effectively had three months to produce this LME Strategy for 2020/21. This timescale made it difficult to undertake our usual extensive and in-depth stakeholder engagement. In practical terms, this meant we were only able to run a call for evidence over a truncated period of five weeks (spanning the Christmas break). In this short timeframe, my Office has engaged with 66 different organisations and firms, hosted three round tables and four sector-focused workshops, a workshop focussing on the use of intelligence and research in prioritisation of resources, and received written evidence from 38 partners (see Annex E for full list).

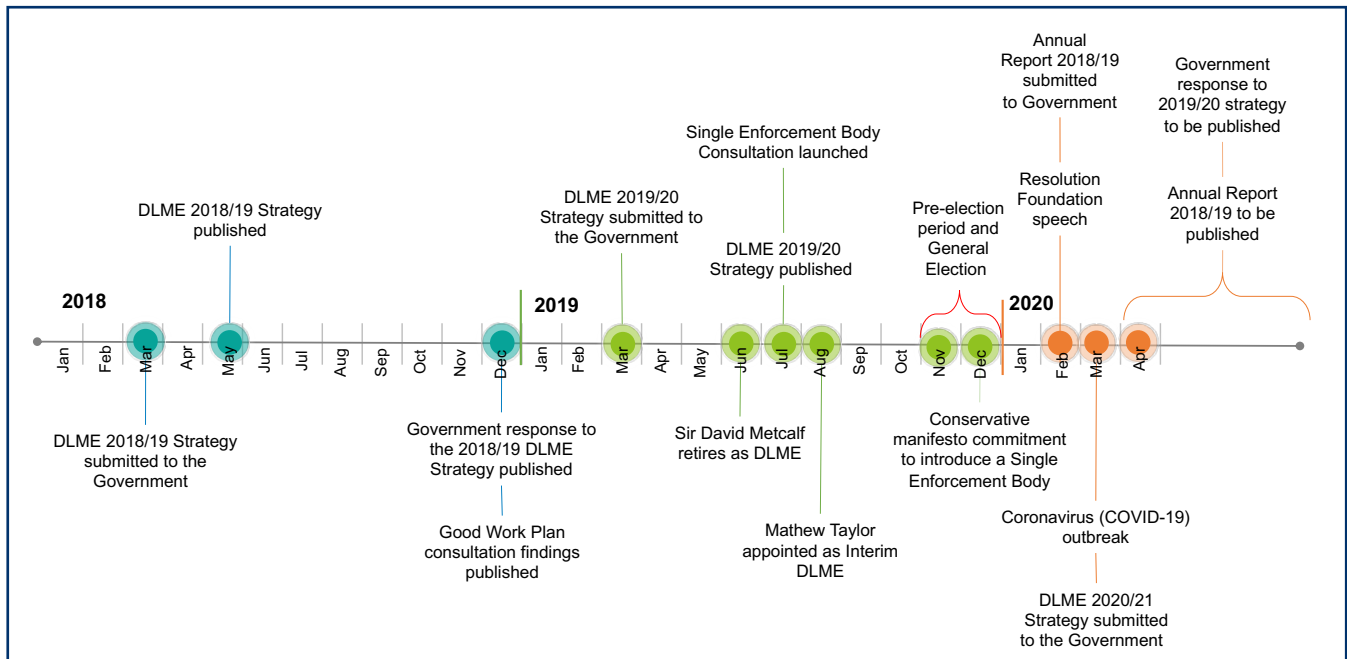
I am very grateful for the helpful and enthusiastic response from our partners in industry, academia, the unions and other government departments. Your expertise and perspectives have been invaluable in the production of this Strategy and its recommendations.

6 The Government published its response to the SEB Consultation in June 2021. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/991751/singleenforcement-body-consultation-govt-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991751/singleenforcement-body-consultation-govt-response.pdf)

7 <https://www.thersa.org/globalassets/images/blogs/2019/11/good-work-plan.pdf>



Figure 1.2: ODLME Timeline



This Strategy was originally researched and written in winter 2019/20 and submitted to the Government in March 2020. The pandemic and the need for government to refocus its efforts on designing and implementing completely new support schemes for businesses and workers alike, have inevitably delayed the publication of this 2020/21 Strategy until now. In the interim, I have reviewed and modified some of my recommendations, before discussing and agreeing these with the Government. This should negate the need for a formal Government response. The vast majority of the text remains unchanged from March, but where there have been modifications in the intervening nine months, we have added comments or footnotes to acknowledge this. This delay has also necessitated revising the original timescales for implementation and these will be taken into account when reporting on progress in future Annual Reports.

In reviewing this Strategy in December 2020, I do not find that the pandemic or other changes since spring undermine the validity of the recommendations made in this report. Indeed, the changes in the labour market due to COVID-19, and also a new immigration system and uncertainty around EU exit, only increase the risk of labour exploitation and requires an even greater focus on improving worker protection through effective labour market enforcement. In this Strategy, my Office continues to suggest a range of incremental measures to further improve the performance of the bodies but there are also wider themes and issues worth highlighting for the future of enforcement.

## 1.3 Structure of Strategy

The structure of the Strategy is as follows:

**Section 2** provides a high-level overview of the scale and nature of labour market non-compliance, the response by the enforcement bodies and my overall assessment of this. More extensive supporting analysis and commentary is available in Annex A.

**Section 3** presents the results of the strategic intelligence assessment conducted by the Office in partnership with the three enforcement bodies and discusses how the methodology for this analysis may be advanced in future.

**Section 4** provides a detailed analysis of four at-risk sectors; care, seasonal workers in agriculture, construction, and hand car washes, and concludes with a summary of the emerging themes.

**Section 5** discusses some important cross-cutting issues that create an environment where exploitation can occur, or that will be important for tackling labour abuse in future, including areas outside of the direct remit of the DLME such as immigration and employment status.

**Section 6** discusses the Single Enforcement Body and my proposals on how this Office can feed into discussions.

**Section 7** concludes with the future workplan of the ODLME.

## Section 2. Labour market non-compliance and the enforcement response

Tackling labour market non-compliance in the areas that fall within my remit, is built on having a good understanding of what the problem is, its scale, where it is located, and who is most at risk. I have specific obligations under the Immigration Act 2016 to assess the scale and nature of labour market non-compliance and to examine how well the enforcement bodies are responding.

This section provides a summary of the scale and nature of non-compliance, based on the available evidence and then considers the resourcing of the three bodies and how their interventions are seeking to tackle this non-compliance. Annex A sets out the extensive data and analysis supporting this section.

I then provide my own assessment of the enforcement interventions made by each body in the last year or two. Finally, this section looks ahead to work DLME is undertaking to fill evidence gaps and, in doing so, better target publicly funded resources.

### 2.1 Overview of the scale and nature of non-compliance

I noted in my inaugural speech as interim Director of Labour Market Enforcement (DLME, 2020a) that we are somewhat 'flying blind' in terms of our understanding of the overall scale and nature of the risk of labour market non-compliance in the UK. Some non-compliance is reported by workers themselves, but it is likely that the bulk of non-compliance goes unreported. There are known and understandable reasons for this, including workers being unaware of their rights, or being afraid to report issues.

Previous LME strategies have been clear about this information deficit and the need for significant work to seek to fill this gap. Without this, our knowledge and understanding of the problem will remain vague with the consequence that workers lose out on the protections they are entitled to, and the enforcement bodies risk applying resources inefficiently.

We can draw on the following sources of data to help inform our understanding of the degree of non-compliance and/or where risks may be heightened are as follows:

- **Minimum wage non-compliance** – BEIS (2020a) estimates that 424,000 workers were paid below the minimum wage in 2019. This represents 1.5 per cent of all jobs in the UK undertaken by workers aged 16 and over. Of these, 361,000 were not being paid the National Living Wage (for workers aged 25 and over). As a proportion of all jobs by sector, underpayment was highest in childcare (over 7 per cent of jobs), hair and beauty (6.6 per cent), cleaning and maintenance (5 per cent), and hospitality and transport (both 4 per cent).

- **Labour exploitation** – referrals to the National Referral Mechanism (NRM) of potential victims of modern slavery for labour exploitation numbered almost 6,000 in 2019 (Home Office, 2020c). The most common type of exploitation for both adult and minor potential victims in the NRM in 2019 was reported to be labour exploitation. However, this may include some instances of criminal exploitation (such as ‘county lines’ activity) for referrals prior to NRM classification changes introduced in October 2019 (see Annex A.3 for more details).
- **Employment agencies** – a proxy measure for non-compliance in this sector does not exist. However, we note that the number of employment agencies has grown considerably over the past decade at a time when, until very recently, enforcement resources in this sector had been declining.

## 2.2 Enforcement resourcing

For the 2019/20 financial year, total government investment in the three enforcement bodies to tackle non-compliance in the UK labour market<sup>8</sup> amounted to around £34.5 million, up by around £1.5 million over the previous year. In 2010/11 total resourcing across the three bodies was £13.2 million. Much of this increase has been driven by the expansion of HMRC NMW resourcing from £8.1 million to £26.3 million over this period.

Between them, the three bodies now employ around 575 FTE staff, up from around 260 in 2010/11. Again, much of this is due to expansion of HMRC NMW staff, though GLAA staffing has increased its workforce by around a third as well. By contrast, EAS staffing is now lower than it was in 2010/11, despite the significant growth in the employment agency market discussed above.

This overall growth in resourcing for labour market compliance and enforcement also needs to be understood in the context of a larger labour market. According to the latest labour market data (three months to January 2020) there were almost 33 million people in work in the UK, nearly four million more than at the same point a decade ago. Although labour market participation rates are high currently and unemployment low, it is also worth noting that pay growth in the economy has been below average for much of this period.<sup>9</sup>

Also over this period, the remits of the three bodies have broadened (or, in the case of EAS, will do in the near future), notably with the introduction of the National Living Wage (NLW) in April 2016 and the expansion of GLAA’s remit in 2017 to tackle labour market offences in England and Wales utilising additional powers in the Police and Criminal Evidence Act (PACE) 1984.

<sup>8</sup> With some gaps in geographic coverage for certain aspects of the three bodies’ remits, see Table 2.1

<sup>9</sup> Note that COVID-19 may result in significant changes in the labour market since this was written.

**Table 2.1: Overview of the resourcing and scope of the three enforcement bodies**

Enforcement body (Responsible department)	Funding (£m)	Full Time Equivalent (FTE staff)	Focus and Scope	Geographic coverage
<b>HMRC NMW</b> <b>(BEIS)</b>	2019/20: 26.4 2018/19: 26.2 2010/11: 8.1	2019/20: 433 2018/19: 429 2010/11: 142	All employers and workers in scope, covering around 2m workers in low-paid jobs	UK
<b>GLAA</b> <b>(Home Office)</b>	2019/20: 7.1 2018/19: 7.1 2010/11: 4.0	2019/20: 112 2018/19: 122 2010/11: 89	Over 1,000 licensed labour providers, supplying around 0.5m workers  Modern Slavery: estimated 10-13,000 potential victims*	Licensing: England, Scotland, Wales and by order in Northern Ireland  LAPO coverage: England and Wales
<b>EAS</b> <b>(BEIS)</b>	2019/20: 1.125 2018/19: 0.725 2009/10: 1.1**	2019/20: 27 2018/19: 15 2010/11: 31	Around 29,000 Employment Agencies, covering 1.1m workers	England, Wales and Scotland

Sources: BEIS (2020a), GLAA management information, EAS data submission to DLME.

\* Based on an estimate of there being between 10,000-13,000 potential victims of Modern Slavery in the UK in 2013 (Silverman 2014).

The Immigration Act (2016) gave GLAA a much broader role addressing labour exploitation across the entire labour market, including Modern Slavery offences. The new activity is carried out by Labour Abuse Prevention Officers (LAPOs). LAPOs have powers to: investigate labour market offences; arrest suspects; enter premises; search and seize evidence.

\*\* Data for 2010/11 not available for EAS.

## 2.3 Enforcement response

This section provides a high-level summary of compliance and enforcement activity carried out by the three bodies from recent financial years. Because the remit and powers of each organisation are different, making performance comparisons across the three bodies is problematic. Any interpretation of differential performance between the enforcement bodies should therefore be treated with extreme caution.

Where possible, we aim to present a time series comparison within each body (generally comparing recent performance against the situation in 2010/11, where data allow), though again the results from this should not be considered definitive for the reasons set out in my assessment below. More detail on the recent enforcement response by each body is given in Annex A.

### 2.3.1 Assessment of recent enforcement response

The evidence on performance provides a good indication of where each of the enforcement bodies is channelling its efforts and where resources are being directed to greatest effect. The quality of that information itself is improving thanks to changes made by the bodies, such as the implementation of a new performance analysis approach by GLAA in 2018/19 and the introduction of a new case management system by EAS. Advances of this kind are encouraging and should enable a more finely tuned understanding of the effectiveness of each body's interventions.

I do not make recommendations around resourcing for the three bodies on the basis of this assessment. A number of related recommendations were made in the previous Strategy and we have yet to see the Government response to that.<sup>10</sup> Furthermore, with the move towards a Single Enforcement Body (SEB) in the near future, I would be cautious about recommending additional resourcing changes in the interim.

Related to this is the issue of joint working between the bodies and, indeed, with other agencies and law enforcement partners. There are relatively few operations carried out involving two or more of the three enforcement bodies. The DLME's Strategic Co-ordination Group (SCG) has served a useful role in facilitating some joint working to date, and my expectation is that increasingly the bodies should now be using those established links to pursue joint working without the need for SCG assistance (the SCG – and DLME more broadly – would, of course, retain an interest in assessing the strategic impact of joint working).

In making the following assessment, I would like to acknowledge the help and support both I and DLME staff have had from the three bodies. Each enforcement body gave generously of their time during my first weeks in post, to enable me to really understand the nature of their work and the challenges and complexities involved. This has given me a real appreciation for the hard work undertaken and the commitment made by their staff on a daily basis.

### 2.3.1.1 HMRC NMW

HMRC NMW and BEIS should take great credit for their performance over the last year. In headline terms, the amount of arrears identified now almost equates to their overall budget. Once you include the £17 million of penalty income generated, HMRC NMW more than pays for itself. Admittedly this is a crude measure, as there are other additional intangible benefits that cannot be so readily monetised, but the point stands.

At the same time, more workers than ever before are benefiting because HMRC NMW are identifying more instances of wage arrears. That HMRC NMW are helping more workers be reimbursed is positive, but the fact that more non-compliance is being uncovered suggests that even more violations are occurring that remain hidden and unreported.

I am hopeful that increases in penalties issued will serve to enhance the deterrence effect. Previous LME strategies have recommended even stiffer penalties for non-compliant employers. The Government has not favoured this approach, but I believe we need to keep an open mind here, depending on what evaluations of the current penalty regime tell us.

I welcome the recent announcement both to resume the Naming Scheme<sup>11</sup> and the changes that have been made to make this an even more effective deterrence tool. The next naming round may well be two years since the last in July 2018, and the reintroduction of this scheme is an important enforcement intervention to tackle minimum wage underpayment.

My major concern is around the lack of criminal prosecutions for minimum wage offences. More high-profile prosecutions could, I believe, send out a really strong message to employers to be compliant. Over the coming year, I would like to see real progress made here.

<sup>10</sup> This was published in October 2020.

<sup>11</sup> BEIS NMW Naming Scheme was under review and suspended since July 2018. BEIS announced its resumption in February 2020 and published a new naming round in December 2020 where it named 139 employers investigated between 2016 to 2018.

<https://www.gov.uk/government/news/rogue-employers-named-and-shamed-for-failing-to-pay-minimum-wage>

### 2.3.1.2 GLAA

GLAA continues to adapt and grow following the expansion of its role and powers in 2017. It has had to overcome significant organisational challenges in the past two years and, although at the time of writing, some of these changes are still to take effect, I believe GLAA is now in a much stronger position to sharpen its focus to deliver across the key areas of its remit.

GLAA's licensing scheme is a tried-and-tested model, that receives much recognition and praise from stakeholders, both in the UK and from overseas. GLAA has revised the fundamental licensing standards and the announcement that it is seeking to review its licensing fees is welcome. Nevertheless, as later sections will discuss, there are aspects of the licensing approach that would merit reappraisal. Last year's Strategy commented that more compliance visits could be undertaken, given GLAA's existing resourcing in this area. Again, without a response from the Government to that strategy, it is not clear whether or how that is being addressed. In addition to this, I believe there is a strong case for GLAA to undertake more unannounced visits. As ever, there is a balance to be reached here in terms of potential burdens on business, but I am struck by the approach the Health and Safety Executive already uses here, whereby unannounced visits are used as an important information gathering exercise, as well as compliance and enforcement intervention.

I wish to also comment here briefly on GLAA's interventions to tackle more serious labour exploitation. I have raised elsewhere whether labour exploitation aspects of modern slavery offences should fall within the scope of the proposed Single Enforcement Body (DLME, 2019b). This is an issue on which I am keeping an open mind, given the importance of what is a rapidly growing problem. I comment later in the section looking at the hand car wash sector, how we should be seeking to better identify actual modern slavery offences in the labour market and ensuring resources are focused on the most severe cases.

The final area I would like to cover relates to GLAA's approach to transparency and engagement. Here I believe GLAA should be commended, both for its many interactions with industries at risk of labour exploitation – as evidenced for example by its protocols in construction and textiles – and indeed for its openness and publicity around its work. Again, in the context of the SEB, I am strongly in favour of a new single body that adopts this sort of approach. Increasingly, the challenge of promoting compliance and undertaking enforcement in the labour market will only be achieved with the help and involvement of others. Preventative interventions will be key. My hope is that the GLAA's protocol model will increase its impact to raise standards and elicit more intelligence to help enforcement agencies in their work.

### 2.3.1.3 EAS

EAS continues to achieve a considerable amount with minimal resources.

Although their resourcing has increased recently, it remains below what it was a decade ago, while the sector itself continues to expand. The ability of EAS to meet its demands – just to fulfil its current remit – therefore needs to be kept under close review. Over and above this, they will need to have sufficient capacity to undertake the extension to their role to regulate umbrella companies once that legislation comes into effect.

EAS has undergone resource expansion in the last two years, principally following DLME recommendations. I do not underestimate the challenges this will have entailed for a small organisation and understand that this is a body in transition. EAS therefore deserves much credit for demonstrating such a marked improvement in performance over the recent period.

As the EAS business delivery plan sets out, there are five key areas of focus.

Two relate to having a robust underlying case management system and improving their risk profiling and intelligence capability. These are key issues necessary to support its wider work and help target its limited resources more effectively.

Two more concern their commitment to investigate all complaints – and in doing so, adhere to clear service response times – and work with other enforcement partners, in some cases as part of targeted operations.

Achieving marked progress on the above will be a challenge, but perhaps EAS' biggest challenge is around the final action: to increase its own profile and visibility to raise awareness and compliance, and to maximise its deterrence effect. EAS has carried out important outreach work and training activity. Plus, now with its own online presence, I am hopeful the EAS brand – and stakeholder awareness of its role and underpinning legislation – will increase too.

## 2.3.2 Summary

I believe the bodies continue to make good progress in their efforts to promote greater compliance and enforce the law in their respective areas. They have been open to suggestions, in particular from DLME but also from the Low Pay Commission (LPC) (in the case of the minimum wage), about how their work can be done more effectively and efficiently. The changes and improvements they have made are beginning to bear fruit.

As I commented above, the quality of performance metrics is improving, which is welcome. I would also encourage each of the bodies, subject to the caveat in the following paragraph, to consider smarter performance reporting and to make this fully transparent. Currently only GLAA is doing this, using 12 targets which can be measured. EAS has published a business delivery strategy for 2019/20 as part of its 2018/19 Annual Report. This is again welcome, though I would encourage more widespread use of measurable targets within this. HMRC NMW agree an annual Service Level Agreement with BEIS, which will contain target outcomes. It would be helpful for public accountability to present elements of this as part of the BEIS Compliance and Enforcement report.

The important point here is that it remains difficult to connect agency performance with evidence of reducing labour market non-compliance overall. The 2019/20 Strategy highlighted the need to better understand the problem of non-compliance and to directly relate the work of the bodies to tackling this, with a greater focus on evaluation of the different interventions they use to find out what works and what does not. I discuss this further below.

## 2.3.3 Assessment of current and future threats

Looking ahead over the coming year I wish to highlight a number of areas that will be relevant and important for labour market enforcement.

### 2.3.3.1 Impact of COVID-19 on labour market enforcement

The economic and social response to COVID-19 is already having a significant impact on the UK economy and labour market. At the time of writing (March 2020), the full scale and duration of these are unknown. I am particularly concerned about the new compliance and enforcement challenges that may arise during this period and the ability of the enforcement bodies to carry out their existing duties. The bodies will need to be mindful of pressures businesses are now under, yet maintain their focus on ensuring that rights of, and protections for, workers in their respective areas are upheld.



### 2.3.3.2 Minimum wage

The LPC (2020) estimated that the April 2020 uprating of the minimum wage (across all rates) will affect more than 2.7 million jobs. Upratings of at least 4.6 per cent will apply to all minimum wage rates, with some increasing by 6 per cent or more (for instance, the National Living Wage for those aged 25 and over will rise by 6.2 per cent from £8.21 to £8.72). The consequence of this rate of increase is that a larger pool of workers may be affected both by coverage of the minimum wage and by underpayment. Up to March 2020, UK employment growth continued to be healthy, with around three-quarters of a million more people in employment between Q4 2017 and Q4 2019 (ONS, 2020). Because of these factors, we would normally anticipate that the absolute numbers of workers affected by minimum wage non-compliance would increase. A key concern would then be whether HMRC NMW resourcing keeps pace with this.

### 2.3.3.3 Employment agencies

This sector has been growing rapidly. While EAS resources have grown over the year – and are set to grow further in 2020 – this area is one we will want to monitor very closely and potentially reassess in terms of its overall resourcing.

### 2.3.3.4 Labour exploitation

The overall number of potential modern slavery victims referred to the NRM is increasing at a significant rate: surpassing 10,000 in 2019, more than double the level two years earlier. The majority of referrals in 2019 were for potential victims of labour exploitation. New immigration rules due to enter force from the beginning of 2021 and much tighter control of low-skilled migration will impact on labour supply into these sectors generally. I discuss this further in Section 5.

### 2.3.3.5 Licensing: regulated sectors

The volume of licensed gangmasters has remained relatively stable at around 1,000 over recent years. As above, these sectors will be impacted by reduced labour supply resulting from the new immigration rules in 2021. We return to this issue in greater detail later in this Strategy and discuss how this may impact on key regulated sectors (i.e. agriculture).

## 2.4 Work of the DLME Information Hub to improve our understanding of scale and nature

As discussed above, there are significant gaps in our knowledge and understanding of the labour market non-compliance problem. One of my obligations as Director of Labour Market Enforcement is to provide an annual assessment of the scale and nature of non-compliance in the UK labour market, as it pertains to those parts of employment law under my remit.

Previous strategies have highlighted the work undertaken to date to address what continue to be significant information gaps. As I said in a speech earlier this year, we are to a large extent ‘flying blind’ in terms of really understanding the extant threat of labour market non-compliance (DLME, 2020a).

Scoping work commissioned by my Office in 2018/19 (Cockbain et al., 2019) has laid the foundations for a major piece of work that will aim to improve our understanding of these issues. Inevitably, doing so in a robust, comprehensive and meaningful way will be resource intensive. Funding from our sponsor departments for this work was made available in 2019/20. While covering a significant proportion of the project’s likely overall cost, my Office has had to seek additional funding from elsewhere. I am pleased to say that a potential funding partner was

identified in December 2019. Subject to government commitment to continue funding this work over the next two financial years (2020/21 and 2021/22) and wider circumstances, my aim will be to launch an invitation to tender and have this project underway in 2020/21.

In the interim, my Office has taken forward other activities to help underpin the work that will be needed for the full project. One such piece is a small research project seeking to assess the scale and nature of precarious work in the UK (Pósch et al., 2020) which is published alongside this Strategy.

This project considered what it means to be in precarious work, including indicators thereof, then attempted to estimate the size of the population in these circumstances. International literature has indicated an association between precarious work and labour abuse,<sup>12</sup> so improving our understanding of this vulnerable group will be valuable for our assessments of labour market non-compliance. In addition, this research has made significant progress in testing the feasibility of proposals made by Cockbain et al. (2020) for a robust methodology for assessing the full scale and nature of non-compliance in the UK labour market.

With a commitment to establish a Single Enforcement Body (SEB), there is need for a firmer evidence base to be in place by the time it becomes fully operational so as to have a better understanding of the issues it is designed to tackle. Being able to progress this work on the scale and nature of non-compliance over the coming months will therefore be critical to aligning with the creation of the SEB.

Beyond this, my Office, this year, has also commissioned four small research projects to provide evidence to support our at-risk sector work for this Strategy. These projects sought to get in-depth views and experiences of the workers themselves in each sector:

- To better understand worker experiences in sectors identified as low paid and potentially posing heightened non-compliance risk for workers;
- To generate insight from people working in these sectors at risk of exploitation; and
- To explore recruitment and working experiences and corroborate these against evidence gathered elsewhere.

These projects have contributed to the development of this Strategy and are published alongside this document. In the longer-term, this research will also be used to inform future assessments of the scale and nature of non-compliance, both in content and the design for the larger-scale project discussed above.

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12 See, for example, Noack, A., Vosko, L., & Grundy, J. (2015). Measuring Employment Standards Violations, Evasion and Erosion-Using a Telephone Survey. *Relations Industrielles/Industrial Relations*, 70(1), 86-109.

## Section 3. Assessment of risk and prioritisation

As outlined in the previous section, there are significant barriers to fully assessing the scale and nature of non-compliance in the UK labour market. As in previous strategies, the DLME Information Hub has carried out an exercise in conjunction with the enforcement bodies to identify those sectors and parts of the labour market that may pose the greatest risks of non-compliance.

This section sets out the methodology and findings of this assessment, then details the review that I have commissioned on the approach taken to assessing this risk. I am keen to ensure that our risking work takes a broad and informed approach, drawing on a diverse set of sources to deliver the most valuable strategic outputs for labour market enforcement.

### 3.1 MoRiLE and list of at-risk sectors

The role of the Information Hub, as set out in the Immigration Act 2016, is to “gather, store, process, analyse and disseminate information relating to non-compliance in the labour market.” As in the 2018/19 and 2019/20 strategies, the Information Hub produced a strategic intelligence assessment providing an overview of current labour market enforcement issues across different sectors. This covers the whole range of non-compliance ranging from non-payment of the minimum wage resulting from ‘technical errors’ or misinterpretation of guidance, to deliberate non-compliance including, in the most severe cases, modern slavery. The assessment is based on information shared by the enforcement bodies, stakeholders and partners, including analysis of intelligence, trends in complaints and management information held by the three bodies, as well as relevant open-source material and research.

As in previous years, the Information Hub has reviewed intelligence using the Measurement of Risk in Law Enforcement (MoRiLE) methodology. This is a structured methodology used by law enforcement to understand the levels of risk and a range of organisational factors. It assesses the anticipated impact of a thematic area on individuals, communities, the environment, business, and the economy. MoRiLE scoring provides a gauge of the relative severity of each threat, establishing a ranked list of priorities. The nature of the methodology means the most severe threats are categorised as instances where there is high harm to individuals or to the UK. This is often characterised by modern slavery and labour exploitation, but may also be where, for example, there is a danger to members of the public. The scoring is agreed through discussion with the three enforcement bodies, with critical contributions from key stakeholders such as the Health and Safety Executive (HSE).

Table 3.1 below shows the sectors identified as being higher risk for this year and compares MoRiLE assessments from previous LME strategies.

**Table 3.1: MoRiLE assessment of labour market enforcement threats 2020/21 and previous assessments**

Sector	Threat description	2018/19 assessment	2019/20 assessment	2020/21 assessment
<b>Hand Car Washes</b>	Vulnerable workers are being exploited, some cases indicative of modern slavery. Many more in the sector are not receiving NMW/NLW.	<b>Severe</b>	<b>Severe</b>	<b>Severe</b>
<b>Agriculture (seasonal workers)</b>	Vulnerable seasonal workers are being exploited, some cases indicative of modern slavery. Many more in the sector are not receiving NMW/NLW.	<b>Severe</b>	<b>Severe</b>	<b>Severe</b>
<b>Care Sector</b>	Vulnerable workers are being exploited, some cases indicative of modern slavery. Many more in the sector are not receiving NMW/NLW.	<b>High</b>	<b>High</b>	<b>High</b>
<b>Construction</b>	Vulnerable workers are being exploited, some cases indicative of modern slavery. Many low- skilled workers in construction are not receiving NMW/NLW.	<b>Medium</b>	<b>Medium</b>	<b>High</b>
<b>Hospitality</b>	Vulnerable workers are being exploited, some cases indicative of modern slavery. Many more in the sector are not receiving NMW/NLW.	<b>Medium</b>	<b>Medium</b>	<b>Medium</b>
<b>Shellfish gathering</b>	Unlicensed activity and illicit gathering from closed beds present opportunities for exploitation to occur.	<b>Medium</b>	<b>Medium</b>	<b>Medium</b>
<b>Nail bars</b>	Vulnerable adults, and in some cases children, are being exploited. Some cases indicative of modern slavery. Some workers not receiving NMW/NLW.	<b>Medium</b>	<b>Medium</b>	<b>Medium</b>
<b>Poultry and eggs</b>	Many workers in the sectors are not receiving NMW/NLW.	<b>Medium</b>	<b>Medium</b>	<b>Medium</b>
<b>Warehouses and distribution centres</b>	Many workers in the sectors are not receiving NMW/NLW.	<b>Medium</b>	<b>Medium</b>	<b>Medium</b>
<b>Food Industry (processing and packing)</b>	Many workers in the sectors are not receiving NMW/NLW.	<b>Low</b>	<b>Low</b>	<b>Medium</b>
<b>Garments and textiles</b>	Serious non-compliance, with workers not receiving NMW/NLW.	<b>Low</b>	<b>Low</b>	<b>Medium</b>

\* The 2018/19 Strategy reported a list of 'high priority sectors'. This table provides additional information from that analysis.

While the MoRiLE assessment provides an indication of key sectors, it is not an exhaustive list, and findings should be interpreted with the following caveats

- The assessment is based on the known intelligence picture and does not account for under-reporting of breaches: and
- Established reporting mechanisms may result in higher levels of intelligence and therefore higher MoRiLE scores. This is reflected in the scores of GLAA licensed sectors (agriculture, shellfish gathering, and poultry and eggs). Conversely, a lack of intelligence may result in a lower MoRiLE score. This reflects lack of information rather than a confirmed absence of threat, risk and harm.

Over the past year, the enforcement bodies have reported a general increase in intelligence reporting. This is due to increased joint working between the enforcement bodies, law enforcement partners and departments, which has generated more intelligence around labour exploitation. Similarly, the engagement of wider stakeholders, for example through the GLAA protocols, has helped in understanding of the issues in some cases.

This has improved our knowledge of some sectors, especially in the high harm sectors such as hand car washes. The improved evidence base has led to an uplift in the MoRiLE score for some sectors. Further detail on the assessment for each of the sectors in Table 3.1 is provided in Annex B.

### 3.1.2 Review of MoRiLE

The three MoRiLE assessments undertaken by the DLME Information Hub in conjunction with the LME bodies, have produced broadly similar priority sectors, suggesting a relatively stable level and type of risk. This raises two questions:

- What strategic approach have the three enforcement bodies and wider partners taken to enforcement in these sectors?
- What would it take to successfully deal with the non-compliance in the sector to reduce the risk?

Speaking to the enforcement bodies and other partners, I can see that there is a lot of activity in these sectors, both from state enforcement organisations and, in some cases, the industry itself trying to self-regulate and ensure a level playing field for compliant employers and agencies.

The enforcement bodies carry out different levels of strategic analysis depending on their remit and capacity. I would highlight the risk modelling work of HMRC NMW as being particularly impressive in terms of large-scale data analysis. From discussions with the analytical team there, I see that it has made significant progress in the past three years and that there is strong ambition to use this further to understand issues of minimum wage risk and actively apply this to resourcing decisions. I am also impressed with the intelligence analysis that GLAA conduct, and their openness about sharing this publicly and between partners. EAS are also developing their capacity in this regard with a new case management system and are looking to build better intelligence analytical capability through their Find-IT tool.

However, there remain some persistently problematic sectors where the current enforcement approach is insufficient to change the level of risk experienced by vulnerable workers. In my opinion, there is not enough strategic analysis and leadership in approaching these sectors and developing new ways of jointly tackling the problems. Without this, despite significant resource and effort being used in enforcement activity, there will be little change in the assessment of risk.

The development of the Single Enforcement Body provides an opportunity to embed a strategic, joint working approach which can take a sectoral view on some of these difficult industries. As I explore in this Strategy, looking in detail at the features of the industry structure, types of work and characteristics of the workers most at risk in different sectors reveals very different pressures, vulnerabilities, enforcement opportunities and policy levers for improving the employment conditions for workers.

The sector profiles in this Strategy are the work of the small team in my Office over a matter of a couple of months. Through this analysis and engagement with stakeholders, we have developed a series of recommendations and ideas that should, if implemented, help to further compliance within the sectors. However, there is clearly much more that could be done.

Later in this report, I advocate testing out a sector-based approach to explore these issues further (see Section 4.3), with enforcement bodies and industry experts and employers working together to try to understand and resolve some of these deeply ingrained issues. I believe that having a detailed and nuanced approach would be essential for enabling the Single Enforcement Body to make a significant difference in the level of non-compliance in ‘enforcement resistant’ sectors.

In discussing and reviewing the MoRiLE assessment, I also feel that there is potential to build on its methodology, which is designed around the needs of law enforcement tasking rather than strategic overview.

## 3.2 Future of assessment

MoRiLE is an established methodology within law enforcement. It has been useful for reaching consensus between enforcement bodies around risk of different sectors, and this has helped inform previous Labour Market Enforcement Strategies. However, I believe that the methodology can be adapted to be more useful for the purposes of strategic planning and resource allocation. The role of the DLME is not to drive operational activity, but to inform a far more strategic approach, and these two different aims may engender a different methodology and conceptual framework.

As the same methodology has been used for three years, it seems appropriate to review it to ensure it remains relevant and useful. In addition, looking forward to the development of the Single Enforcement Body, this much bigger organisation will have a broader risk base, making it all the more possible to prioritise resources, and even more important to adequately capture all the information on risks. Lastly, along with my Office, I have been having very interesting discussions with a number of other organisations and bodies who are developing new ways of analysing and using data, offering the opportunity to strengthen our approach through other data and techniques.

The current methodology considers a number of measures around risk for each sector but is (understandably) heavily weighted towards the higher end of harm to individuals. By its nature, it only really covers the sectors at the more serious end of the non-compliance spectrum; as such, it does not, for instance, fully reflect the extent or impact of minimum wage risk. The process is intelligence-focused and does not fully include the wider analytical and research information available.

I want to work with the enforcement bodies and the wider intelligence, research and analysis community to develop this further to produce a more nuanced version of risk. As illustrated in Box 3.1, I would like to see the sectors have three scores reflecting:

- The **size** of the sector – an objective measurement based on the best available data;
- The **prevalence** of non-compliance – measured quantitatively as far as possible based on the number of reports, complaints and cases in each sector; and
- The **severity** of the non-compliance – based on qualitative analysis of the intelligence and other information sources including research and media reports.

Separating out the scores in this way enables a different understanding of risk.

**Box 3.1: Illustration of how revised system could look**

Purely for illustration, and based on estimated scores, let us consider the following sectors, rated A to E on each of these measures (A being biggest or highest, and E being smallest or lowest):

Sector	Size of worker population at risk	Prevalence of non-compliance	Severity of non-compliance
Poultry and eggs	E	C	B
Care	A	B	D
Nail bars	D	A	A

In this instance, those allocating enforcement resources across these sectors have a dilemma: how much should they allocate to a sector (care) with medium prevalence of relatively low-level severity of exploitation but a very large potential worker population being affected, against another (nail bars) with a small population at risk, but working in an environment where labour abuse is rife and potentially very serious?

This more nuanced picture, showing granularity of information is, to me, more informative than a single score or rating of risk. This kind of analysis could be used to drive the strategic conversations around the allocation of resource for enforcement, engendering a greater level of accountability and public awareness.

Examples of similar work which could help inform and shape the deliberations around the Single Enforcement Body and provide examples of good practice include:

- HMRC's large scale predictive modelling of risk;
- GLAA intelligence analysis of the scale and nature of non-compliance;
- HSE work combining databases to assess risk; and
- Nottingham Trent University's mapping of hand car washes to make use of existing mapping information and understand the correlations of car washes with other features of the area.

## Section 4. High-risk sectors

The list of at-risk sectors (Table 3.1) covers a variety of industries, each with different structures and labour models which engender different types of exploitation. These differences mean a ‘one-size-fits-all’ approach to enforcement is not appropriate to tackle problems in these sectors.

In this Strategy, we have chosen to look at four of the highest risk sectors to understand in greater detail: the industry features which facilitate labour abuse; the type of non-compliance seen; the enforcement activity already taking place and its effectiveness; and what could be done to reduce the risk for the sectors in the longer term. Our analysis has considered issues across the full spectrum of non-compliance, reflecting on the range of powers and levers available to the labour market enforcement bodies. Many of the insights can be extrapolated to risks manifesting in the wider labour market.

To inform this analysis, my Office analysed intelligence reports provided by the enforcement bodies, conducted secondary data analysis of national statistics, administrative data and other industry data sources and reviewed both academic and grey literature. Crucially, the Strategy has been underpinned by constructive engagement with a range of stakeholders, including the enforcement bodies, trade unions, academics, businesses and NGOs. As well as the receiving written evidence through the call for evidence, my team ran a series of roundtables in January, followed by sector-specific workshops in February. These helped refine our understanding of the issues and collaboratively develop a set of proposals to tackle non-compliance. Other one-to-one meetings and discussions have supported the development of the conclusions and recommendations.

My Office also commissioned four research projects – one for each at-risk sector – to engage workers in the sector to understand their experiences of work. This sought to understand the perception of the industries in which they worked, their experiences of non-compliance or exploitation (if any), and their knowledge of their employment rights. This research has been valuable in ensuring that the voices of workers are heard and considered in labour market enforcement. Segments from these reports and anonymised quotes have been presented in the following sections to illustrate key points and the full reports are being published alongside this Strategy.

Wherever possible, discussion and recommendations in these sections distinguish between issues that could be addressed in the **immediate term** under current enforcement structures, and issues which should be taken into account when **developing the Single Enforcement Body**.



## 4.1 Social care

### 4.1.1 Introduction

The social care sector is a very important sector, both in terms of its economic contribution and the vital service it provides. The Gross Value Added (GVA) of human health and social work activities contributed was around £145 billion to the UK economy in 2018 (ONS, 2019e), and the care sector itself accounted for around 5 per cent of employment in Great Britain (ONS, 2018d). As well as the economic importance, social care has a critical impact on the quality of life for those with care needs.

This Strategy is primarily focused on improving outcomes for **workers** in the sector, but the importance of outcomes for the **recipients** of care make this a particularly interesting sector. Recipients and workers are not at odds in benefiting from better working conditions, indeed stakeholders were clear there is a positive correlation between employment conditions and the quality of the service provided. I am optimistic that the proposed improvements to enforcement will have indirect benefits for care recipients and their families.

### 4.1.2 Sector context

Social care encompasses many different types of work, therefore treating it as a single sector would be an oversimplification. For the purposes of this Strategy, we have tended to focus on those adult social care activities that are captured under the following Standard Industrial Classifications (SIC) codes:<sup>13</sup>

- SIC 87: Residential Care, referring chiefly to care homes; and
- SIC 88: Social work (non-residential), which focuses on domiciliary care services, including live-in carers.

Overall, social care activities include:

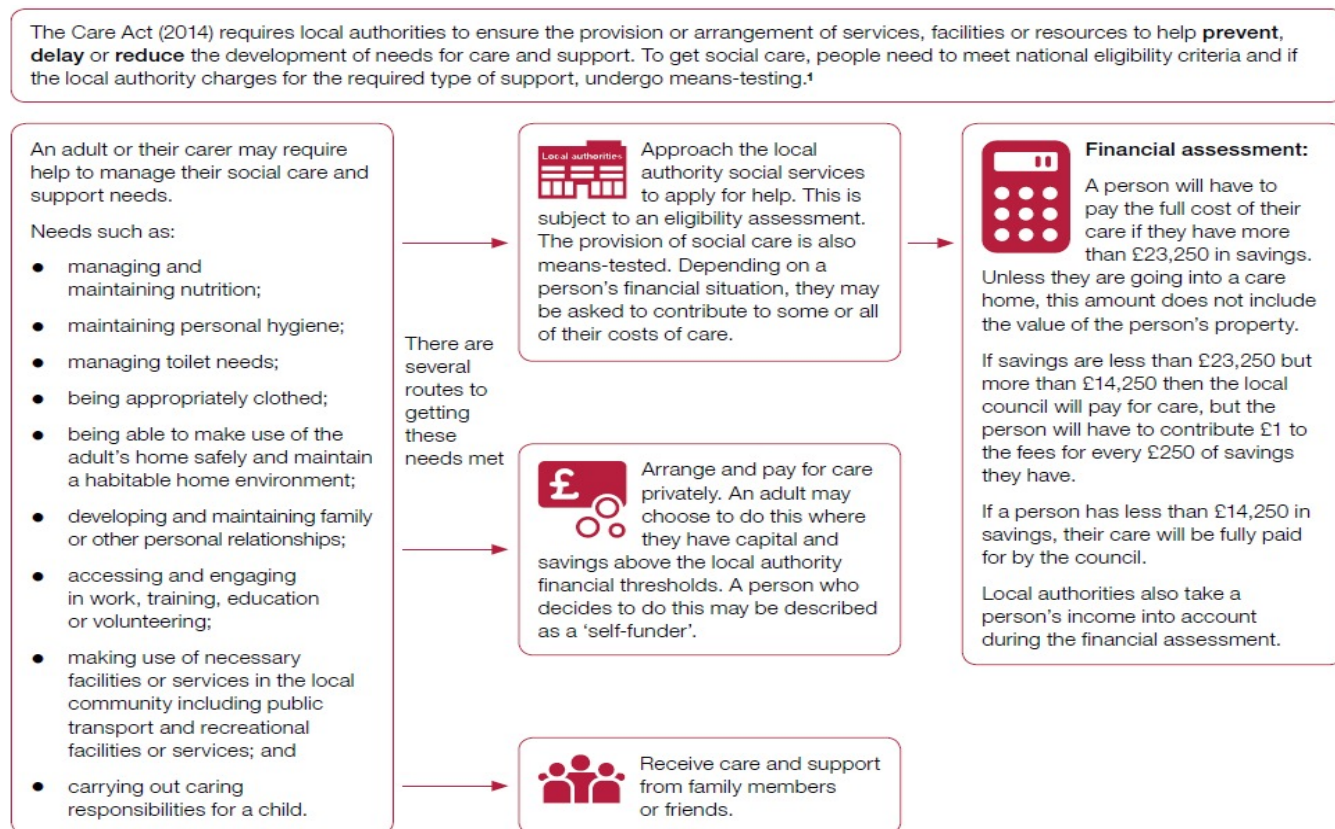
- Support in people's own homes ('home care'/ 'domiciliary care', including 'live-in care, and personal assistants');
- Support in day centres; care provided by care homes and nursing homes ('residential care');
- Reablement services to help people regain independence;
- Providing aids and adaptations for people's homes;
- Providing information and advice; and
- Providing support for family carers.

Care services are tailored to the needs of the recipient, and the individual's circumstances will determine the way in which they receive their care and the subsequent employment relationship (see Figure 4.1.1).

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13 2007 SIC Codes (ONS, 2016).

Figure 4.1.1: Access to and types of adult social care

**Note**

<sup>1</sup> Except for information and advice and safeguarding.

Source: National Audit Office

As set out in Figure 4.1.1, there are three primary routes to receiving care:

- Via the Local Authority;
- Paying for it privately; or
- Receiving care from family members and friends.

The National Audit Office (NAO, 2018a) noted that most care is provided unpaid by family and friends of the recipient, with this informal care provision potentially worth almost £100bn annually.

Where the recipient of care (or their family) organises and pays for care services privately, self-funders will identify a provider themselves, whether this be a care home or domiciliary care services. For the latter, the self-funder can either employ an agency to arrange the services or employ the worker directly to provide those services. Where self-funders are in receipt of domiciliary care, they are most likely to be the legal employer of the worker(s) providing the service. The value of self-funded care was estimated at around £11 billion in 2016/17, but this only represented around a third of formal care provision (NAO, 2018b).

The bulk of the formal care falls to Local Authorities (LAs) – at an estimated value/cost of £20 billion (NAO, 2018a). LAs can provide care services directly but, in recent years, a growing proportion of care is commissioned through external providers. LAs can also indirectly fund the provision of care services through the use of direct payments – monetary support to individuals to be used for procuring care either through LA frameworks or identified privately – which require an assessment both of finances and the needs of the recipient. Where the LA procures places in residential care homes or the services of domiciliary care agencies, these organisations would typically be the legal employers of the staff (as opposed to the LA).

As set out in the Care Act (2014), LAs have to ensure a minimum level of provision or arrangement of care services in their area. This legislation protects service users but has also resulted in immense pressure on LAs. An estimated 38 per cent of council budgets is being spent on adult social care (ADASS, 2019). Against a backdrop of budget cuts – the NAO estimated a 49 per cent reduction in government funding for LAs 2010/11-2017/18 (NAO, 2018b) – LAs are having to seek more and more effective solutions.

Given the extent of the outsourcing, these cost pressures are effectively being pushed onto private sector care providers, who in turn have to find ways to operate at a lower cost. In a market with already thin margins, there is evidence to suggest that this is having a significant impact upon the feasibility of operating in the care sector.

*“Social care is a labour-intensive sector and a large share of its services are purchased by local authorities or the NHS. Therefore the sector is particularly exposed to downward price pressures from the public sector.”* Personal Social Services Research Unit (PSSRU) at the University of Kent response to the Call for Evidence

The 2019 Budget Survey by the Association of Directors of Adult Social Services (ADASS) reports that 75 per cent of councils have reported that providers in their area had closed, ceased trading, or handed back contracts in the last six months (ADASS, 2019). Directors identified the causes of this as being due to ‘other financial difficulties’ (37%), the inability to recruit (26%), and due to Care Quality Commission (CQC) enforcement (14%).

In a sector as reliant on labour as the care sector, it is no surprise that the financial pressures being placed on the providers are leading to poor pay and conditions for workers. This is already a low-paying sector: the hourly pay in the care sector at the lowest decile is around the current National Living Wage (ONS, 2019c). The median hourly pay in the care sector is approximately £9.31 for residential care activities, and £10.48 for social work activities without accommodation.

*“We were paid minimum wage and for senior support workers they added like 20p on top. Even deputy managers earn like an extra pound per hour but they have a lot more responsibilities. Being a senior support worker is not financially attractive, and there are a lot of extra responsibilities.”*

Worker Interview (Hussein and Turnpenney, 2020)

BEIS’ analysis of Annual Survey of Hours and Earnings 2019 estimates more than 17,000 jobs in the sector are paid below the minimum wage (BEIS, 2020). The Low Pay Commission estimates that around 20% of low-paid workers in the social care sector were paid below the National Living Wage in 2018 (LPC, 2018) and consider social care to be a low paying sector (LPC, 2019).

Finding a solution to the funding crisis is the critical issue for the long-term sustainability of this sector. Addressing the structural pressures which impact on pay and conditions will be expensive and involve some difficult decisions by government but nevertheless needs to be taken forward urgently. The Government has publicly committed to tackle the issue of social care, with the 2020 Budget announcing an additional investment of £1 billion in the next year and every year of the current Parliament, in order to stabilise the system (HM Treasury, 2020). This Budget also announced that the Secretary of State for the Department for Health and Social Care (DHSC) had written to parliamentarians to “begin building cross-party consensus on reform” for the adult social care system.

### 4.1.3 Types of non-compliance

Our research and discussions with stakeholders raised a number of issues of non-compliance around worker rights in the care sector. The most common of these is the underpayment of NLW, particularly in relation to **working time**.

There is inherent complexity around the definition of working time within the care sector. In their evidence, stakeholders raised concerns around employers failing to pay for overtime, breaks and shift handovers in a range of sectors, but there are particular issues that arise in the care sector due to the nature of the work. There is some confusion around what constitutes working time in the care sector, such as being on-call or travelling between home care clients, which is experienced by employers and staff alike. The most controversial issue is around sleep-in shifts time which, at the time of writing, is still awaiting clarification through the courts (see Box 4.1.1).<sup>14</sup>

#### Box 4.1.1: Sleep-in time

*Depending on the individual care required, some care workers may stay overnight (sleep-in) at a client's home. The number of hours a worker is paid NMW depends on whether they are expected to work or sleep for this period. Workers who are expected to sleep for most of their shift must be given a suitable place to sleep, however they will only get NMW when they are woken up to perform specific tasks.*

*A former Mencap employee<sup>i</sup> challenged the legality of this, and the employment tribunal ruled that she was entitled to have all the hours sleeping counted as working time for national minimum wage purposes, and therefore was entitled to back pay. This meant that for every of hour of the shift, regardless of whether they were awake and carrying out their duties or asleep, this would be included for NMW purposes. In 2018 this was overturned by the Court of Appeal<sup>ii</sup> which ruled that care workers who sleep at a client's home overnight were not entitled to NMW for those hours and, hence, not entitled to back pay. This was on the basis that the sleep-in workers were only entitled to the NMW when they were performing specific tasks/actually working, and not for when they were available to work.*

*This case has serious ramifications for the sector and, at the time of writing, is awaiting judgement in the Supreme Court.<sup>iii</sup>*

*<sup>i</sup> Royal Mencap Society v Mrs C Tomlinson-Blake: UKEAT/0290/16/DM*

*<sup>ii</sup> Royal Mencap Society v Tomlinson-Blake [2018] EWCA Civ 1641*

*<sup>iii</sup> Royal Mencap Society v Tomlinson-Blake UKSC 2018/0160.*

*Note: In March 2021, the Supreme Court unanimously dismissed the appeals. The judgement held that sleep-in workers should receive an allowance and not the NMW unless they were awake for the purpose of working.*

This impact of the sleep-in case on minimum wage enforcement is discussed further in Section 4.1.4.2.

The confusion around working time is exacerbated by lack of transparency in some payslips, notably where working hours are omitted.

<sup>14</sup> In March 2021, the Supreme Court unanimously dismissed the appeals. The judgement held that sleep-in workers should receive an allowance and not the NMW unless they were awake for the purpose of working. The government is considering the implications of the judgment and will update the Calculating National Minimum Wage guidance.

<https://www.supremecourt.uk/cases/uksc-2018-0160.html>

<https://www.gov.uk/guidance/calculating-the-minimum-wage/working-hours-for-which-the-minimum-wage-must-be-paid>

*“By allowing homecare employers to avoid listing important information, such as how much travel time has been worked and what rates of pay they have received for what hours, the law continues to make it extremely difficult for homecare workers to tell if they have been paid for all their working time.”* Unison response to the Call for Evidence

*“The NMW regulations do not require travel time and expenses to be paid as separate items, even though they stipulate that a care worker’s pay should average out at the minimum wage after factoring in the time they spend in the client’s home, time spent travelling between their different clients and their associated out-of-pocket expenses.”* Low Incomes Tax Reform Group response to the Call for Evidence

A lack of transparency on payslips, coupled with a lack of awareness of rights, means that some minimum wage non-compliance can go undetected by workers.

*“I always write down my hours and check the pay. I don’t work a lot of hours and I know exactly how much I should be paid. If they make a mistake, you have to wait until next payday to get paid. Sometimes it’s a big difference. For example this month they owe me around £200. They say it was not written up properly in their system. These things shouldn’t happen I think. I always tell my colleagues to check their payslips but I’m not sure if they all do it.”*

Worker Interview (Hussein and Turnpenny, 2020)

The onus is on the worker to request to see records of their hours, but there are significant barriers to this ranging from complexity and inconvenience, through to fear of reprisal and loss of work.

There are similar concerns around **deductions from pay**, such as fees charged for DBS checks, and failure to compensate costs for travel between visits, which may drop their pay below the NLW. These would not appear on payslips and may be difficult to identify through record checks.

### **Mary – live-in care worker**

Mary is registered with an employment agency that supplies staff to a number of care providers. Working via an employment agency provides additional income and helps her bridge gaps in her income between live-in placements.

Mary moved to the UK in the early 2000s to study at a university and soon started working part-time as a care worker in a registered care home. Over the years, she had various jobs but care was her main source of income until 2007, when she set up a charity to support vulnerable women in the community. In 2018, she decided to return to social care due to financial difficulties and registered with a live-in care agency.

Mary had to buy uniforms for all the agencies under the main agency, sold by their supplier at a “special low price”. The agency charges workers for training and does not pay for travel/use of own car (wear and tear, insurance premium, mileage).

Worker Interview (Hussein and Turnpenny, 2020)

Furthermore, there are many dubious **employment status** practices (discussed in more detail in Section 4.3) being used in the care sector in order to reduce labour costs for employers. Stakeholders noted that some workers are being forced into self-employment by domiciliary agencies to avoid minimum wage obligations, while the use of zero hours contracts are reducing the burdens of a permanent workforce but leaving other staff in increasingly precarious situations.

Widely reported problems with pay and conditions in the sector have inevitably led to challenges in recruiting and retaining staff (as seen in the ADASS Budget survey, 2019). In 2019, Skills for Care estimated that the staff turnover rate of directly employed staff working in the adult social care was around 30 per cent in 2018/19.

There is some evidence to suggest that these atypical employment relationships within the non-permanent workforce can leave workers more vulnerable to labour exploitation. For instance, the high churn in the sector may mean that supervisors have limited interactions with the care workers before they move on, which can prevent exploitation indicators from being identified or reported.

*“The distancing and dismantling of employee relations we found, when coupled with an increase in staff turnover, may increase modern slavery risk for permanent, as well as temporary employees, close to the point of commissioning.” Emberson and Trautrimis (2018)*

Concerns were raised by stakeholders about the occupational mobility of the care workforce potentially causing many to leave the sector, particularly given the comparable pay and perhaps better conditions in other sectors such as retail. In contrast, Skills for Care (2019) identified a degree of retention of skills and experience within the sector itself but noted that the vacancy rate stood at nearly 8 per cent in 2018/19, almost double what it was in 2012/13.

Considering current workforce issues and population projections, Skills for Care (2019) estimate that as many as 800,000 new jobs will be required in the care sector by 2035 to meet demand. Given the recruitment and retention problems the sector is experiencing, there are questions as to the long-term supply of labour in this sector. At the time of writing, the Government’s announced immigration policy intentions would suggest that overseas recruitment will not be an option for this sector as care work would be classed as ‘low-skill’.<sup>15</sup> Currently, around one in six (17 per cent) of the care workforce is non-British, almost half (8 per cent) of which are EU nationals (Skills for Care, 2019). Therefore, serious consideration should be made of the impact of post-Brexit immigration policy on the already fragile social care sector and its workforce.

## 4.1.4 Regulating the care sector

### 4.1.4.1 Care regulators

Social care is a devolved matter in the UK and each devolved administration has its own regulator for the sector (summarised in Table 4.1.1). Though their exact powers, remits and ways of working differ, all these care regulators are primarily focused on ensuring quality care provision.

<sup>15</sup> In July 2020, the Government announced a Health and Care visa as part of the new immigration system, but many care workers would fail to meet the required criteria. <https://www.gov.uk/guidance/new-immigration-system-what-you-need-to-know>

**Table 4.1.1: Summary of Devolved Administration Regulator Remit**

Devolved administration	Regulator remit
<b>England</b>	
<b>Care Quality Commission (CQC)</b>	<ul style="list-style-type: none"> <li>Registers and inspects healthcare and social care providers;<sup>16</sup></li> <li>Civil and criminal enforcement powers to impose conditions of registration, suspend/cancel registration, prosecute, and impose cautions and/or penalties; and</li> <li>Do not check employment matters, but engage with workers during the investigation process.</li> </ul>
<b>Social Work England</b>	<ul style="list-style-type: none"> <li>Regulator for social workers;</li> <li>Sets professional standards for working in social care;</li> <li>Ensures continuing professional development and quality assures education/training opportunities;</li> <li>Maintains a register of around 100,000 social workers;</li> <li>Runs a fitness to practise system;</li> <li>Investigates complaints.</li> </ul>
<b>Wales</b>	
<b>Care Inspectorate Wales (CIW)</b>	<ul style="list-style-type: none"> <li>Registers and inspect social care providers;</li> <li>Civil and criminal power to stop providers from operating, limit their operation, take action to initiate a criminal investigation, serve a penalty notice or recommend a criminal prosecution; and</li> <li>Does not investigate individual complaints or resolve disagreements between clients and their service providers. Engages with workers through the investigation process.</li> </ul>
<b>Social Care Wales</b>	<ul style="list-style-type: none"> <li>Oversees mandatory registration<sup>17</sup> of social workers, social care managers (adult home care managers, domiciliary care managers), and domiciliary care workers (mandatory from April 2020);</li> <li>Will investigate concerns<sup>18</sup> about registered persons;</li> <li>Communicates with workers via registration process, however this is focused on fitness to practice rather than employment conditions;</li> <li>Set Code of Practice of professional conduct for workers and employers; and</li> <li>Cannot investigate concerns regarding an organisation or if an employer fails to comply with Code of Practice (this falls under CIW remit).</li> </ul>
<b>Scotland</b>	
<b>Care Inspectorate</b>	<ul style="list-style-type: none"> <li>Registers and inspects all Scottish local authority social work services;</li> <li>Has powers to issue condition notice, improvement notice, and urgent proceedings to apply for emergency cancellation of a service's registration or apply for changes to their conditions; and</li> <li>Provides guidance with Scottish Social Services Council aimed at employers, workers and students on raising concerns in the workplace.</li> </ul>

16 A service provider can be an individual, a partnership or an organisation. Covers regulated activities listed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

17 Registration Rules 2018 as the legal basis for registering the social care workforce in Wales.

18 This applies to whether a registered person is doing their work safely, effectively and in-line with the Code of Professional Practice. This includes incidents which happen outside work.

Devolved administration	Regulator remit
<b>Scottish Social Services Council (SSSC)</b>	<ul style="list-style-type: none"> <li>• Registers social service workers; interacts with workers through registration process, focused on whether the person is fit to practice in this sector;</li> <li>• Set Code of Practice of professional conduct for workers and employers;</li> <li>• May investigate where worker reported not to be adhering to the Codes of Practice; and</li> <li>• Panel decides on applications, impairment and temporary orders (can suspend worker registration and/or impose conditions on their registration until allegations against them investigated) and publish outcomes online.</li> </ul>
<b>Northern Ireland</b>	
<b>Northern Ireland Social Care Council (NISCC)</b>	<ul style="list-style-type: none"> <li>• Maintains Compulsory Registration for Social Care Workers;</li> <li>• Holds NISCC Standards of Conduct and Practice;</li> <li>• If a worker does not adhere to standards, they can require more training or withdraw registration; and</li> <li>• Has standards for employers on how to support the registered workforce to meet their conduct standards, but this does not include detailed aspects of working conditions or monitoring employers.</li> <li>• Maintains Compulsory Registration for Social Care Workers;</li> <li>• Holds NISCC Standards of Conduct and Practice;</li> <li>• If a worker does not adhere to standards, they can require more training or withdraw registration; and</li> <li>• Has standards for employers on how to support the registered workforce to meet their conduct standards, but this does not include detailed aspects of working conditions or monitoring employers.</li> </ul>
<b>Regulation and Quality Improvement Authority (RQIA)</b>	<ul style="list-style-type: none"> <li>• Independent health and social care regulator;</li> <li>• Monitors and inspects the availability and quality of health and social care services in Northern Ireland;<sup>19</sup></li> <li>• Registers and inspects statutory and private health and social care services; and</li> <li>• Interacts with workers through inspection process, however, in the first instance, issues should be raised with the service provider.</li> </ul>

Different worker registers are managed by the care regulators. These are, of course, founded on ensuring quality of care to users, but can also serve to improve conditions and protections for workers. However, there are two limitations in the current systems for this to happen: firstly, there are gaps in the coverage of registration, for example self-employed persons operating in the care sector do not require registration; and, secondly, most of these schemes do not consider employment conditions within their registration or inspection processes as such matters fall outside of the regulatory powers.

In our call for evidence, stakeholders repeatedly noted that there is a direct correlation between the treatment of care workers and the quality of the services that they provide, which suggests that consideration of pay and conditions in the sector is particularly important in terms of user outcomes. I fully recognise the pressure that the care regulators are already under and to add working conditions to their remit would likely be overly burdensome. However, I believe that

<sup>19</sup> This includes nursing and residential homes, children's homes, domiciliary care and nursing agencies, adult day care services, places of detention including prisons, learning disability wards, mental health wards, acute hospitals, private dental clinics, and independent hospitals and hospices and clinics.



an integrated, multi-agency approach is needed to tackle labour exploitation in this sector, using the expertise within the LME bodies to help address the gaps in coverage amongst the care regulators and taking advantage of opportunities that present themselves within current inspection frameworks.

For instance, the care regulators will typically have some interaction with workers during their inspections, which ought to put them in a position to notice indicators of dubious employment standards or working practices (even without specific expertise in this area). I understand that the CQC are seeking to implement a training package for its inspectors regarding the identification of potential indicators of exploitation. This is very promising, and I encourage the CQC to seek support from the LME bodies in the development of this training since they have already developed resources in this area, such as the GLAA's Spotting the Signs materials.

We have heard that the care regulators' inspectors are typically seen as trusted individuals, to whom workers may feel comfortable divulging sensitive information or concerns. It is important that these inspectors are alert to and informed on how to refer cases of potential labour abuses to relevant authorities. There is already some evidence of this being put into practice in South Wales, demonstrating the capability of care regulators to identify and tackle exploitation in the care sector.

#### **Box 4.1.2 Case Study of Care Sector Exploitation**

In 2019, the Care Inspectorate Wales was made aware of potentially exploitative practices taking place in care homes in Gwent, South Wales. This was subsequently referred to local police, leading to the development and ultimate launch of a joint investigation between Gwent Police, the National Crime Agency, the Care Inspectorate Wales and the Local Authority.

This joined-up approach provided multiple disruption opportunities to ensure the safety of staff and residents in these care homes. In total, four individuals were arrested for suspected modern slavery offences.

The joined-up approach used in South Wales meant that several avenues of enforcement activity were taken to safeguard the workers and the recipients of care. However, it also reflects a wider lack of awareness of the remits of the three LME bodies across the care regulators. The involvement of the LME bodies would strengthen this work, particularly where the level of exploitation falls below the threshold for modern slavery offences and would therefore not be an issue for the police. We came across several examples where cases of labour issues were being dealt with without their expertise and resource.

In their response to my call for evidence, the CQC noted that it had made eight referrals to the Government Agency Intelligence Network (GAIN) in the last 12 months, demonstrating both their capacity to identify potential modern slavery or labour exploitation and their active approach to intelligence-sharing. GAIN referrals are typically used to facilitate potential joint-working to tackle concerns around serious and organised crime, and GAIN membership could be valuable for generating a multi-agency approach to threats in the care sector. This is particularly true for those agencies whose intelligence and case referral mechanisms with core law enforcement partners are lacking. For this reason, I would urge the care regulators in the devolved administrations to join the GAIN network if they have not done so already.

Similarly, given their interaction with workers and strong knowledge of this sector, I would strongly encourage greater joint-working and intelligence sharing between care regulators and the three labour market enforcement bodies. Though, as has been noted in this section, there are some risks of modern slavery indicators within the care sector, the incidence of offences below this threshold far exceeds the number of cases of such extreme exploitation. As the core objective of

GAIN is to tackle serious and organised crime, GAIN membership should be sought by the care regulators as a referral route in addition to (not in place of) the development of strong, effective gateways between themselves and the LME bodies (see Recommendation 1c).

#### 4.1.4.2 Existing Labour Market Enforcement

The three bodies are undertaking significant amounts of enforcement in the care sector.

##### HMRC NMW

As discussed earlier, there are a number of concerns around minimum wage non-compliance in the care sector. The care sector has typically been an important area for HMRC NMW enforcement, but the progression of the Mencap case through the courts has made this sector an even higher priority.

Beginning in early 2017, a number of social care employers raised concerns with the Government that enforcement of historic 'sleep-in time' liabilities could cause significant financial difficulties across the social care sector,<sup>20</sup> and potentially undermine continuity of care should some providers face bankruptcy. After consultation with HMRC and other stakeholders, in July 2017 the Government announced a suspension of HMRC enforcement action until October 2017 to allow time for consultation and impact assessment. Simultaneously, the Government announced a Secretary of State direction waiving financial penalties on sleep-in shifts time arrears accrued prior to the date of the Government announcement.

Following the temporary suspension of enforcement activity, the Government introduced the Social Care Compliance Scheme (SCCS) on 1st November 2017. All social care employers already subject to a minimum wage investigation and those who believed they may have sleep-in time arrears, were invited to join the scheme. Employers were given until 31st December 2018 to complete a self-review and make a declaration to HMRC of the wage arrears they had identified. On acceptance of a declaration, social care employers had until 31st March 2019 to pay all identified minimum wage arrears to their workers. Penalties were waived and employers were exempt from the BEIS minimum wage Naming Scheme.

Following Mencap's appeal, the Court of Appeal published a judgement in July 2018 overturning the Employment Appeal Tribunal's decision. This meant that care workers who had to stay overnight (sleep-in) as part of their role would not be entitled to up to six years back pay.

Despite the Court of Appeal judgement, BEIS reported that HMRC received over 1,000 declarations from employers through the SCCS. In total, the scheme identified over £6 million in arrears for over 25,800 workers (BEIS, 2020a). Since the SCCS closed, the Mencap case has progressed to the Supreme Court, which heard the appeal in February 2020.<sup>21</sup> I await the outcome of this judgement.

Accurate and up-to-date guidance is crucial for making sure employers know their responsibilities around the minimum wage. Whatever the final judgement on sleep-in shifts time, employers will need to ensure they are compliant with the law and make this clear in their records. Hence, the minimum wage guidance should be updated to reflect this as soon as possible. I know that HMRC and BEIS are alive to this matter, and I encourage them to continue their internal preparations for any potential outcome to be assured that businesses are supported to be compliant in a changing legislative landscape.

20 Royal Mencap Society v Mrs C Tomlinson-Blake: UKEAT/0290/16/DM Employment Appeal Tribunal judgment of Mrs Justice Simler on 21 April 2017.

21 UKSC 2018/0160. In March 2021, the Supreme Court unanimously dismissed the appeals. The judgement held that sleep-in workers should receive an allowance and not the NMW unless they were awake for the purpose of working.

The issue of sleep-in time demonstrates the challenges faced by the care sector when interpreting minimum wage regulations and applying them to the industry's particular ways of working. However, complexities in defining working time are not unique to the care sector, with stakeholders drawing parallels of unpaid on-call or travel time between the care and entertainment sectors, among others. As discussed earlier, the lack of transparency in what constitutes working time makes it difficult for workers to identify problems with their own pay, but this also presents difficulties for employers that wish to be compliant. We heard that addressing such complexities in the application of minimum wage regulations to working time would help improve compliance in this sector and others that face similar problems.

The 2019/20 LME Strategy recommended that BEIS, with input from HMRC NMW, produce supplementary sector-specific advice booklets for those sectors where trends of certain types of breaches emerge or where the regulatory landscape is particularly complex (Recommendation 2, DLME 2019).

In October 2020, the Government partially accepted this recommendation but opted to develop *“new thematic guides on topics where breaches are common”* rather than sector-specific information. While this will no doubt also be valuable, sector-specific guidance and advice is an issue that is consistently raised by stakeholders and I find myself recommending that BEIS, with the support of HMRC NMW, re-examine the issue of developing sector-specific guidance to address complexities for those industries where the nature of work is atypical, including (but not limited to) social care (see Recommendation 2).

Should this not be a route BEIS wish to pursue, the effectiveness of guidance should be formally evaluated and considered with the input of the Guidance Readership Panel. At the same time, HMRC NMW also continue to expand their sector-specific communication and briefings via other routes (e.g. through webinars, e-learning, campaigns etc.).

## EAS

The presence of employment businesses in the sector means that EAS also has a role in the regulation of the care sector. However, despite the name, many domiciliary care agencies do not typically fall within the EAS remit. It is only under specific circumstances that entities within the care sector can be regulated by EAS.

Some typical employment business relationships exist, for instance in the supply of labour into a care home, e.g. to cover absences. In the home care subsector, though, it is rather more complicated. For example, if the individual both pays for the services (with or without a direct payment from the local authority) delivered through a domiciliary care agency, and the individual sets the level or nature of the care provided, then they have engaged the domiciliary care agency in an employment business arrangement and, hence, the agency is subject to EAS regulations. In contrast, if the home care agency is commissioned by the local authority to provide care to individuals, that would fall outside of EAS remit.

Despite the nuances regarding their scope for enforcement in the care sector, the volume of cases that EAS is undertaking in the industry is fairly high. 15 per cent of cases taken by EAS in 2018/19 were in the wider healthcare sector, with 178 infringements identified across these 127 cases (EAS, 2020). I am encouraged by the supportive working relationship between EAS and CQC when tackling threats in the care sector, and I hope that this extends to the equivalent bodies in the devolved administrations.

## GLAA

As illustrated by Box 4.1.2 (Case Study of Care Sector Exploitation), there is also evidence of severe labour exploitation and even modern slavery offences in the care sector.

*“Our research has revealed the risks of exploitation, indicative of modern slavery, pre-and post-recruitment relating both to financial and operational malpractice” (Emberson and Trautrim, 2019) Rights Lab at The University of Nottingham response to Call for Evidence*

Following the expansion of their remit and powers in 2017, the GLAA now have the power to investigate such cases through their labour abuse prevention officers (LAPOs). However, the GLAA did not undertake any enforcement cases in the care sector in 2018/19, and only received 28 intelligence reports regarding the sector in that year, representing less than 1 per cent of reports received.

I noted earlier that the LME bodies should raise their profiles within the sector, and this is particularly true for the GLAA given these severe labour exploitation risks. I recognise, though, that given their intelligence-led approach, GLAA are unable to tackle threats without supporting intelligence. GLAA should strengthen their existing intelligence-sharing gateways between themselves and care regulators so that they might provide training, education or support for alternative disruption activities to enforcement in the sector in future.

## 4.1.5 Raising awareness

Publicity around the low sector pay and the modern slavery offences outlined in the South Wales case study have raised the general awareness of issues within the care sector. A less publicised issue that emerged during my call for evidence is that of the vulnerabilities of **live-in carers**.

Live-in carers can find themselves reliant on their individual employer for not just their pay but also their food and accommodation. Workers under these circumstances are often hidden in residential homes, away from public view and may have limited interaction with those outside of the residence. This means that where the employment situation becomes abusive, they can be trapped with limited support and unable to raise issues around their pay and conditions even if they are aware that their rights are being breached.

### Mary – live-in care worker

As a live-in carer, Mary’s contracts were with the agencies, not directly with the client. This meant that food allowance had to be negotiated with the client or their family, the agency did not set any requirements. No families were willing to provide food allowance and they would always say the carer could eat “as part of the household” but then be “mean and rude” to an extent that Mary would be uncomfortable to eat or would not eat. In her words “after all, who wants to be insulted or cursed for food which they would actually have worked for?”

Worker Interview (Hussein and Turnpenny, 2020)

Similar concerns apply to those self-employed live-in carers who are matched to jobs by introductory agencies. Introductory agencies can charge fees for introducing carers and clients, but Hussein and Turnpenny (2020) noted that some may be as high as 20 per cent or extend past the introduction. These agencies are not subject to CQC registration in England because they do not provide control of the service, but this leaves both the service providers and users unprotected.

### Alma – live-in care worker

Alma is a very experienced care worker and has a degree in a related discipline. She had worked in social care in her country for a number of years prior to moving to the UK.

She raised concerns about financial abuse and neglect of some of her clients with the agency; however, “the agency would not listen”. “They don’t care about the carer, they don’t care about the customer, they only care about earning money.”

Worker Interview (Hussein and Turnpenny, 2020)

Stakeholders raised concerns that the dependence on their employer, combined with the lack of oversight, may leave some live-in carers stuck in a working arrangement akin to modern slavery. There is limited evidence on the prevalence of these labour abuses, particularly the extreme cases, but there is certainly a fear that some employers in live-in care arrangements are not providing adequate pay and conditions to their staff. Though many recipients of care (and their families) have very good relationships with care workers, we have heard that many are simply unaware that they are the employer in this scenario and, hence, do not meet their employer obligations.

This is not unique to live-in carers, as the routes to care, as noted earlier, are very complex. The actual responsibilities of employing care workers can be difficult for individuals to untangle, which may mean that individuals can be unwittingly non-compliant employers.

*“...Becoming/being an individual employer is a complex task for which individuals or families often receive very limited support from local authorities or clinical commissioning groups (Whelton et al., 2019), and may end up – unintentionally – breaching some employment regulations (e.g. employment status, paid holiday, payment of sick leave, pension regulations etc.)”* The PSSRU at the University of Kent response to the Call for Evidence

Over the course of my stakeholder engagement, it has become clear to me that work must be done to educate these new micro-employers as to their role and obligations within their care arrangements. The LME bodies and wider HMRC have produced materials on this in the past, which are valuable sources of information and guidance. However, I would like to see more innovative dissemination of this guidance to ensure that this is provided to all those that need it.

One promising solution proposed was to provide this guidance to local authorities to share with all those in receipt of direct payments for care services, which may help reach those individuals that may not otherwise realise that they are acting as an employer.

Educating employers should help support individuals to be compliant with employment regulations. Unfortunately, not everyone will wish to be compliant, so the LME bodies should also seek to raise awareness of rights among the workers. Due to the often hidden nature of this population, identifying means to interact with them can be challenging.

There may be an opportunity to educate care workers about their basic employment rights on entry or progression through the sector. The University of Nottingham Rights Lab noted in their response to my call for evidence that training initiatives, such as the Care Certificate in England, are focused upon patient safety but potentially could also cover workers’ rights. This could be used to signpost prospective and existing care workers to guidance around very basic employment rights and complaints routes when they are seeking training or qualifications, if not to incorporate these messages into the courses themselves.

Moreover, the existence of registers of workers in the sector in some of the devolved administrations should provide an effective mechanism to communicate with workers. Though there is no UK-wide register of social care workers, social workers in Scotland and Northern Ireland are subject to registration through the SSSC and NISCC respectively, while Social Care Wales will be mandating the registration of all domiciliary care workers in Wales from April 2020. These registration schemes, though not providing complete coverage of the workforce, may present an opportunity to disseminate messages around employment rights and complaints routes directly to those working in the care sector.

Both routes have potential for raising awareness of workers' rights in the care sector and options such as these should be seriously considered going forward. For optimal delivery of this guidance and information, the LME bodies should work closely with the sector skills providers, organisations such as Skills for Care, and those devolved entities with worker registration schemes. I am conscious that there are other stakeholders operating in this sector that provide help and guidance to those working in care, and the LME bodies should identify these parties and support the development and delivery of information related to employment rights in a similar fashion (see Recommendation 3).

## 4.1.6 Role of Local Authorities

As discussed earlier, local authorities (LAs) play a significant role in this sector but are themselves under immense pressure to minimise the costs of care provision. Some stakeholders noted that care workers directly employed by LAs tend to have acceptable pay and conditions, but that there are more risks to workers engaged by outsourced providers. Our stakeholders largely attributed this to a perceived lack of due diligence undertaken by LAs in the procurement of care services, perhaps related to resource constraints or the need to meet the minimum provisions of the Care Act (2014).

### 4.1.6.1 Existing guidance for local authorities and good practice

Statutory guidance sets out the requirements<sup>22</sup> for local authorities when commissioning adult social care (4.3 and 4.31, DHSC, 2020). Among other things, this guidance sets the expectation that commissioners should have the assurance that service providers will comply with minimum wage legislation for hourly pay or equivalent salary, including 'appropriate remuneration' for time spent travelling between appointments. While certainly informative, the best practice presented in this guidance is primarily focused on ensuring a high quality of care rather than protecting workers' rights.

More recently, the Local Government Association (LGA) produced detailed guidance for councils in the National Procurement Strategy 2018, which presented a toolkit for robust procurement by LAs. While this document provides useful "*tips on how to get the best out of procurement and contract management*" (LGA 2018, p:2), it has little coverage of workers' rights and regulations on the minimum wage. Similarly, the National Social Care Category Strategy for local government (LGA, 2015) sets out clear recommendations and resources for the commissioning of care services by LAs but focuses primarily on improving the quality of service rather than safeguarding workers.

Nevertheless, I have heard many examples of LAs independently seeking ways to ensure a quality of provision of care services with greater consideration of the impact on both the providers and the workers.

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22 s5 Care Act 2014.

### Box 4.1.3: Good practice from Nottinghamshire County Council

“A ‘Group Quality and Market’ Manager was responsible for the relationship management of all providers of residential care and nursing homes; home care; community and supported living services. Monitoring Officers were responsible for auditing a portfolio of service providers and administering any corrective action plans. In 2008 the local authority had introduced a banded fee structure, based upon a quality audit of each residential care and nursing home.

Banding was established by an initial audit of five aspects including care-worker recruitment; appropriate systems, processes and governance; reference and staffing level checks. Audits were repeated annually; although, as with CQC audits, the focus of each audit was concerned with ensuring care-worker competence so that a safe service could be delivered. These audits did not include agency use checks and, though irregularities had on occasion come to light, this had been the result of word of mouth rather than routine investigation. Joint audits were sometimes undertaken with local Clinical Commissioning Group partners and the CQC itself.”

Emberson, C., & Trautrim, A. (in press). How might modern slavery risk in adult social care procurement be reduced?

It is encouraging to see LAs investing efforts into improving their own processes, but both the nature and quality of approaches to social care commissioning can vary greatly across the country. The guidance from LGA is very welcome, and I would hope to see similar products from them in future. However, having an agreed national approach that incorporated employment rights into the process would be a stronger approach.

#### 4.1.6.2 Devolved Administrations and support for local authorities

For instance, the Scottish Government has produced detailed guidance on addressing fair work practices in procurement (Scottish Government, 2018). Moreover, it has also published best practice guidance on the procurement of care and support services, including consideration of fair work practices such as the living wage (Scottish Government, 2016).

Similarly, the Welsh Government launched a Code of Practice (Ethical employment in supply chains: code of practice, guidance and training) to guide procurement in the Welsh public sector in 2017. The Code of Practice consists of 12 commitments for procuring goods and services, covering issues such as: modern slavery; bogus self-employment; payment of the living wage; and the unfair use of umbrella companies and zero hours contracts (Welsh Government, 2017). The response to the Code of Practice has been overwhelmingly positive with almost all LAs in Wales currently signed up to it.

However, we have heard that its reception amongst providers in the social care sector has been less warm, with concerns raised that compliance with the Code of Practice is difficult for providers in this sector due to funding constraints passed on by LAs in their commissioning processes. With particular problems around ensuring the Living Wage Foundation living wage, some LAs have signed up to the Code with promises to ‘consider’ measures around pay rather than making any firmer commitments in the first instance. As a result of this, and recommendations in Fair Work Wales (Fair Work Commission, 2019), the Welsh Government is working with partners to create a Fair Work Forum in the social care sector that will help develop the right conditions for promoting fair work and take-up of the Code.

The Welsh Government is now exploring the option of a Social Partnership Bill. A consultation was launched in November 2019 seeking views on the strengthening of social partnerships to encourage fair work practices across Wales (Welsh Government, 2019). This closed in January 2020. Depending on the outcome of this consultation, this could “*place a duty on public bodies to work in social partnership and promote fair work goals*”, with some entities expected to produce a procurement strategy. This commitment from the Welsh Government to improve the experience of work across the country is commendable, and I look forward to seeing the outcome of the consultation.

### 4.1.6.3 Other initiatives supporting local authorities

More specific to the care sector, the UNISON Ethical Care Charter outlines the minimum standards to which councils commissioning care should adhere (UNISON, 2013). The Charter consists of guidance of what ought to be considered at each stage of commissioning with regards to employment conditions. The Charter includes provisions such as paying the NLW, paying for travel, ensuring workers have suitable training, and to ensure that zero-hour contracts are being used appropriately and “*not used in place of permanent contracts*”.<sup>23</sup> Though this was designed to be a clear and achievable standard, at the time of writing, only 46 councils have signed up to the Charter since its launch in 2013. However, even in those councils that have not signed up, stakeholders felt that the UNISON Charter had raised awareness of employment rights and issues within this sector.

Moreover, these initiatives also offer a tangible baseline against which current and prospective contracts can be assessed. We heard that LAs will consider CQC ratings of providers when evaluating bids for care service contracts but, beyond this, there is little available information to assess the quality of service of the potential compliance of prospective contractors during the procurement process. The vast majority of care providers in the UK are not large enough to need to provide a modern slavery statement, which might otherwise provide more information as to the prospective contractors’ approach to employment.

The UK Home Care Association (UKHCA) publishes estimates on the minimum cost of providing home care in a legally compliant way, which incorporates uplifts in the NMW/NLW (UKHCA, 2020a). LAs are encouraged to use the UKHCA Minimum Price as a baseline when considering bids for contracts. The UKHCA also regularly updates their NMW/NLW toolkit to help homecare providers meet the minimum wage requirements (UKHCA, 2020b). The toolkit sets out the current law with practical examples and provides a step-by-step compliance assessment tool. Using these tools, LAs should be able to identify any prospective contractors offering to operate below the estimated break-even point, which is likely to be indicative of some degree of non-compliance.

#### Box 4.1.4 Good practice from Reading Borough Council, UNISON Charter member

Since 2015, Reading Borough Council have used a Home Care & Support Framework (HCSF) when commissioning social care. The HCSF includes provisions in line with the UNISON Charter, such as paying the national living wage, travel time, and ensuring the option for zero hour contracts. The expectation clearly set out by the Council is that all care providers will be compliant with the Reading Dignity in Care Charter and the key Ethical Care Charter stipulations are embedded in the contracts.

The Council has re-procured its home care services and the new HCSF will commence in April 2020. In the new contract, the Council has also implemented two tiers of contract management that seek to ensure that care providers adhere to the expected quality standards (tier 2) and work to achieve ‘Gold Standard’ status (tier 1). Providers are ranked



according to their quality scores. Where quality concerns are identified for a provider, the Council may give the provider either a Red placement (no new placements and will be removed from the HCSF until the flag is lifted), or an Amber placement (placements made with caution according to the particular issue. This will also be shared internally with colleagues, professionals and neighbouring local authorities.

The Council carries out checks regarding the quality of service of all their providers. A risk matrix is in place which flags providers that are potentially a quality risk, enabling appropriate and timely intervention. The risk matrix uses information gathered from safeguarding, complaints, feedback from service users and health and social care professionals as well as CQC ratings and other performance indicators to calculate potential risk. This information may then lead to visits or inspections by the Council.

At the time of writing, a new Supported Living Framework (SLF) was due to begin in April 2020 to replace the current framework. As the rates for different services vary, the tiering is based on both quality and price rather than just quality as in the HCSF (where the hourly rate is the same for all providers).

The Council's Workforce Development Team also offers a range of support for providers, including:

- Funded social care e-learning;
- Funded Safeguarding, Mental Capacity Act and Deprivation of Liberty Safeguards courses;
- Commissioned training courses according to demand;
- Online social care assessments, advice and training;
- Administration of a Registered Managers Network in Reading; and
- A regular newsletter.

Having a baseline standard can support LAs in their due diligence not only at the point of procurement, but also during the lifetime of the contracts. Clear standards and expectations may help LAs to identify any potential breaches of employment rights and handle them effectively. We have heard some examples of good practice by LA contract monitoring officers, whose role, in part, involves reviewing the practices of providers and ensuring compliance with their contract and relevant regulations.

It is encouraging to hear that LAs are still investing time and resource into contract management. However, in all the examples raised by stakeholders, LA contract management officers were referring any suspected breaches of tax or employment laws to their internal fraud or procurement teams rather than any of the three LME enforcement bodies. LAs already bear significant burdens with severe budgetary constraints, so it is unlikely that handling these cases internally is the best use of their limited resources, and neither will they necessarily have the expertise or powers to deal with issues effectively. This activity may lead to the LA terminating its contracts with the non-compliant provider, but this may not necessarily cause the provider to cease operating or abusing workers in the sector.

It was noted that, in extreme cases, contract monitoring officers have been known to refer concerns to the police, but I have heard limited evidence of referrals being made to the relevant care regulator or the LME bodies, despite the immediate relevance of such information. Any monitoring of care providers done by LAs – or, indeed, any other stakeholders – which finds non-compliance should be shared with relevant parties to enable effective disruption of labour abuses.

The LME bodies therefore need to raise their profile (and that of their referral pathways) within LAs to support the LAs in their efforts to identify and tackle any suspected non-compliance within their commissioned care (see Recommendation 4).

### 4.1.7 Conclusion and recommendations

The care sector is very complex. A great many parties across the UK are working hard to ensure a high quality of care is being provided to those vulnerable people that rely on this service. This patchwork of regulatory frameworks results in distinct variations between each of the UK nations, with each care regulator having its own nuanced remit compared to its equivalents in other nations.

I understand that other than social work in England a large part of the workforce is not registered. Therefore a large part of the sector does not have a recognised authority charged with registering at the workforce for conduct and professional standards, and it appears that it is falling behind the devolved authorities in this respect.

Given the differences in regulatory practices across the UK, I believe that there is an opportunity to compare different approaches and learn from good practice in the effective safeguarding of the care sector workforce. Additionally, the important debates and workstreams within DHSC around long-term social care reform also provide a significant opportunity for BEIS and the LME bodies to highlight the importance of consideration of worker rights and enforcement.

I would see benefit in bringing all the care regulators together in a conference, with the LME bodies, to share their experiences and expertise in the monitoring and enforcement of this sector. BEIS/HO and LME bodies may wish to find other ways to facilitate discussion, but they should work together to consider levers and activities that can be applied both in the short- and long-term, particularly given the ongoing work to improve the sector's circumstances.

With the principle focus on the protection of workers in this high-risk sector, I believe that BEIS and HO should play a leading role in the progression of this discussion, with active support from my Office and the LME bodies.

Finally, the COVID-19 pandemic has highlighted the vital work of social care workers, in turn raising the profile of the low pay and sometimes problematic working arrangements and conditions they experience. I hope that the Government responds to this greater public awareness and concern by taking steps to improve working conditions in this important sector, including action to tackle non-compliance and exploitation.

**Recommendation 1:****All bodies – 3 year timeframe**

The LME bodies should strengthen their relationship with care regulators across the devolved administrations by:

- a. Raising their profile and ensuring their powers and remit are well-known in the sector;
- b. Providing active support in the training of inspectors, enabling them to spot the signs of labour exploitation; and
- c. Reviewing existing gateways and processes to ensure smooth intelligence-sharing and referrals between the LME bodies and the care regulators, including effective signposting to each other's complaints/whistleblowing routes.

**Recommendation 2:****BEIS and HMRC – one-year delivery period**

BEIS with support of HMRC NMW should continue to improve guidance around NMW, in collaboration with stakeholders, by:

- a. Updating guidance promptly following any significant legal or policy developments, and proactively disseminating this in a timely manner with a publicity campaign to reach both workers and employers; and
- b. Re-examining developing sector-specific guidance to address complexities in NMW guidance for those industries where the nature of work is atypical, including (but not limited to) social care.

**Recommendation 3:****All Bodies- two-year delivery period**

The LME bodies should work closely with external partners, particularly within high-risk sectors, to find innovative ways to disseminate information and raise awareness on employment rights and enforcement among employers and workers.

Specifically, within social care:

- a. The LME bodies should bring together an information pack of employer obligations for Local Authorities to pass on to those receiving direct payments for care needs; and
- b. The LME Bodies should target the dissemination of information resources for workers, including via skills providers, Skills for Care, and/or devolved worker registration schemes at the point of certification or training.

**Recommendation 4:****All Bodies – two-year delivery period**

The LME bodies should identify ways to actively and effectively support local authorities in their due diligence and monitoring of externally commissioned services with focus on workers' rights.

Specifically for social care, the LME bodies should consider the following methods (but may find other ways of achieving the same aim):

- a. Develop a good practice guide that Local Authorities can easily incorporate into their procurement processes; and
- b. Raise awareness within Local Authorities of the enforcement bodies' powers, regulations, and common breaches to ensure a greater flow of intelligence and appropriate referrals where non-compliance is suspected.

### Recommendation 5:

#### BEIS and Home Office – two-year delivery period

I recommend that BEIS and Home Office work closely with DHSC to ensure social care reform includes consideration of worker rights and enforcement, building on learning from the variability in social care models within the UK.

One option might be to organise a conference involving the LME bodies and all the care regulators from across the UK, but alternative means can be used to achieve the same end of identifying good practice and opportunities for the protection of workers within the different models of social care regulation, both in the immediate and longer-term within the sector.

## 4.2 Seasonal workers in agriculture

### 4.2.1 Introduction

Agriculture is a broad sector but the MoRiLE assessment and wider research literature identifies the labour market exploitation risk as being focused on **seasonal workers**, primarily those working within **horticulture** (as defined in Box 4.2.1). This has therefore been the centre of our analysis.

#### Box 4.2.1: Definition of agriculture, horticulture and seasonal work

**Agriculture:** Agriculture more broadly is the production of crops and livestock and the services that contribute to this production.

**Horticulture:** Horticulture is a sub-set of agriculture – it is the growing and picking of fruits, vegetables and flowers. Of all the different agriculture sub-sectors, it is the most labour-intensive and employs the most seasonal, casual and gang workers.

**Seasonal, casual and gang workers:** Seasonal workers work for an organisation on a short-term basis, in jobs that are seasonal – that is, they only require workers for part of the year. Gang workers would have their work arranged and overseen by a gangmaster.

Source: ONS (2018)

This is not to say that other areas of agriculture are not experiencing problems of non-compliance. My Office has received evidence of non-compliance and exploitation of seasonal workers in other parts of agriculture, such as in poultry and eggs, and also of problems faced by permanent workers in a range of agricultural sectors. These include issues of underpayment of the minimum wage, problems with holiday pay, bogus self-employment and unpaid working time. These practices are often related to informal working arrangements that might have spanned a period of years.

### Janet – Turkey Plucker

Janet has worked in a range of agricultural work. Her most recent role was plucking turkeys on a farm in the run up to Christmas.

Janet was paid for each turkey she plucked and believed she was paid above the minimum wage. However, she noticed that some of her colleagues were paid below the minimum wage as they would pick fewer turkeys.

Worker Interview (IFF Research, 2020a)

While I appreciate that these issues should be challenged, there are qualitative differences in the types and level of risk and the ensuing appropriate enforcement response. Therefore, whilst referring to seasonal agricultural work, my Office considers that those most at risk will generally be workers involved in the picking of fruits, vegetable and flowers following the season of each crop.

The distinction drawn around seasonal agriculture work in this analysis is not always clearly defined in practice. Food packaging and processing are increasingly located on the same sites with the work carried out by many of the same workers. While food processing/packing has not been a focus of this Strategy, there will be cross over in both findings and recommendations.

Labour provision in the agriculture sector has been licensed for 15 years by the GLAA (previously the Gangmasters Licensing Authority) and considerable effort has been made in the sector to improve the working conditions. Yet it remains the case that seasonal agricultural workers are a vulnerable group at risk of potentially serious harm through labour exploitation. Recent cases have highlighted the continuing dangers workers can face (see Box 4.2.2).

#### Box 4.2.2: Modern slavery in agriculture case study – Operation Fort

Operation Fort investigated the UK's largest modern-day slavery network identified by police.

Police believe that over 400 victims were trafficked from Poland. They were forced to work for little or no money in agriculture and other sectors, forced to live in squalid accommodation, threatened with violence and controlled by the traffickers.

The organised crime group (OCG) used an insider at an employment agency to get their victims into work, including working for limited periods in farms supplying well-known supermarket brands. The recruitment agency held a licence with the GLAA.

The following account comes from a victim of the OCG who was forced to work picking vegetables in a farm.

“Every day we travelled 90 minutes to work. I was picking vegetables in the rain... [there were] No toilet facilities, no shower in the house. On Friday, the trafficker comes round and pays me – sometimes £40, sometimes £25. The most I got was £75... The traffickers opened bank accounts in everybody's name – with an address they control... They beat me... Punched and kicked me. Broke my ribs. Gave me black eyes. I slept with a knife under my pillow in case they came again.” (BBC, 2019b).

West Midlands Police began its investigation after a report from the charity Hope for Justice, which noticed an increasing number of Polish people attending one of its soup kitchens. 61 victims gave evidence against the defendants, but it is believed that the total number of victims is closer to 400.

Source: BBC (2019b; 2019c); The Guardian (2019); CPS (2019); SIA (2019)

## 4.2.2 Sector context

Seasonal agricultural work is geographically spread across the UK with uneven patterns of demand for labour that change throughout the growing season. Due to technological advances such as polytunnels, plant breeding and glasshouse technology, many crops now have a longer growing season (Countryside, 2020). Through careful planning, many farms are able to grow crops year-round. While they do require some level of labour throughout the year, they still have peaks in demand, primarily in the summer months.

The agricultural seasonal workforce is very hard to measure given the transient nature of the population and the fact it is not recorded by any official statistic (ONS, 2018a). The available estimates would indicate:

- 64,000 seasonal, casual or gang workers employed across the wider agriculture sector as a snapshot measuring peak demand (DEFRA, 2016);
- 75,000 positions in horticultural work filled by non-UK seasonal workers in the British Growers annual labour survey 2016, which can include individuals taking more than one position (ONS, 2018a); and
- 37,500 positions filled on horticulture farms by recruiters (Jan-September 2019) according to the NFU survey of labour providers (NFU, 2020).

Taking these together, the best estimates would suggest that there are approximately 60,000-70,000 people covering about 70,000-80,000 seasonal roles in agriculture across the year.

Evidence shows that over 99% of seasonal workers are EU nationals (ONS, 2018a; stakeholder evidence, various). This is an historic trend where migrants, largely from Eastern Europe, have come to work for short lengths of time in the UK agriculture sector.

More recently, the horticultural sector has reported an increase in labour shortages. A DEFRA survey found that 33 per cent of horticulture farms that used seasonal labour experienced a shortfall of workers in 2018, ranging from 25 per cent of small and medium farms to 44 per cent of large farms (DEFRA, 2019b). As the economies of Eastern Europe have improved, more work opportunities have emerged in workers' home countries and so fewer workers are looking for seasonal work in the UK. This, alongside increased demand for seasonal labour from other EU countries and fluctuating currency values, has led to labour shortages across the agriculture sector (NFU, 2017; MAC, 2018b).

Historically, seasonal demand for labour was largely filled through the Seasonal Agricultural Worker Scheme (SAWS). This allowed certain categories of non-EU workers to enter the UK for a limited time to work in the agriculture sector. This programme was closed in 2013 when the right to work in the UK was extended to Romanian and Bulgarian workers.

Following the UK's decision to leave the European Union, in 2019 a new seasonal workers' programme has been piloted that allows workers from non-EEA countries to work for a maximum of six months on UK fruit and vegetable farms.

In February 2020, it was announced that this scheme would be expanded to 10,000 seasonal workers for 2020 (DEFRA and Home Office, 2020). An evaluation of the pilot is ongoing and will inform how future needs of the sector will be addressed.<sup>24</sup>

<sup>24</sup> In December 2020, the Government announced that the number of workers permitted to travel to the UK to pick and package fruit and vegetables will be increased for the 2021 harvest to 30,000. <https://www.gov.uk/government/news/up-to-30000-workers-to-help-reap-2021-harvest--2>

## 4.2.3 Risk factors for labour exploitation

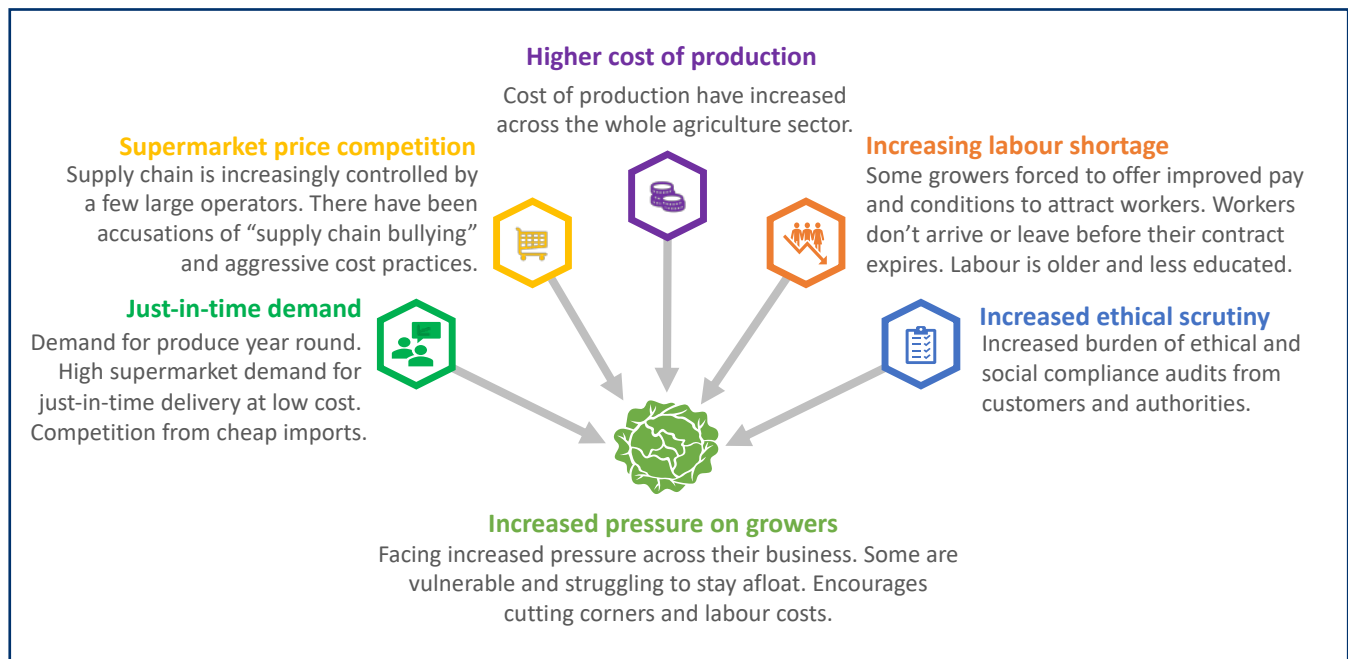
There are three elements of the sector that together help to facilitate worker exploitation:

- Structural pressures in the industry;
- Nature of the work itself; and
- Characteristics of the workers who take on the roles.

### 4.2.3.1 Structural pressures

The dynamics of UK seasonal agricultural work are leading to increased pressures on growers and subsequently labour providers, as shown in Figure 4.2.1.

**Figure 4.2.1: Structural pressures in seasonal agricultural work**



Sources: DEFRA (2019a); GLAA (2019e); MAC (2013, 2018b); Philips and Trautrim (2018); Scott et al., (2012); Sustain (2016); Stakeholder Evidence.

As one stakeholder from the agriculture workshop put it, the result of these pressures is “a race to the top and race to the bottom”. Some growers have invested in both facilities and employment conditions to attract workers (as demonstrated by the high rate of return workers to some sites). Others may feel they need to reduce labour costs to remain profitable or are sufficiently desperate for labour that they might cut corners and turn a blind eye to recruitment and employment practices.

*“The farmers’ income relies on crops being picked, and therefore his priority is often ensuring this happens over fulfilling extra due diligence on a labour provider who offers him workers at the last minute” (Nottingham Rights Lab response to Call for Evidence).*

The same impact is reflected on labour providers, with some raising their standards to attract workers, but facing unfair competition from unscrupulous gangmasters both in the UK and abroad.

As these pressures are brought together, they create an environment where exploitation of workers is facilitated or seen as a mode of businesses survival.

### 4.2.3.2 Nature of the work

The nature of seasonal agricultural work means that it is, and always has been, unattractive to the local workforce. As seen earlier, EU workers fill 99 per cent of these roles. The work is:

- Seasonal and always changing: workers must be available to respond to changing demand, both monthly and daily. There is no flexibility on when crops must be picked;
- Physically hard and repetitive, involving potentially long unsociable hours and exposure to the elements in all weathers;
- Dangerous: HSE record a high risk of accidents and injury in agriculture (HSE, 2019);
- Low paid: often workers are paid piece rates and the level and timing of pay may be unpredictable (although it should be noted that experienced workers can earn substantially above the minimum wage and given the low cost of living, many workers end the season with considerable savings);
- Geographically and socially isolating, most workers living on the farms will not have their own transport; and
- Linked to workers' transport and accommodation: either with accommodation provided on the farm, or the gangmaster providing accommodation in HMOs (Houses in Multiple Occupation) and transport to work.

“Their use of computers – and you had to log on and put in how many tomatoes – trays you picked – and for how long...and it gives you an average. I felt like some of the averages were set too high for some of the work standards and some of the heat conditions in there.”

Worker Interview (IFF Research, 2020a)

“There were times when I really hated it ...the greenhouse in summer [was] so sweaty and humid”.

Worker Interview (IFF Research, 2020a)

The combination of these characteristics leaves workers in a more vulnerable position.

*“...agricultural workers are particularly vulnerable to exploitation due to the nature of the work. This includes the high prevalence of easily replicable tasks, a reliance on low-skilled seasonal labour, a shortage of workers, particularly since 2017, seasonality and need for temporary contracts and the downward pressure on food commodity prices” (Nottingham Rights Lab response to Call for Evidence).*



### 4.2.3.3 Characteristics of workers

There are certain characteristics of the people who take up work in seasonal agricultural jobs which influence their vulnerability to exploitation. These include:

- A very high proportion of migrant workers. GLAA identify Romanian, Bulgarian and Lithuania workers as vulnerable in this sector;
- Potentially poor knowledge of English and literacy skills. Stakeholders told us that the level of language and literacy skills has significantly declined in recent years as the recruitment of workers has had to move to more remote and rural areas of Bulgaria, Romania and Lithuania where levels of education are particularly low;
- Limited alternative work opportunities both in home country and in UK, reducing workers' abilities to complain or leave employment;
- Lack of knowledge of rights while working in the UK or how to complain;
- Poor social support networks and lack of time to develop this before moving to new workplace or returning to their home country;
- Work may be linked to family and social networks in home country, making it difficult to complain or refuse work;
- Barriers to accessing services, such as primary healthcare and banking, due to practical reasons such as lack of transport and frequent moves, poor or limited English language skills and administrative issues such as proving addresses and providing documents;
- Cultural issues: the expectation that it is normal to pay for a job/services therefore acceptance of illegal 'fees'; and
- Mobile population difficult to track for enforcement investigations.

#### Bogdan – Picker

Bogdan grew up in Romania and has been working in the UK agriculture sector for between 6 and 9 months for the past 5 years.

Compared with farm work back in Romania, he felt agriculture work in the UK is better organised and safer and has better wages. Bogdan doesn't feel that there are any risks working on farms in the UK like those he's seen in Romania.

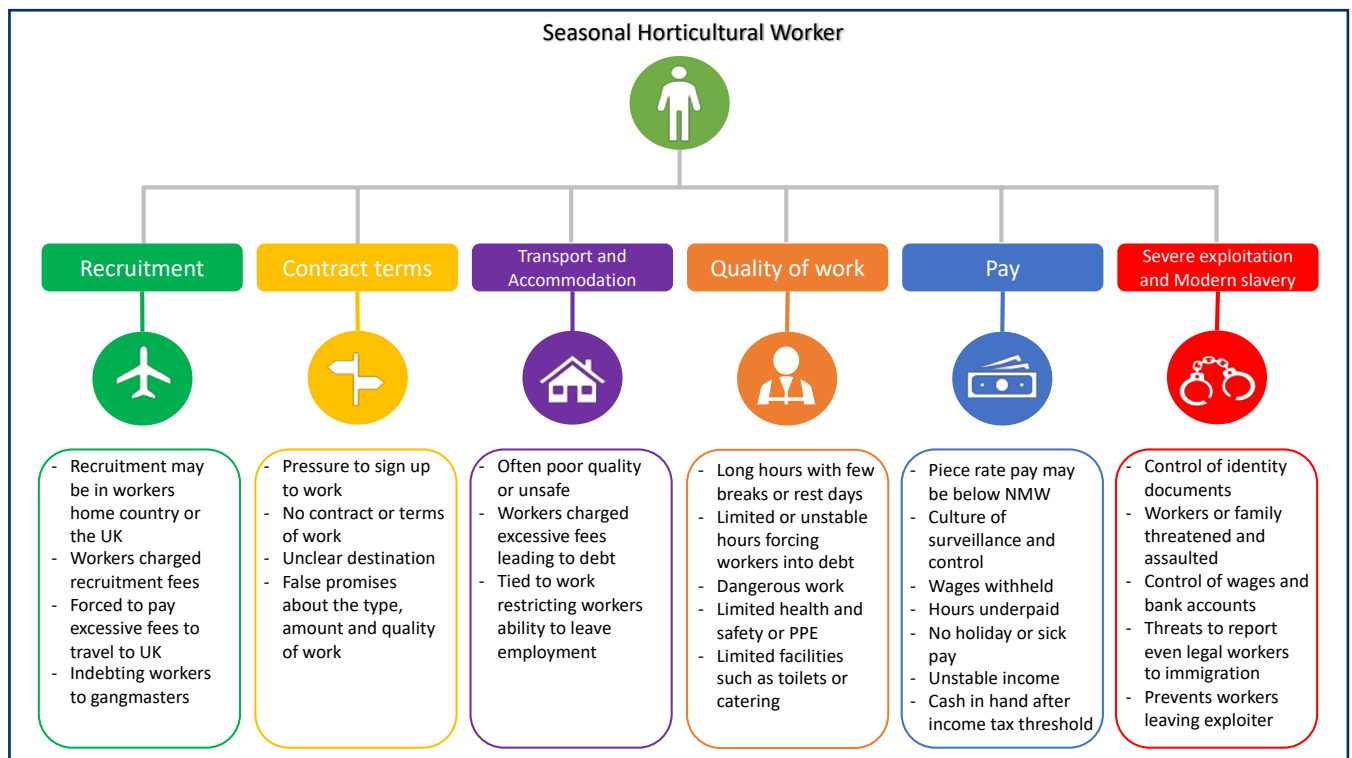
Worker Interview (IFF Research, 2020a)

The level of undocumented or illegal labour in the sector is unknown but was not raised with us as a major issue for the sector. However, we did hear that workers are sometimes told that they are working illegally, when they do in fact have the right to work, in order for the gangmaster to exert control and make them fearful of complaining to any authority.

### 4.2.4 Types of non-compliance

The combination of structural pressure on growers to keep costs low, the difficult and isolated nature of the work and the vulnerability of the workforce, means that seasonal agricultural work is inherently high risk for labour exploitation. This high risk is manifested in the range of potential exploitation ranging from illegal recruitment fees and poor pay to severe forms of exploitation, control via threats and actual violence, and modern slavery as shown in Figure 4.2.2.

Figure 4.2.2: Types of exploitation faced by seasonal agricultural workers



Sources: GLAA (2018b, 2019c); Scott et al., (2012); Sustain (2018); Stakeholder Evidence

We suspect that there are differences in the level of vulnerability or opportunity for exploitation of workers with different working patterns, but do not have sufficient evidence to fully understand this at the moment. For instance:

- Workers who stay on farms for six months or more are more likely to develop trusting relationships with their employer and co-workers which might lead to problems being disclosed; and
- Growers and labour providers we spoke to felt that when they provided accommodation on the farms, they would have a greater opportunity to spot any signs of exploitation, however if workers are housed offsite, especially in HMOs, they have less visibility and potentially greater vulnerability.

One evidence gap is around what happens to workers who remain in the UK after having worked in seasonal agricultural work – what type of work and employment relationships do they move on to and is there potential for further exploitation in other sectors? Understanding more about the differences in vulnerabilities for different workers would be helpful for designing better interventions to spot and tackle exploitation.

A further issue reported by stakeholders was that exploitation also occurs between workers. Stakeholder discussed an example of returning workers “recommending” someone “as a friend” to a grower who employs the workers directly. This ‘recommendation’ might cost the new worker £1,000, a continuing portion of their wages or some form of gift. Technically, this may fall within GLAA’s remit; acting as an unlicensed gangmaster, but it would be difficult for them to act in these cases due to the informality of the relationships. Relationships within family and social groups can also create problems, where one person may dominate and control the group. Similarly issues of discrimination and harassment between nationality groups were also reported as being a problem. It can be difficult for growers to know how to deal with these issues where individuals are potentially being exploited, discriminated against, or bullied but not by their employer or official gangmaster.

## 4.2.5 Existing labour market enforcement

The primary labour market enforcement bodies that cover seasonal agricultural work are the GLAA, HMRC NMW, and HSE. These bodies have differing powers and responsibilities within the devolved administrations. For instance, the agricultural wages boards mean that HMRC NMW do not enforce the minimum wage in Scotland and Northern Ireland. GLAA can enforce licensing in Scotland and Northern Ireland but cannot use their wider enforcement powers.

### 4.2.5.1 State enforcement activity

#### HMRC NMW

HMRC NMW data demonstrates that they have relatively small numbers of enforcement cases across agriculture, with cases involving both permanent and seasonal workers. We discussed their most recent cases to better understand their case load. Most of the arrears identified in recent closed cases are low at less than £100 per worker, but a few cases involved over £10,000 owed to individual workers.<sup>25</sup> These cases involved longstanding employment relationships where people were underpaid over several years rather than seasonal workers.

HMRC NMW explained that it can be difficult for them to enforce the minimum wage in this sector. There are issues with identifying vulnerable workers at the right time. Unless it is a very large farm, workers are often only working on a farm for a few weeks making it very difficult to receive and action intelligence with enough time to respond and reach the workers before they have moved to a new area.

#### Police and modern slavery investigations

Various police forces around the country have conducted investigations into modern slavery and forced labour relating to the agricultural sector. The Modern Slavery Police Transformation Unit (MSPTU) works to support police and law enforcement partners to tackle modern slavery, bringing a consistent response across all forces.

The MSPTU has seen an increase in cases across agriculture. The method of data collection does not allow a reporting of annual figures but, for illustrative purposes, the Table 4.2.1 shows a snapshot of ongoing cases in April of each year. Though not necessarily indicative of the full caseload, this data indicates a three-fold increase comparing April 2017 to April 2019 (MSPTU, 2019).

**Table 4.2.1: Investigations involving labour exploitation in agriculture reported to the MSPTU in April of each year**

	April 2017	April 2018	April 2019
<b>Number of investigations involving labour exploitation in agriculture</b>	4	10	12

Source: MSPTU (2019)

In 2018, the Modern Slavery Helpline had 38 cases relating to “agriculture/farm” covering 364 potential victims (Unseen, 2018). This accounted for close to 4 per cent of all cases and nearly 7 per cent of all victims in 2018 (ibid).

<sup>25</sup> Correspondence between DLME and HMRC NMW.

## GLAA

GLAA are the main enforcer of labour rights for seasonal workers in agriculture, both through its licensing powers (which have been in place since 2005) and its labour abuse investigations. The licensing standards were reviewed in 2012 and 2019, and updated standards were published in 2020. Details of GLAA's licensing scheme are provided in Box 4.2.3.

### Box 4.2.3: Details of GLAA licensing scheme

The Gangmasters (Licensing) Act 2004 provided for a licensing scheme to regulate the supply of labour to agriculture, horticulture, shellfish gathering and food processing and packaging. A licence can be granted to any kind of legal entity, including individuals (sole traders), limited companies, unincorporated associations or partnerships.

Application or renewal fees cost between £400 and £2,600, depending on the turnover of the organisation. There is also an additional 'inspection fee' of between £1,850 and £2,900. At present, the GLAA licenses around 1,020 labour providers.

The Licensing Standards (re-issued in 2020) used to assess labour providers are wide-ranging, and cover: fit and proper test, pay and tax, prevention of forced labour and mistreatment of workers, accommodation, working conditions, health and safety, recruitment of workers and contractual arrangements, and subcontracting and using other labour providers.

Compliance with the Licensing Standards is assessed using a points system. Those businesses scoring above a set number will normally have their licence refused or revoked. However, a licence may be issued with Additional Licensing Conditions where the GLAA determines that this would be proportionate.

Source: DLME (2018); GLAA (2020c; 2020d)

Table 4.2.2 outlines GLAA's activity across all of the licensed sectors for 2018/19. The GLAA database does not allow reporting on number of licences by industry, therefore it has not been possible to separate out the number of licences that apply to seasonal agricultural work, as opposed to shellfish gathering or food processing and packaging. This reflects a general finding that there is little data easily available on licensed businesses from GLAA. This seems to be due to poor database design, which means that information cannot be easily extracted and a lack of analytical capacity within the organisation. This needs to be rectified in the short-term, and the information requirements around licensing will also need to be considered in detail within the development of the Single Enforcement Body (see Recommendation 8).

**Table 4.2.2: GLAA activity for all licensed sectors (2018/19 unless specified)**

<b>Total licence holders</b>	1,017 <sup>26</sup> 1,001 licences were renewed. Trend: The number of licences was at a high of 1,500 in 2009/10 and then declined with the removal of licensing in forestry and consolidation of the sector following the introduction of licensing. Since 2013/14 the number of licences has remained stable at around 1,000.
<b>New applications</b>	176 licence applications (21% higher than 2017/18). 113 new applications granted.

<sup>26</sup> GLAA hold a rolling stock of licences, this is an estimate of the total over the time period.

<b>Inspections</b>	<p>137 application inspections carried out.</p> <p>42 change of principle authority/ new business inspections.</p> <p>45 compliance inspections.</p> <p>Except application/change of principle authority inspections, nearly all inspections are intelligence led.</p>
<b>Intelligence</b>	<p>There were over 200 intelligence reports related to agriculture.<sup>27</sup></p> <p>These intelligence reports come from a range of sources including the industry, other enforcement bodies, NGOs and workers.</p> <p>Over 30 per cent of these reports were progressed to potential future investigations and a similar proportion were added to the intelligence database. A small proportion were referred to other agencies/enforcement bodies.</p> <p>Intelligence reports are developed and corroborated, any relevant information will be passed to the licensing and compliance teams.</p>
<b>Licence revocations and refusals</b>	<p>Revoked 20 licences.</p> <p>Refused 16 licences.<sup>28</sup></p> <p>Since 2006, there have been 33 revocations with immediate effect (meaning businesses have to cease operating immediately) and 276 revocations without immediate effect (meaning businesses can continue to operate or apply for a new licence during appeal).</p>
<b>LMEUs/ Os</b>	<p>As of 2nd March 2020, GLAA currently have:</p> <p>15 LMEUs.</p> <p>2 LMEOs.</p> <p>These are all related to licensed sectors, but not all agriculture.</p>
<b>Prosecutions taken forward by CPS</b>	<p>2018/19: 6 cases under Section 12 of the Licensing Act.</p> <p>Since 2013/14, there have been 71 convictions for Section 12 (operating as an unlicensed gangmaster), and 24 convictions for Section 13 (using an unlicensed gangmaster).<sup>29</sup></p>
<p>Source: GLAA (2020)<sup>30</sup></p> <p>Notes: The data presented covers all licensed sectors for 2018/19, unless otherwise specified.</p>	

As well as licensing the agriculture sector, the GLAA has invested considerable time and resource to engage with stakeholders across the supply chains of all the licensed sectors. In October 2013, the (as then) GLA launched the 'Supplier/Retailer Protocol' which sought to establish voluntary intelligence sharing arrangement between the GLA and the wider supply chain (GLA, 2013). The GLA agreed to share best practice guidance and lessons learnt with the sector where it was practicable to do so. Since the development of the protocol, the GLAA continues to work with the suppliers and retailers throughout agricultural supply chains.

Beyond licensing, GLAA can also exercise its wider labour abuse investigation powers within seasonal agricultural work. Analysis of GLAA intelligence shows that for the UK overall, agriculture is the most common sector reported in intelligence reports (GLAA, 2018b) and accounted for around 34 per cent of all warnings and around 43 per cent of all enforcement notices between 2018 and December 2019.<sup>31</sup> It is worth noting that it can be difficult to disaggregate licensing and enforcement cases/intelligence for this sector.

27 Due to GLAA's classification system "agriculture" will include some aspects of the wider agriculture sector that are not considered as part of this section, such as animal farming. Similarly, it will exclude some aspects of the sector that are considered in this section, such as shrubs, trees and vines. Given that seasonal work, relating largely to horticulture (as defined earlier in this section) makes up the bulk of GLAA reports in agriculture this should not significantly alter the picture presented by this data.

28 These figures differ slightly from those published in the GLAA 2018/19 annual report. This is due to appeal timescales.

29 CPS decides whether to take forward a prosecution not GLAA.

30 GLAA response to DLME data request.

31 GLAA response to DLME request

### Bogdan – Picker

In a previous role, working as a salad picker, Bogdan did not receive pay for the holiday days he had accrued. He contacted managers who said they would resolve the issues, but after a couple of months he had still not received the money. At this point, he emailed the GLAA. They were able to resolve this issue within two weeks which Bogdan found very satisfactory.

Worker Interview (IFF Research, 2020a)

## 4.2.5.2 Other state enforcement

There are other state bodies beyond my remit which have regulatory and enforcement powers within the broader agriculture sector that will cover and impact upon seasonal agricultural work.

As with many other sectors, farming and agriculture has many inspections from different state enforcement bodies. The 2018 Farm Inspection and Regulatory Review identified that within DEFRA alone there are five bodies overseeing farming and land management, and every year there are 150,000 farm visits by DEFRA group bodies and local authorities (DEFRA, 2018). Interestingly, the report makes the recommendation of developing a new, single independent regulator for farming and land management, run on design principles and mature regulatory approaches, including better use of data, to bring about culture change – i.e. very similar to the idea behind the Single Enforcement Body.

The broad agriculture sector has a poor record for managing health and safety. The sector covers one per cent of the GB workforce, but accounts for 20 per cent of worker deaths (HSE, 2017). The HSE Agriculture Sector Plan details a targeted programme of blended interventions, including the use of insight research, intelligence from other government departments, latest communication techniques to amplify messages, and targeted inspection activities that maximise the reach and impact of their investigations.

As mentioned previously, in the devolved administrations, the agricultural wages boards also have an enforcement role in the agriculture sector. Their enforcement remit and capacities differ between devolved administrations.

## 4.2.5.3 Industry self-regulation

The work of the GLAA through the Supplier/Retailer Protocol and their continued engagement in the sector has helped promote the issue of labour exploitation and continues to provide an important link for information and intelligence flows between growers and retailers and the GLAA. However, the level of engagement and self-regulation within the industry around these issues is a marked feature of this sector.

*“Preventing labour exploitation is an issue that the industry takes seriously, and which is embedded in supply chain requirements” (National Farmers Union (NFU) response to Call for Evidence).*

As well as state enforcement, agricultural growers may be inspected by ethical and social auditors working for their end-users (supermarkets checking their supply chains), and other accreditation schemes such as Ethical Trade Initiative and Red Tractor. Tesco, for instance, require their ‘tier

1' suppliers to undergo an ethical audit based on the principles set out in the Ethical Trading Initiative. Suppliers will be audited either by in-house specialists or independent auditors approved by Tesco (Tesco PLC, 2019).

Stakeholders have highlighted that, like Tesco, their customers will each have their own audit scheme or require audits by an accredited scheme. However, the requirements and costs of each scheme differ. The number of audits adds further cost pressures to compliant businesses and there is no guarantee these audits are robust enough to identify or prevent exploitative practices.

Certain growers and labour providers are playing a significant leadership and coordination role in tackling labour market exploitation in agriculture. For instance, G's Fresh, a large grower, and the NFU co-sponsored and organised a large conference in January 2020 on "*Working Together to Prevent Modern Slavery*". This aimed to identify practical ways that producers and labour providers could identify and prevent exploitation in their businesses.

The Association of Labour Providers (ALP) is also very active and has developed a series of partnerships and programmes including Stronger Together (a business-led initiative aiming to reduce forced labour and exploitation of workers), Clearview (certification scheme for labour providers), and the responsible recruitment toolkit (supporting supply chains to embed good practice) (ALP, 2020).

Stakeholders also told us that the Food Network for Ethical Trade (FNET) has been very active in supporting members to understand the issues and solutions on responsible recruitment, effective worker engagement and other issues.

Part of the industry is therefore investing, engaging and proactively considering the issue of labour exploitation. This is not to say that they are immune from being involved in labour abuse: indeed, the G's conference was prompted by finding that they had been unwittingly involved in the periphery of the Operation Fort case. However, unlike some of the other high-risk sectors, there is a positive movement within the sector to deal with the issues. The efforts of some in the industry to tackle the problem of labour exploitation are to be commended.

While some in the industry are racing to the top, there are others who will race to the bottom. It is this latter segment of the industry who will be unlikely to engage in these discussions and are likely to be the highest risk. This leaves an important question – given limited resources, how do the enforcement bodies best interact with the engaged part of the industry, while cracking down on those who are persistently non-compliant? This is a perennial problem for the enforcement bodies.

Stakeholders brought to my attention that there is an increasing distortion in the market with unscrupulous labour providers and users undercutting those that are compliant. In addition, those who are trying to meet all ethical requirements are increasingly facing numerous, costly and sometimes poor-quality ethical audits demanded by their customers. Stakeholders highlighted that each of these audits can cost thousands of pounds, increasing the cost of operating ethically.

Labour providers (and some growers, if they are directly recruiting abroad) are licensed by the GLAA, which involves meeting the requisite licensing standards and sometimes undergoing GLAA compliance inspections. Both growers and labour providers are also subject to various social and ethical audits. I believe there is potential here to improve the efficiency of business and the level of scrutiny of labour practices by linking the two. In my model of **robust voluntarism** (explained further in Section 5), I explain how there is scope for the enforcement bodies (and the new Single Enforcement Body) to do more to support non-statutory efforts to enhance compliance.

Essentially, GLAA would work with the sector to identify those audits that are robust and provide high quality assessments of labour protection standards. GLAA could regularly review the auditing process and results, to ensure the process was sufficiently robust and standards were being maintained. Auditors could pass information on non-compliance to GLAA when it was uncovered.

Where labour users and providers can demonstrate they pass these audits, it would be taken as a sign that they/their labour providers could be inspected less frequently. If labour providers are appropriately licensed by the GLAA and labour users are audited in a robust fashion, compliance in all aspects of the industry should be strengthened with more opportunities to identify non-compliance and exploitation (see Recommendation 6).

This would allow the industry, stakeholders, consumers and public procurers to be more confident in the system. At the same time, it would reduce the burden on compliant labour users by having a single ethical audit that could be considered robust, avoiding the need to have one audit for each customer. Further, if the GLAA is sufficiently linked into the auditing scheme this would ensure a strong flow of intelligence that would support their work in both licensing and wider labour abuse investigations.

## 4.2.6 Assessment of enforcement

### 4.2.6.1 Licensing

The defining characteristic of labour enforcement within seasonal agricultural work is licensing by the GLAA. I acknowledge that the police investigate and enforce a significant number of cases in this sector but, given the remit of the DLME and the time constraints for this Strategy, we have focused on the GLAA role. This is also the area that will be most useful for developing the Single Enforcement Body and considering potential licensing in other sectors.

Licensing of labour providers is a key element of the GLAA's enforcement role as reflected in their Business Plan aim to:

*“Maintain a credible licensing scheme, creating a level playing field and promoting compliant business growth” (GLAA 2018a: 23).*

Speaking with partners in the sector, there is support for licensing. It was strongly felt that licensing had resulted in significant improvements in labour provision across the licensed sectors, and while it was not perfect, should licensing be revoked, standards would immediately decline.

The ALP survey of labour providers in 2019 showed a high level of support in the industry for licensing, with 95 per cent of respondents reporting that they were in favour of licensing (ALP response to Call for Evidence).

*“The GLAA have done a lot to improve compliance within the Agricultural sector. Whilst I believe the problem will never be truly solved, the issue is much more under control now than it was before the GLAA existed. I think there is a lot of self-governance now which has been driven by the GLAA regulation. The problem of non-compliance still exists but the way to manage and control that is to be more visible in terms of enforcement officers carrying out spot checks on agricultural workers” (Craig McGill, Labour provider, response to Call for Evidence).*

Whilst we did not hear anyone arguing that licensing was not necessary, many asked for the licensing regime and corresponding resources to be strengthened. Stakeholders were keen to ensure that having a licence held significant status, demonstrating that they adhere to a code of operations and ethics that customers can trust.

My assessment of licensing is that current resource and policy is not allowing the industry to have full confidence in the GLAA licence. I acknowledge that resources in the overall licensing and compliance function of the GLAA have increased since 2013 (from 18 staff in 2013/14 to



20 in 2019/20).<sup>32</sup> However, the complexity of some compliance investigations and the pressure of routine applications and changes to licences mean that this resource is not sufficient to have complete confidence that all those with a licence are acting compliantly.

Given the resource available, GLAA have sensibly concentrated on compliance inspections on problematic gangmasters/unlicensed gangmasters who are identified via intelligence and fulfilling new licence applications and changes in principle authority. Their approach to investigations is explicitly “*intelligence-led and risk-based*” (GLAA 2018a:14) and recognise that, with their scarce resource, the priority remains investigating known issues where workers are at risk of harm.

GLAA regularly deny and revoke licences (see Box 4.2.4 and Table 4.2.2) and did so for 33 licences in 2018/19. They have also undertaken prosecutions and used LMEUs in the sector.

#### Box 4.2.4: Boston business loses appeal over GLAA licence

Go Solutions Ltd, of Boston, had its licence revoked in December 2017 following a compliance inspection by the GLAA.

Inspectors discovered multiple failings, including 12 breaches of the licensing standards, five of which were individually serious enough for the business to fail the inspection.

It was judged that the principal authority was not fit and proper, with officers concluding that he had no knowledge of the business and was unable to even access the office computer and payroll systems.

The GLAA considered that two other individuals, who had previously been named on licences that were refused, actually managed the business.

Payslips showed that some workers had not been paid the minimum wage; timesheets failed to show workers taking adequate breaks; no records were kept about holiday pay, sick pay or parental pay and basic health and safety concerns were discovered.

Despite appealing the revocation, no one from the business attended the employment tribunal and the revocation was upheld. GLAA went on to revoke a further licence for a business that had ties to Go Solutions.

Sources: GLAA (2019a) Recruiter (2019)

Yet, from the response from the stakeholders my Office spoke to, it is clear that a GLAA licence no longer elicits great confidence from the sector. This has led parts of the industry to discuss alternative means of accrediting and auditing labour providers, and of sharing information among themselves to be aware of problems within the sector. This is independent of the GLAA and is over and above GLAA licences and intelligence gathering.

The main concerns around licensing are around:

- Lack of regular inspections;
- Limited reach in GLAA remit overseas where much of the recruitment for UK seasonal agricultural work takes place; and
- Limited deterrence effect from the penalties applied when non-compliance is discovered.

Stakeholders raised concerns that many labour providers have not received an inspection from the GLAA in a number of years. GLAA data confirms this, showing 364 licence holders which have not been inspected in over 10 years. GLAA suggest there has been no cause to inspect

<sup>32</sup> GLAA response to DLME – there are currently 2 vacancies.

these licence holders as they have no information to indicate that they are not fully compliant, or they may be ‘dormant’ licences, with the organisations not regularly supplying labour to the licensed sectors but holding a licence for other reasons.

Without more detailed analysis to demonstrate which proportion of these licence holders are in fact ‘dormant’ vs active and uninspected, or any evidence that these uninspected gangmasters are compliant, I still have concerns about the level of inspections. These concerns were also raised in the previous LME Strategy written by my predecessor (DLME, 2019a).

Licensing systems must be robust, otherwise they create a false sense of security. Having a GLAA licence must signify that a gangmaster maintains a level of compliance and acceptable behaviour. There would be public concern and questions raised should there be a serious incident with a licensed gangmaster who has not been inspected for years.

Stakeholders also raised issues around the legal extent of GLAA’s powers, particularly as GLAA is less able to conduct investigations on labour providers based outside the UK, but who are engaging in the recruitment process for the UK agricultural sector.

*“The [GLAA enforcement] interventions are in all in the UK as the GLAA does not investigate overseas and yet much of the unethical and illegal behaviour is happening in Eastern Europe or even further afield.”* (Concordia, Labour Provider, Response to Call for Evidence).

Although the GLAA are limited in their remit overseas, they do work proactively with partners in Romania and Bulgaria, including the Romanian police and the Bulgarian labour inspectorate, and the Embassy attachés of both countries. In the past Bulgarian and Romanian labour inspectors have supported GLAA inspection and undertaken short secondments with the agency. Most recently, parallel inspections on the same day were undertaken by the GLAA in the UK and the labour inspectorate in Bulgaria, with information relayed through the Bulgarian Embassy to the GLAA on the Bulgarian inspection.

It is useful to examine the penalties and likelihood of enforcement against an unlicensed gangmaster, or for using an unlicensed gangmaster, to consider the deterrence effect on these groups.

Since 2008/9, across all the licensed sectors, there have been:

- 71 convictions for Section 12 offences – operating as an unlicensed gangmaster (GLAA, 2020a).<sup>33</sup> As an indictable offence, this carries a maximum penalty of 10 years in prison and/or a fine. In 2018/19 penalties have varied between fines ranging between £750 and £1,200 and prison sentences ranging between 0 and 24 months. In 2019/20, there was also a conviction carrying a penalty of 42 months’ imprisonment. An alternative to prosecution is an LMEU. Currently 14 out of GLAA’s 15 LMEUs relate to Section 12 offences (operating as an unlicensed gangmaster); and
- 24 convictions for Section 13 offences – using an unlicensed gangmaster to supply labour (GLAA, 2020b).<sup>34</sup> As a summary offence, this carries a maximum penalty of 6 months and/or a fine. Currently, one of GLAA’s LMEUs relates to a Section 13 offence. One challenge for GLAA is that a Section 13 offence must be prosecuted within 6 months of the last day on which a labour user used the services of an unlicensed gangmaster. Therefore, Section

<sup>33</sup> It is worth noting that the GLAA can only refer cases to the CPS for prosecution, it is for the CPS to determine whether it is in the public interest to prosecute a case.

<sup>34</sup> Notably, if the 15 convictions for Section 13 in the year 2012/13 (a marked peak in convictions for Section 12 and 13 offences) were removed, there would only have been nine convictions for Section 13 across the time period.

13 offences are generally dealt with by an advisory letter and the labour user may be called as a witness to aid any prosecution for a Section 12 offence (operating as an unlicensed gangmaster).

Given the potential financial losses a labour user may incur if they do not have sufficient labour to pick crops on time, to have a successful deterrence effect, the penalty and likelihood of being held to account for committing an offence would have to be sufficiently high. I would question whether the current arrangements meet this requirement.

Again, the level of deterrence in licensing has been covered in previous strategies: *“prosecutions [against unlicensed gangmasters] are minimal and, where prosecutions were successful, the sentences were too light. I question the deterrence effect of the penalties”* (DLME, 2018: 43).

Although I encourage an educative approach for minor or accidental breaches, there needs to be a sufficient penalty applied to non-compliance, especially in cases of severe exploitation, complicit behaviour and/or repeat offending. The creation of the Single Enforcement Body may provide an opportunity to increase the deterrence effect in this area. For instance, one option is that civil penalties could be applied to breaches of the licensing regulations. I would encourage BEIS and HO to consider whether, under new arrangements under the Single Enforcement Body, civil penalties should have a wider role, including within the licensing regime.

The GLAA acknowledges the challenges of running the licensing scheme. The 2019/22 Strategy states the GLAA will *“Evaluate the effectiveness of the licensing scheme to date and options for future regulation that can promote compliant business growth in sectors beyond the currently licensed sector”* (GLAA, 2019c: 9). Additionally, their priorities for 2019/20 include a *“review of the licensing and compliance process in order to identify opportunities to streamline and improve services to applicants”* and to review the licence fee structure to make the system self-resourcing (GLAA, 2019b: 5).

I shall look forward to discussing progress on these aims further with GLAA. Any efficiencies that can be identified in the short-term should, of course, be pursued, but I would advocate a more fundamental review and ensure that changes are evaluated to understand their impact (see Recommendation 7).

I see the future for the licensing regime as needing to include some level of both:

- Increasing resource and inspection rate, including a programme of routine inspections and, where appropriate, unannounced visits; and
- Becoming much more sophisticated at using data streams to analyse risk and target resource.

Any review of licensing should ensure that the system is risk-based, transparent and consistent across the country. I would like to see the GLAA work with the sector to ensure the frequency and approach of regular licensing visits is proportionate and helps to maintain confidence in the system. This is in line with the regulators code that requires regulators to *“improve confidence in compliance for those they regulate, by providing greater certainty”* (BIS, 2014:3).

Clearly there are resource implications to these changes, and the GLAA could not deliver this in its current budget without de-prioritising other aspects of their work which would not be desirable either. Budgetary issues are for the Home Office and GLAA to agree.

By rough calculations (see Box 4.2.3), an additional **14 inspectors could cover inspecting 1,000 licence holders every three years** over and above current business as usual inspections. This is assuming an inspector can do an average of two inspections a month and all other things remains the same.

### Box 4.2.3: Hypothetical calculation of resource required for inspecting 1,000 licence holders once every three years

For 1,000 licence holders to have a regular inspection every three years (over and above the current activity), requires 333 inspections each year ( $1000/3$ ), or 27 a month ( $333/12$ ).

Assuming each inspector conducts two inspections per month, this requires around 14 additional inspectors needed ( $27/2$ ).

Note: This assumes that all other things remain equal; including the stock of licences and the current licensing team continuing to conduct the routine application inspection and intelligence based/targeted compliance investigations.

Visits could be prioritised based on risk factors known about each labour provider. This would be similar to the Ofsted model of inspection where risk or previous inspection results dictate the timing of and length between visits. I would emphasise that the majority of these routine visits would take an educative, supportive compliance approach. As is currently the case, inspectors would, in the first instance, be looking to help labour providers and growers to meet standards required rather than trying to catch them out on technicalities. Routine inspections would be a key performance target and the GLAA would be publicly accountable through reporting in its Annual Report.

In order to develop this risk-based approach to routine inspections it would be necessary for the GLAA to **consider the use of new data streams and invest in better risk analysis** (see Recommendation 8). However, as discussed earlier, the data analysis capacity and systems within GLAA are currently very limited. This would therefore entail a significant step change in their analytical capabilities, although I note that the Business Plan 2019-22 includes the deliverable of a *“New IT platform for the licensing system to deliver further improvements to processes and ensure a resilient foundation for current and future licensing activity”* (GLAA, 2019b: 5).

More broadly, there are three key questions around data that GLAA need to examine, both in the short- and longer-term when thinking about the opportunities to use data more creatively and effectively within the Single Enforcement Body:

- **Is the right data being collected?**  
Could the GLAA usefully ask for more or different types of information from labour providers which would better inform its understanding of who their licensees are and the type of work they are providing labour for? I would like to see a review of what is collected, and whether it can be cross-checked or systematically matched with information from other sources to improve the understanding of the group of labour providers in vulnerable sectors.
- **Is the data being used to understand risks?**  
I am not currently aware of any analysis of the existing data on licensing linking labour provider characteristics with risk of non-compliance and feeding into resource allocation. GLAA/HO/BEIS should look at what other organisations are developing in terms of data systems and to consider the capabilities that would be necessary for the Single Enforcement Body and ensure these are built into its function from the start. It should also work with partners to identify where combining information may be useful, especially with HMRC and HSE. In the meantime, GLAA should examine the data they already hold (which spans 15 years of licensing; therefore, fairly sizeable) and create a descriptive picture of the sector and risk factors of non-compliance.
- **Is the data available and user-friendly?**  
Of all the three bodies, the GLAA is the most open and user-friendly in terms of data. I encourage them to continue in this vein and as part of the review of information, identify (with the input of industry stakeholders) what further data would be useful to share.

## 4.2.6.2 Labour abuse and modern slavery

As stated above, my team have focused on GLAA licensing rather than the GLAA and police investigations of modern slavery or severe labour abuse, therefore we do not offer an assessment of enforcement in this area. However, some issues have come out of the discussions that provide useful insight.

### Facilitating worker reporting and knowledge of rights

One of the main barriers to better detection and prosecution of modern slavery cases is that workers do not come forward to report issues for reasons including ignorance of rights, fear, language barriers and lack of opportunity.

Engagement with stakeholders and examples of recent labour abuse cases lead me to the understanding that instances of abuse come to light most often through trusted relationships made outside of work, or via colleagues rather than any formal reporting routes. I note that the GLAA Business Plan 2019/20 seeks to achieve: *“Increased identification of victims through supporting networks of existing frontline groups (such as NHS, local authorities, DWP etc.) in spotting the signs and providing relevant intelligence”* (GLAA, 2019b: 4).

There is a lot of activity from the GLAA, police, NGOs, religious organisations and others around raising awareness of labour abuse and how to report it. The GLAA Business Plan states that it aims to *“become more targeted and proactive in the partnership working, engagement and communications we undertake in order to protect rights and prevent exploitation. Our focus will be on partnership working in priority sectors”* (GLAA, 2019b: 6). I agree that this is an appropriate aim and would advise the enforcement bodies and organisations to be sure that this effort is focused for maximum effect. To that end, there is an information gap around how cases currently come to light which should be addressed (see Recommendation 9).

*“the more that responsible employers feel they can trust the authorities to protect them, and vulnerable workers, in a situation that is found to not be their fault, the more information on unscrupulous labour providers will be shared”* (Nottingham Rights Lab response to Call for Evidence)

Various organisations, including Stop the Traffik, the Just Good Work App, UK Border Force, Black Country Women’s Aid among others, have also been working to improve the information on rights that workers receive before starting work. This has included providing leaflets at the border (MSPTU, 2019) and using social media to target information at migrant workers before they leave their home country (see Box 4.2.4).

### Box 4.2.4: Organisations using social media to target worker rights information to migrants

#### **STOP THE TRAFFIK – social media awareness campaign**

In July 2019, STOP THE TRAFFIK ran a two-week awareness campaign across Facebook and Instagram focusing on Lithuanians, living in both Lithuania and Lincolnshire, at risk of labour exploitation in the UK. This involved five partners in Lithuania and 15 in the UK, with a focus on organisations working on the ground to directly support those vulnerable to, or with experience of, labour exploitation. The aim of the campaign was to raise awareness that labour exploitation was relevant to them, equip them with knowledge and drive behavioural change. STOP THE TRAFFIK has completed an external evaluation of the impact of the campaign that found some indication of improved knowledge of rights.

(STOP THE TRAFFIK response to Call for Evidence)

### Just good work app

The ‘just good work app’ has been highlighted by stakeholders as a potentially useful tool to inform workers about their rights. The app seeks to educate workers before they begin work abroad about the reality of the work and what to watch out for.

Initially focussing on Kenyan, Ugandan and Tanzanian workers going to work in Saudi Arabia and Qatar, it has recently expanded to include information targeting workers going to the UK from Bulgaria, Romania and Gujarat.<sup>35</sup>

(Just Good Work, 2019)

There is significant potential in the approach of targeted messaging to specific groups, however it requires understanding your target audience, communicating what they should look out for, and encouraging them to report issues to the relevant people or organisation.

### Effective intelligence

The GLAA have had a significant increase in the level of intelligence reported to them in the past three years which impacts on their resource. In 2018/19 they received 2,750 referrals (pieces of information), of which 21 per cent resulted in an investigation or was linked to an existing case (GLAA, 2020a).

It is in everyone’s interest to ensure that the intelligence received is of as good quality as possible to help detect non-compliance and to make efficient use of resource. Stakeholders expressed frustration that they reported issues and did not see any action. This may be that there was action taken but it cannot be reported back to them for operational and data protection reasons, or that the intelligence was insufficiently detailed to lead to an investigation.

The GLAA Business Plan seeks to develop “*Wider public awareness and industry specific campaigns in conjunction with partner organisations, maximising the use of social media, in order to raise awareness of labour exploitation and increase victim identification*” (GLAA, 2019b: 4). I have certainly noted that the GLAA do a lot of comms work to increase awareness of the signs of modern slavery and encourage reporting, and I commend their efforts in this regard. Tweets are regularly used by their comms team. Going forward, GLAA should review how well these are targeted and how effective they are beyond just the reach and number of views. Proper evaluation of such comms campaigns that includes assessment, as far as possible, of whether intelligence reports increase in both quantity and quality may well help to develop this aim further. Understanding the ways in which current cases have come to light will be useful here (see Recommendation 9).

## 4.2.7 Other relevant issues

### 4.2.7.1 Agriculture Bill

Post EU Exit, the funding, regulatory and trading frameworks in agriculture will be significantly different from present. At the time of writing (early 2020), the Agriculture Bill is being debated, and is proposing a post-2020 agricultural system linking farming subsidies and funding to public goods such as clean air, water, higher animal welfare standards and flood protection. I would highlight that compliance and due diligence in relation to labour regulations are also a public

<sup>35</sup> In addition, the Clewer Initiative also launched The Farm Work Welfare App to support both employers and workers to tackle modern slavery in farming, horticulture and food production. <https://www.theclewerinitiative.org/farmworkwelfare>

good. Therefore, this legislation provides an opportunity to embed worker protection into the new system, by including labour compliance in the criteria for receipt of subsidy. This would help to support and enhance labour rights in an inherently high-risk sector.

In other areas, the Government has taken similar steps to tackle modern slavery through public procurement. For example, the Cabinet Office has established a mandatory commercial policy for Central Government Departments, their Executive Agencies and Non-Departmental Public Bodies. It sets out specific measures to help prevent modern slavery in public contracts at each stage of the commercial life cycle, from pre-procurement to contract management (Cabinet Office, 2019).

It seems to me that farming subsidies should be treated in much the same way. If government money is to be used to support businesses, as a minimum requirement, those businesses should explicitly be required to abide by all necessary labour and employment law. The wider developments in agricultural policy may also present opportunities to address some of the more structural issues within the sector that facilitate exploitation.

I am keen that the Home Office and GLAA apply their understanding and expertise to the strategic discussions around what these new systems will look like, how they will operate, and how they can be designed to impact on the scale and nature of labour abuse (see Recommendation 10).

#### 4.2.7.2 Immigration system

The post-2020 immigration system is likely to have a significant impact on the agriculture sector; primarily as agricultural seasonal work will be classified as 'low skill'. The Government have put in place the Seasonal Workers Pilot and expanded this to 10,000 workers initially, and later to 30,000 workers for the 2021 harvest season.

The message from the farming sector at the end of 2019 was that, given the number of workers currently coming from overseas, 10,000 would not be sufficient to pick the crops at the right time. It remains to be seen how the labour supply for this sector will develop.<sup>36</sup> There are several unknowns about this, including what will happen with the existing pool of seasonal labour and the proportion who decide to apply for settled status and stay in the UK (and stay in the industry). Technological developments or broader changes to the UK workforce may also have an impact.

Some stakeholders raised concerns that the nature of temporary migration schemes can facilitate exploitation, especially where an individual's right to remain in the country is linked to their working arrangements, making it harder to complain or escape from exploitative situations.

However, from discussions with the Home Office policy team, I am encouraged that worker protection is already being seriously considered within the design of the pilot and that it is being evaluated to ensure lessons are learnt. I look forward to seeing the results of this evaluation and expect any key learnings to be duly incorporated into future iterations of the scheme.

I would want the GLAA to continue to play an important part in the development of the pilot and any future schemes, given their expertise in identifying and enforcing against problems in this sector (see Recommendation 11).<sup>37</sup>

I discuss this further in Section 5, but one of my main concerns is that the visitor route which is being implemented side by side with the employment route, may provide an open door to abuse. Where there is strong demand for labour, there is a possibility that some people coming to the UK as visitors for six months will be tempted to work without the right to do so, either for a

<sup>36</sup> Note that COVID-19 has had a particularly significant impact on the movement of agricultural workers over 2020.

<sup>37</sup> Note the 2021/22 LME Strategy will consider the impact of the new immigration system on labour market exploitation and enforcement in more detail.

grower who is prepared to turn a blind eye as they need the labour to tend and pick their crops, or through a non-compliant gangmaster. The penalty for not checking right to work is up to £20,000 per worker and up to five years in prison, and an unlimited fine for deliberately employing someone without the right to work, which dwarfs the penalties for non-compliance with GLAA regulations. Yet we know that, in the wider economy, a small minority of employers already take this risk and use the labour of people not permitted to work in the country.

When working illegally, the workers have no enforceable link to their ‘employer’. We know that these are the very conditions in which exploitation and non-compliance can thrive. On these grounds, there could be an argument that the seasonal pilot should be large and then scaled down, to mitigate against non-compliance, rather than making it restrictive and at risk of choking off businesses and enabling labour abuse.

As I set out in Section 7, the new immigration system is an area that I am very interested in exploring further with the relevant policy teams and departments over the next year.

## 4.2.8 Conclusions and recommendations

### **Recommendation 6:**

#### **GLAA – three-year delivery period**

In line with my wider argument around robust voluntarism, the GLAA should work with the sector to explore how it can lend credibility and support to the labour standards and compliance elements of high-quality certification schemes for growers. Working with a strengthened licensing system, this would allow the sector to be more confident about compliance throughout the supply chain, without relying on multiple, sometimes poor standard ethical compliance audits.

### **Recommendation 7:**

#### **GLAA and Home Office – two-year delivery period**

GLAA and Home Office should:

- a. Review the licensing system and budget to include increased compliance inspections and routine visits; and
- b. Consider analysis of the effectiveness of the potential increase in unannounced visits in circumstances set out in the Government’s response to the 2019/20 Strategy.

### **Recommendation 8:**

#### **BEIS/HO/GLAA**

The GLAA should review licensing data: what is collected, how it is analysed and how it is shared:

- a. In the immediate term (1-year delivery period): the GLAA should strengthen the licence holder database to improve the range and quality of information held, and to identify trends and indicators of risk to inform inspection policy, including the characteristics of licence holders and correlations with risks of non-compliance;
- b. In the longer term (3-year delivery period): BEIS/HO should be ambitious and creative when designing the data collection and analytic functions of the Single Enforcement Body. They should draw on innovative practice such as HSE’s and HMRC’s risking models and consider how best to draw on expertise from outside Government; and



- c. Within the Single Enforcement Body (3-year delivery period): the licensing function should be fully integrated into the data capability of the new organisation. BEIS/HO/GLAA should identify where streams of data around licensed labour providers and labour users can be usefully compared and combined to understand risk, identify non-compliance and target resources appropriately.

### **Recommendation 9:**

#### **All bodies – two-year delivery period**

The LME bodies should undertake analysis and work in partnership with academics and JSTAC to fill key evidence gaps in understanding labour market non-compliance and the effectiveness of enforcement. This will be especially important to feed into the SEB development.

Specifically, the DLME, in collaboration with the labour market enforcement bodies and other relevant organisations (including the facilitation of access to case information), will seek to review existing and past cases of severe labour exploitation to improve understanding of how worker exploitation comes to light. This should consider:

- Who do workers confide in? and
- What opportunities are there to encourage people to report labour abuse?

The findings should feed into the communication and engagement strategies for the enforcement bodies and the future SEB.

### **Recommendation 10:**

#### **GLAA and Home Office – two-year delivery period**

I encourage the GLAA and Home Office to engage with the Department for Environment, Farming and Rural Affairs (DEFRA) to consider the scope to include labour protection compliance as part of the relationship between the new farming subsidies systems and the protection of labour rights.

### **Recommendation 11:**

#### **GLAA – one-year delivery period**

GLAA should continue to work closely with Immigration Policy to ensure the Seasonal Workers Pilot builds on its existing approach of incorporating prevention of exploitation within its programme.

## **4.3 Construction**

The ODLME MoRiLE assessment identifies a number of non-compliance issues in the construction sector, including reports of widespread ‘lower level’ non-compliance such as unlawful pay deductions or failure to pay for personal protective equipment, concerns around health and safety and tax fraud risks, and at the extreme end, some cases of labour abuse and modern slavery. Given the size of the workforce, issues of non-compliance have the potential to impact on large numbers of people.

### 4.3.1 Sector context

Construction is a major sector in the UK economy, with a GVA of around £116 billion (ONS, 2019e) and accounting for around eight per cent of GDP (BEIS, 2019). It is highly diverse ranging from the large commercial sites, which involve extreme levels of complexity of planning and workforce, down to domestic construction activities, such as plumbing and kitchen-fitting with many more direct links between end consumer and worker.

Jobs within the sector vary significantly in pay and Regulated Qualifications Framework (RQF) skill-level; labouring and groundwork roles are relatively low-skilled and low paid, while some technical occupations are highly specialised and highly paid. The sector is highly reliant on associated trades, including cleaning and security through to architectural services and logistics.

For the purposes of this Strategy, I have mainly focused on three core construction industries defined using the SIC (2007) codes in Table 4.3.1 below. In 2019, these three core industries accounted for over 1 million businesses and almost 1 in 5 SMEs in the UK (BEIS, 2019). Across these businesses, approximately 2.2 million people were working in construction contributing to the sector's estimated £357 billion turnover.

**Table 4.3.1: Business Population Estimates by Construction subsector, 2019**

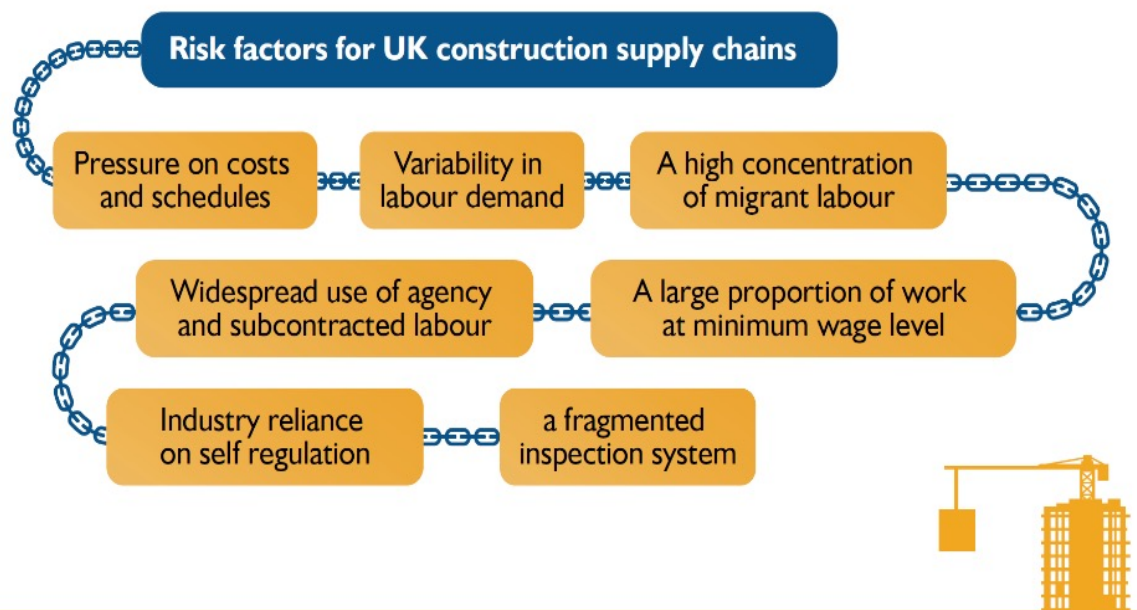
	41: Construction of buildings	42: Civil engineering	43: Specialised construction activities	Total
<b>Businesses</b>	369,000	68,300	600,000	1,040,000
<b>Turnover</b>	£175 billion	£57.8 billion	£125 billion	£357 billion
<b>Employment</b>	711,000	289,000	1,220,000	2,220,000

Source: Business Population Estimates (BEIS, 2019)  
Note: Totals may not sum due to rounding

The sector is expanding. The number of construction businesses rose by 12,000 between 2018 and 2019 (ONS, 2019b). This is connected to the Government's support of increased home-building and the commitment to building 300,000 new homes every year by the mid-2020s (HM Treasury, 2017). The Chartered Institute of Building (CIOB) estimates that, in order to meet these ambitious targets, 160,000 new recruits will be needed by 2023 (CIOB Campaigns).

### 4.3.2 Risk factors for labour exploitation in the construction sector

Certain features of the construction industry can create an environment that might facilitate labour exploitation. These risk factors are summarised in the diagram below from the Chartered Institute of Building.

**Figure 4.3.2: Risk factors for labour exploitation in the construction sector**

Source: Chartered Institute of Building (2018)

Common themes with the other sectors examined in this report are the high concentration of migrant labour, variability in labour demand, low pay and pressure on costs. However, the degree of subcontracting and complexity of employment practices stands out within this sector.

### 4.3.2.1 Pressure on costs and schedules and low pay

Despite recent improvements in productivity, profitability in construction is still low and business survival is precarious (Glenigan, 2019). The true impact of these cost pressures can be illustrated by the case of Carillion, which liquidated in 2018, putting 20,000 jobs directly at risk. In 2019, construction had the highest number of company insolvencies of any sector in England and Wales with almost 3,200 insolvencies – a nearly 7 per cent rise on the previous year (Insolvency Service, 2019). It is therefore key to survival that businesses reduce costs where they can, which can often put downward pressures on labour costs.

By the Low Pay Commission's definition,<sup>38</sup> construction is not a low-paying sector, but this is skewed by the existence of highly-skilled, highly-specialised occupations within construction. BEIS estimated that there were around 41,000 jobs in construction paid at or below the relevant minimum wage rate in 2018/19 (BEIS, 2020a) and gross pay at the lowest decile for the sector in 2019 was just below £9 per hour (ASHE, 2019).

However, as highly-skilled workers are in demand (and, therefore, at a premium), and lower paid workers are already at or around minimum wage, there is a limited capacity for firms to legally cut costs here. Instead, some businesses seek to avoid associated labour costs.

38 See for example LPC (2019).

“There’s loads of times actually, come to think of it. Loads of jobs where you’re told you need proper scaffolding and you won’t get it, cause it’s too expensive . . . money, money. [...] they’ll have you working off a ladder, it won’t cost them anything then.”

Worker Interview (Vey et al., 2020)

One way of doing this is by not providing Personal Protective Equipment (PPE) or forcing the workers to pay for it. This has obvious health and safety risks but can also push pay below NMW/NLW. Additionally, some businesses seek to reduce their number of direct employees and use self-employed people. This helps with flexibility but also avoids NMW/NLW obligations and National Insurance liabilities. This may benefit the worker in some regards (i.e. through the receipt of gross pay, tax advantages, ability to be selective about work), but also means lack of sick pay, holiday pay or pension provision.

“I have no rights whatsoever. I’ve never thought of having any rights, myself, personally – self-employed.”

Worker Interview (Vey et al., 2020)

Stakeholders suggested that self-employment is sometimes imposed on workers who may be unaware of the downsides or who may feel unable to challenge this practice. Indeed, there are notably high rates of self-employment in construction, especially among migrants in the sector. For 2014 to 2016, more than half of non-UK nationals in the sector were self-employed (ONS, 2018c), including 63 percent of EU8 nationals, and 66 per cent of EU2 nationals (ONS, 2018b).

### 4.3.2.2 Variability in labour demand

Against these thin cost margins, businesses can also face significant financial penalties for failing to deliver outputs as contracted, resulting in pressures on schedules as well as costs. To remain profitable and avoid these penalties, businesses need a highly flexible workforce, one that can provide an influx of labour when it is required but not impose a cost burden when their labour is not needed.

Moreover, construction is a generally volatile sector, experiencing acute peaks and troughs in response to confidence and performance in the wider economy. Even within a single project, demand for labour varies day by day and unexpected problems or weather can affect subsequent project stages, meaning that certain roles may not be required until later than initially anticipated. Contracts are bid for and won without the labour force in position, with recruitment done at short notice.

During peaks of labour demand, for instance, where a deadline must be met, employment safeguards may start to weaken. Workers may be required to work longer hours, potentially breaching health and safety regulations, and due diligence controls around labour recruitment may become lax. This can present an opportunity for unscrupulous labour providers and employers to operate in the market with a reduced chance of being detected or challenged. In the most extreme cases, this can lead to severely exploited workers being provided into otherwise compliant supply chains, with examples given of workers living in very poor conditions, being transported to and from the sites, and having their pay withheld.

More generally, lower-skilled workers, who cannot easily move between roles, often find that work is often temporary, sporadic and unpredictable. Workers are constantly changing employer, work sites and possibly even employment status with different jobs. This creates a vulnerability to potential exploitation and makes it more likely that workers will simply move on to the next job rather than complain when they are unfairly treated.

“I think there are people that deal with this kind of stuff [external support] . . . but probably I wouldn’t look for any trouble, I would just try to sort it the best I could, to not cause any trouble or anything but at the end of the day if you’re not happy somewhere you just find another job”

Worker Interview (Vey et al., 2020)

Construction firms often recruit via employment agencies/businesses, but there is evidence of much more informal recruitment techniques also being used. Stakeholders told us of employers simply shouting out their requirements for the day in a public setting that becomes known as a recruitment place, and individual workers offering their labour with others then potentially providing lower rates to undercut them. In these cases, workers have no indication of the reliability of the employer in terms of pay and conditions of work, are potentially not getting the minimum wage and could be at risk of more severe exploitation.

Similar risks are present for workers recruited abroad. We heard cases of individuals being deceived as to the pay and conditions being offered, travelling to the UK having paid fees and finding no work as promised. Media reporting in late 2019 highlighted the involvement of organised crime groups in brokering workers at off-site locations to employers with apparent coercion of the workers under their control (Construction News, 2019).

Stakeholders also noted casual dismissal policies in the sector, with a ‘hand-to-mouth’ business model and workers being given less than 24 hours’ notice of their employment being terminated. To ensure that vacancies are filled, multiple people may be offered the same role, only to be told that they are not needed when they arrive on site.

These informal recruitment practices make the situation for workers very precarious. The threat of sudden termination of employment may be a significant deterrent to workers reporting any problems, as individuals may fear retaliation.

*“The preference for flexibility of workforce and the ready supply of workers in this sector is leading to informal and unpredictable hiring and firing practices. . . . Such informal hiring practices also appear to lead to informal dismissal procedures, leaving workers with little or no security when demand decreases, and employers look to make savings.”* FLEX response to the Call for Evidence.

### 4.3.2.3 Structural fragmentation and complex supply chains

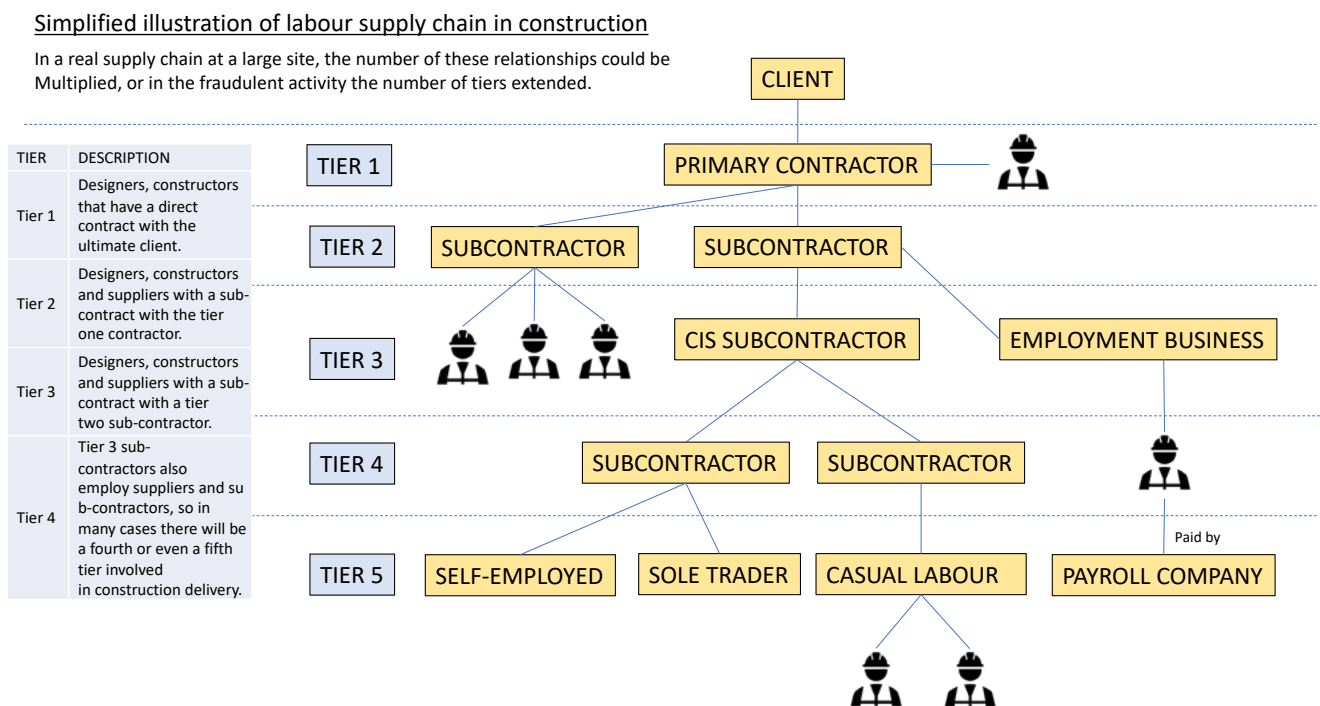
One of the key risk factors for labour exploitation in construction is the fragmentation of the employment relationships, with multiple tiers of sub-contracting and long supply chains using a variety of employment models. With each layer, the lead contractor becomes less able to really know who is working on their sites and under what working agreements or recruitment methods.

For the worker, it becomes more difficult to know who to complain to or challenge when they have difficulties at work. We heard for example that workers may be unaware that they are being treated as self-employed or how they are to be paid. The worker may believe they are employed by the employment business but are actually paid via an umbrella company, muddying the employment relationship further.

As a result, raising a complaint about pay and conditions becomes even more daunting, especially for those whose understanding of worker rights and/or the English language may be quite poor.

These complex relationships in the supply chain are illustrated in Figure 4.3.3.

**Figure 4.3.3: Illustration of Labour Supply Chain in Construction**



Unscrupulous labour providers can use the complexity of employment relationships to deliberately hide their non-compliance, either slipping through the cracks during due diligence checks or by deliberately falsifying records. Indeed, some workers themselves may be providing false documentation such as fraudulent or fake CSCS cards (Construction Skills Certification Scheme) and it can be very difficult for contractors to identify these types of fraud.

This complexity is exacerbated by the presence of different types of employment relationships within a single tier or even among workers supplied by a single provider. Staff could be provided by the same recruitment business or subcontractor entity under different employment routes and, as outlined in Table 4.3.2, each can be vulnerable to different types of exploitation, making due diligence difficult for those examining their supply chains.

**Table 4.3.2: Employment routes and associated potential exploitation**

Employment route	Potential exploitation
Self-employed	While the level of self-employment is high in the industry, stakeholders reported that workers were being forced (or signed up to without their knowledge) to become self-employed without understanding the wider implications (such as sick pay, holiday pay or access to pension saving). In many cases, this employment status was not genuine.

Employment route	Potential exploitation
Umbrella companies	Workers may sometimes be unaware they have been passed to an umbrella company or have no choice about using one. Workers may be paid above minimum wage, but if they are paying costs (e.g. administrative charges) to a payroll provider, they might be paid below the minimum wage. Other unspecified deductions mean that workers do not receive the full payment they were expecting.
Informal (casual, word of mouth, pick up points)	Informal recruitment enables off-record working where cash in hand transactions are often used to suppress income for tax purposes. This type of employment means that full employment rights are unlikely to be exercised in the workplace, let alone recorded. Workers also make themselves more vulnerable by accepting work and transport to work sites without knowing their employer. The worker is left dependent on the employer paying for their labour and returning them to a home location, raising the risk of labour abuse if the dependence increases.

#### 4.3.2.4 Industry image

The construction industry suffers from poor reputation as an employer (Farmer Review, 2016). With 20 per cent of workplace fatalities in 2018/19 occurring in the sector (HSE, 2019) construction is often perceived as a dangerous industry, exacerbated by media reports of rogue or ‘cowboy’ builders operating in negligent or criminal ways.

“There was one job where we were working where I had me accident, where I’m surprised there hasn’t been anyone killed. [...] we were not trained scaffolders but we were forced into the position of taking this scaffold down... [...] and that was about 90 foot up”

Worker Interview (Vey et al., 2020)

The negative picture of the sector means that, to some extent, non-compliance in construction is normalised and tacitly accepted. This may exacerbate the underreporting of breaches or exploitative practices – both by workers and by the general public – as they become ‘expected’ industry standards. I recognise that industry is working to address these issues, for example, through the Considerate Constructor Scheme, but there is clearly further progress to be made on improving the image and accepted behaviours within the industry.

There is also a perception that unscrupulous employers do not expect to be found out or challenged. This is particularly true in domestic construction, where businesses do not face the same scrutiny or due diligence as the more commercial construction activities. A key risk of transactions in domestic construction is cash in hand, off record, payments which makes non-compliance more difficult to identify. Moreover, as with self-employment, the short-term advantages of cash in hand payments may be understood by the workers, but they may not be fully aware of the benefits they forego, such as minimum wages or pension entitlement.

#### 4.3.3 Enforcement

As described above, the complex nature of labour supply chains within the construction industry is compounded by multiple avenues through which workers can be employed. This creates a situation where there is the potential for exploitation of workers across the full spectrum of non-compliance, varying from deductions for personal protective equipment, non-payment of national minimum wage through to documented cases of modern slavery.

*“Construction is rife with human rights abuses. Bonded labour, delayed wages, abysmal working and living conditions, withholding of construction workers passports and limitations of movement are all forms of Modern Day Slavery.” UNITE the Union.*

Considering this wide range of potential exploitation, enforcement against non-compliance in construction falls into the remit of all three LME bodies.

### 4.3.3.1 EAS

In 2018/19, EAS had 111 cases in the construction sector, representing around 13 per cent of the complaints cleared and targeted inspections undertaken in that period. In these cases, EAS identified 133 infringements, and the Construction sector had the third highest number of breaches across all sectors for 2018/19 (EAS, 2020).

During our Call for Evidence, we heard that the main employment business-related issues for construction workers include:

- Being treated as self-employed when they were unaware that this was their designated status and how they would be paid;
- Believing they are employed by the employment agency but find they are paid via an umbrella company; and
- Lack of clarity on people’s payslips, making it difficult for individuals to identify any issues with their pay or conditions.

*“FLEX’s survey showed that 36% of respondents do not understand all the deductions on their payslip.” FLEX response to Call for Evidence.*

One of the enforcement gaps for EAS in construction is around self-employment: even where this is bogus and/or forced upon the individual, the EAS regulations cannot be applied. Individual construction workers can form limited companies and opt out of certain labour regulations – such as the Agency Conduct Regulations<sup>39</sup> – that would cover agency workers, meaning that bogus self-employment would legally release employers from this requirement. Despite the potentially negative impact this precarious situation may have on the individuals, this is not a breach of any regulations against which EAS can enforce.

To increase worker awareness, from April 2020, employment businesses will be required to provide a Key Information Document (KID) to individuals that sets out whether the worker is employed under a contract for services or a contract of service, and (if paid by an umbrella company) who the employer of the agency worker is. The KID should then provide more transparency around the nature of their employment and improve awareness of the rights and conditions associated with their employment. Given the extent of the fragmentation in labour supply chains in the sector, I would expect the KID to have a significant positive impact in construction. EAS will enforce compliance with this new regulation as they currently do with the rest of the Conduct Regulations (BEIS, and EAS 2019).

I am very supportive of increased transparency around the reality of employment status and, as such, I welcome the introduction of the KID. As discussed in Section 5, the Government will need to evaluate the effectiveness of this awareness-raising tool in due course.

39 Conduct of Employment Agencies and Employment Businesses Regulations (2003).  
<http://www.legislation.gov.uk/uksi/2003/3319/contents/made>



### 4.3.3.2 HMRC

As well as minimum wage, HMRC has a wider interest in the construction sector around the tax implications of bogus self-employment, among other fraud risks present in the sector.

As noted earlier, given the scale of self-employment and high-skilled jobs in the construction sector, the estimated proportion of jobs at risk of underpayment is less than 2% (BEIS, 2020a). However, the incidence of false or bogus self-employment in construction and the prevalence of informal cash in hand recruitment may mean that the extent of minimum wage underpayment in this sector is underestimated.

In 2018/19, HMRC NMW closed 80 cases in the construction sector, identifying arrears for workers in 45 per cent of these cases. Across these cases, HMRC identified £111,000 of arrears affecting nearly 700 workers, an average of just over £160 per worker (BEIS, 2020a). In the BEIS Naming Scheme, 5 per cent of the nearly 2,000 entities named since 2013 were in the construction sector (BEIS, HMRC, ACAS and LPC 2018).

The majority of the construction businesses named for underpayment of minimum wages were SMEs. While some of these will have been involved in domestic construction, it is likely that many of these SMEs featured towards the bottom of complex supply chains. Given the opacity of these supply chains, it is possible that, even with the press coverage of the Naming Scheme, some of the companies and clients are unaware that subcontractors in their supply chain have been caught breaching minimum wage regulations.

I think there needs to be improvement in the way LME bodies inform and educate the supply chain when they find significant problems of non-compliance.

As regards self-employment, it is notable that when they receive a complaint, HMRC NMW will determine whether individuals are 'workers' for the purposes of employment rights, and therefore entitled to the minimum wage. This, however, is different from the determination of an individual's employment rights status for tax purposes where HMRC can make a group determination. This means for a person complaining that they have not been paid NMW/NLW, HMRC would have to consider each of their colleagues individually in a complaint for their status as a worker, while if it was for tax purposes the single determination would apply to the whole group.

As previously reported in the Good Work Plan (BEIS, 2018), there is a two-tier employment status framework in the UK tax system: employed and self-employed. For employment rights, there is a three-tier framework: two statutory employment statuses of employee and worker, and a third category of self-employed, which is not defined in legislation. It is currently possible that someone with worker status for employment rights could be employed or self-employed for tax.

I still believe that the way self-employment is determined at an individual level for minimum wage is a barrier for people reporting non-compliance as each individual has to be assessed rather than a group of workers. In a group complaint, workers may feel less concerned about being identified and therefore more likely to raise concerns.

I strongly believe that aligning both tax and minimum wage determination for employment status and allowing group determination of status would reduce ambiguity, provide clarity for workers and companies, allow for quicker resolution of disputes and provide wider scope for interventions. I hope to see further progress on this issue.

### 4.3.3.3 GLAA

Since their remit and powers were extended in 2017, the GLAA have taken on an increasing number of cases in construction. In 2018/19, the GLAA recorded 200 intelligence reports and undertook 22 enforcement cases in the construction sector. Within these cases, an estimated

134 potential victims were identified, two-thirds of whom were at risk of modern slavery or human trafficking offences.<sup>40</sup> Ultimately, 18 victims were subsequently referred to the National Referral Mechanism.

As well as these enforcement activities, the GLAA launched the Construction Protocol in October 2017 to support compliance in the sector. It now has over 100 signatories with a broad membership involving large construction companies.

Stakeholder feedback to us was that it is a positive initiative that has been particularly successful in raising awareness both around the issues and the means to tackle risks within labour supply chains. Stakeholders suggested that this protocol stands out from other social auditing initiatives because of GLAA's status as an enforcement body. It was felt that having their corporate logos on the protocol page of GLAA's website is beneficial for the reputation of the business.

While stakeholders welcomed these initial steps to support businesses to be compliant, there was some criticism about the protocol's membership. Some felt that businesses should meet certain standards to sign the protocol, while others believed the open membership encouraged a broader participation and consideration of the issues within the industry. Further, one REC construction member suggested that the value of the protocol has been affected by its rapid expansion.

*"We found the information offered through the protocol useful for successfully completing audits, particular for public contracts but the GLAA's push for more signatories [now approximately over 100] has watered down its impact"* – REC Construction Member in REC response to Call for Evidence.

A recurring theme, though, was that the protocol could do more to comprehensively cover the construction sector, with many calling for the inclusion of businesses lower down the supply chain, including employment businesses, intermediaries, and online platforms. Some stakeholders called for a public evaluation of the effectiveness of the protocol and I understand that this is something that the GLAA are working to produce. I look forward to seeing the outcome.

*"[a] general challenge with the protocol that only large businesses will have the capacity to attend the meetings and engage meaningfully in what it stands for. Therefore, we would be interested in understanding the success of the protocol and plans to expand its membership to types of business which are often missed from these crucial information sharing circles."* The Rights Lab at the University of Nottingham response to the Call for Evidence.

Stakeholders highlighted that worker representation is limited across the industry initiatives – including the GLAA protocol – and more widely social auditing. It was felt that incorporating workers' perspectives into the design would improve the effectiveness of such initiatives and increase the reach for awareness-raising among the workers themselves. I agree that worker voice is important and encourage enforcement bodies to incorporate workers' voices in the design of compliance initiatives such as protocols.

#### 4.3.4 Barriers to enforcement

There are a number of barriers to enforcement which inhibit identification of the full scale and nature of exploitation in the industry and the effective enforcement against this. These include:

<sup>40</sup> Management information provided by GLAA.

**The workforce and its nature can be hidden:** Exploitative work may occur at different sites over short periods. Even those engaging the workers may not be aware of breaches or patterns of non-compliance, so it is very difficult for the enforcement bodies to identify in a timely manner. In large sites, work may be hidden behind boarding and the work/workers are out of sight. Home improvement work may not be visible from the street preventing the public from identifying and reporting problems, while homeowners are unlikely to know which workers are on site or their conditions of pay and work, particularly given the shorter timelines for domestic works. For enforcement bodies, even once a problem is reported, the workers may have moved on to the next job by the time they visit and be very difficult to trace. Very little evidence was provided to my Office with regards to the domestic side of the industry, leaving knowledge gaps around the scale and nature of non-compliance in this part of the construction sector.

**The lack of reporting:** Workers being exploited may face the barriers of a lack of knowledge, awareness, skills and confidence to complain. This is exacerbated in this industry by people frequently not knowing who their employer is, making it less clear how to resolve any issues either informally or through official channels. The most vulnerable individuals may also fear losing work if they complain, or fear those exploiting them. As discussed in Section 5, it is hoped that the introduction of the Key Information Document will lead to improved awareness of the rights and realities of employment statuses.

I encourage the LME bodies to continue in their awareness-raising work around complaints routes, targeting their communications to reach vulnerable workers in accessible ways, including in multiple languages. For example, we heard evidence that posters produced by the GLAA for construction sites to signpost workers to complaints routes are considered an effective method of raising awareness.

**There is no database of where construction work is happening:** Where work does not require planning permission, there may be no official records within any central or government agency that the work is being carried out. This is particularly acute in domestic construction.

**Access to records:** Contract details as well as terms and conditions for workers are not usually held on site. Enforcement bodies, therefore, need to access different places to conduct investigations and match up records with individual workers during inspections. Given the LME bodies' varying powers of entry, accessing both the records and the workers is not always possible. Moreover, there is often a lack of paperwork and effective record-keeping, particularly if workers have been informally recruited. The nature of the supply chain will mean that unconnected employers on the same site will hold employment records at the various offices.

**The powers of entry:** Unless there are indications of severe labour exploitation (criminal in nature) then access to work sites can be difficult. For large scale construction sites, access to the site is by permission and requires pre-planning to ensure the safety of both workers and enforcement staff when conducting visits. The process of obtaining permission may mean that exploiters become aware of the planned enforcement activity and take steps to evade detection such as keeping certain workers off site for that day.

### 4.3.5 Conclusions and recommendations

Construction is a vast and complicated sector with multiple problems of non-compliance that span the spectrum. It is clear that there is no 'silver bullet' for resolving all these difficult issues, but stakeholders provided their own suggestions and I set out my recommendations below.

A small number of stakeholders proposed that GLAA's licensing of labour providers could be extended to construction industry as a solution to the risks within this sector.

*“FLEX advocates for the extension of licensing of labour provision in construction. Licensing provides a clear mechanism by which to monitor labour providers and through that, to ensure a level playing field both for workers and for businesses, as it prevents competitors undercutting them by behaving unscrupulously.”* Focus on Labour Exploitation response to the Call for Evidence

In my view, this would not be effective. Firstly, it would be incredibly resource intensive as this is an extremely large sector, with over a million businesses in total (BEIS, 2019). Secondly, though many of the risks manifest among labour providers, there are significant threats within construction that would not be addressed by such an approach. Given challenges in existing areas of licensing, and my recommendation to explore models of licensing in hand car washes, I do not think that licensing this sector would be appropriate at this time. Instead, as a first step, I see an opportunity for improvement through the consolidation of enforcement efforts and resources.

Effective joint working entails sharing intelligence, insights and resources, as well as seeking to develop alternative disruption methods. This includes making concerted efforts to join up the evidence, knowledge, and information to build a strong understanding of the risks, then aligning the existing powers, resources and penalties available to enforcement bodies when tackling the issues.

In the long-term, under the Single Enforcement Body, there is a strong argument for dealing with sectors such as construction through sector-specific taskforces. These taskforces should involve a wide range of regulatory and law enforcement partners, making use of all available evidence and operational capabilities. Intelligence from external stakeholders and industry partners (such as the GLAA construction protocol and its members) should feed directly into these taskforces to inform both tactical and strategic decision making among the enforcement bodies. For instance, intelligence generated by social auditing schemes should be shared with these operational taskforces, thereby robustly supporting industry compliance initiatives with effective enforcement activity.

There is the opportunity within the development of the Single Enforcement Body to review the legislative basis of enforcement, including issues such as powers of entry, which could significantly improve efforts to find and deal with problems. These issues need to be understood and addressed now, at the early stages of the development of this new enforcement body.

Moreover, I would want more to be done to understand the scale and nature of non-compliance in at-risk sectors. For instance, given its size and complexity, the analysis we have undertaken on the construction sector during this compressed Strategy development period could, inevitably, only scratch the surface of non-compliance. More work involving a wide range of stakeholders will be needed to develop a robust understanding of the issues in this sector. This would have to be taken forward by the proposed sector-specific taskforce within the SEB, but progress should be made in the interim.

Such work could be initiated by my Office but would rely on the engagement of the LME bodies and other enforcement partners. In this way, I would envisage the development of a more robust evidence base around non-compliance in construction, with consideration of the optimal methods for tackling non-compliance in the different sub-sectors of the industry. Moreover, this workstream could help inform the development of the Single Enforcement Body by acting as a test case for this sectoral approach. I discuss this further in Section 7.

One area of continual work to tackle exploitation in the construction sector is around raising awareness about labour exploitation within the less regulated parts of the industry. For instance, it might be possible to reach property owners through the provision of information through the building application process. I appreciate that this would have to be done carefully to avoid generating a surge in reports and subsequent demand that the enforcement bodies may be

unable to manage. Nevertheless, distributing awareness-raising materials to the public may be an effective new way to educate and inform a different form of client base for the construction industry (see Recommendation 13).

Additionally, while there is recognition of progress within the industry itself, wider public awareness of successful interventions against severe exploitation would potentially serve as a deterrent across the supply chain. Stakeholders have been very open about how they are working to identify and tackle non-compliance in their supply chains, and these lessons learned are often shared at industry fora such as the GLAA protocol meetings. It was suggested that broadening the reach of these messages would amplify the impact throughout the construction industry.

More generally, promoting good practice being conducted by household names within industry – both independently and with support from the enforcement bodies – could encourage others to take similar approaches, while also deterring non-compliance at different sector tiers. I would envisage this being effectively implemented as a joint partnership between the LME bodies and the industry in disseminating this information; demonstrating that industry is cracking down on exploitation in supply chains and leveraging the big names to deter unscrupulous employers from entering the market. There is already good work in this area from the GLAA Construction protocol, but I would want this to be taken further to develop the evidence base around ‘what works’ (see Recommendation 14).

I am aware that there are limitations on some of the bodies as to their ability to discuss and publicise individual cases publicly. However, I would want to see this collaborative approach with industry (and not just in construction) to be advanced as far as possible before the SEB is established. The set-up of the SEB may potentially be used to overcome some of the barriers currently experienced by the enforcement bodies.

Acknowledging the good work being conducted by industry, I still believe that dealing effectively with the issues of complex supply chains is vitally important for making a significant change in non-compliance in construction. This applies equally to other sectors such as agriculture and textile manufacturing among many others. I strongly feel that using different tools to ensure impact throughout the supply chain will be essential for dealing with non-compliance in particular problem sectors.

To tackle these issues and increase the incentive for the top of the supply chain to ensure compliance among their sub-contractors, the 2018/19 Strategy recommended that the Government introduce powers to embargo ‘hot goods’, and to introduce ‘joint responsibility’, where the brand name (at the top of the chain) bears joint responsibility for any non-compliance found further down the supply chain. Both these proposals were consulted on as part of the Single Enforcement Body consultation (BEIS 2019). I await the Government response which is expected in early 2021.

I set out a similar argument in my response to the Government’s consultation on Transparency in Supply Chains (TISC) (Home Office, 2019a).<sup>41</sup> In this, I emphasised my view that a joined-up approach from government setting out the expectations on firms in relation to their supply chains will make both compliance and enforcement easier. My discussions with large companies, both through the call for evidence and in wider discussions, suggests acceptance of responsibility for their supply chains but that companies need clarity from government on their responsibilities, and for the process for compliance to be made as easy as possible.

The Government is already considering several potential avenues for tackling non-compliance in complex supply chains. In addition, new measures are being introduced to ensure public procurement practices identify and tackle risks of modern slavery (Cabinet Office 2019).

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41 The response to the consultation was published in September 2020.

The Government recently published its own Modern Slavery statement for the first time (HM Government 2020), which includes specific actions to improve purchasing practices in construction to reduce structural problems that increase the risk of exploitation.

All of these are very welcome measures to embed and promote good practice. Clearly, the development of the Single Enforcement Body and the consequent review of powers and ways of working will be a key opportunity to further develop these types of ideas.

In the meantime, I believe that for the most serious cases of exploitation (in any sector, not just construction), the enforcement bodies should invest resource to understand the drivers and facilitators of the severe non-compliance identified within that supply chain, as well as any other breaches that may be connected to that case. By identifying vulnerabilities in this way, the enforcement bodies may be able to refine their internal risking and develop their intelligence picture so as to more accurately identify which types of workers may be suffering labour abuses and thus target their resources more efficiently (see Recommendation 15a).

Furthermore, this learning could be used to inform those higher up the supply chain as to the weaknesses in their due diligence processes, therefore working with industry to strengthen their own efforts to uncover and resolve non-compliance amongst their suppliers. I understand there are issues of confidentiality restricting the sharing of details outside of law enforcement. However, as far as possible and as early as possible, I believe that the enforcement bodies should share awareness of the nature of non-compliance identified within a companies' supply chain to improve their understanding and awareness of risks, which could ultimately strengthen their systems of review (see Recommendation 15b).

I would expect high-tier businesses that have been informed of the nature and incidence of non-compliance within their supply chain to make concerted efforts to prevent and challenge labour exploitation among their other contractors. I am mindful, though, that some firms may not sufficiently alter their behaviour, if at all. The LME bodies should seek to identify those companies that repeatedly use non-compliant businesses within their supply chains, as they may require targeted assistance in bolstering their due diligence or more forceful engagement to encourage improvements (see Recommendation 15c).

At present, it would not be possible for the LME bodies to impose any penalty on such organisations in this scenario. However, this may change with the outcome of the SEB consultation and should be considered during deliberations around the powers and priorities of the new body. In any case, I believe that it is important for the enforcement bodies to encourage and support due diligence in supply chains wherever possible and identifying and sharing appropriate information about non-compliance could be an effective means of doing so.

## **Recommendation 12:**

### **HO and BEIS – one-year delivery period**

- a. Home Office and BEIS, in partnership with ODLME, should investigate a sectoral approach into the design of the Single Enforcement Body, to bring together enforcement bodies and wider stakeholders to develop ways of identifying, analysing, mapping and effectively tackling non-compliance in particular industries

### **All Bodies – one-year delivery period**

- b. In the interim, the enforcement bodies should build on the Construction Protocol and ODLME will support work to develop the evidence base around the sector. Learning from this would then inform the development of the Single Enforcement Body.

**Recommendation 13:****GLAA – one-year delivery period**

The GLAA should engage with the Local Government Association to understand whether it would be an effective prevention intervention to provide information to property owners when planning permission is granted for construction work on the signs of labour exploitation and how to report concerns.

**Recommendation 14:****All Bodies – two-year delivery period**

Both in construction and in other high-risk sectors, the enforcement bodies should increase their promotion of instances of good practice where a brand/household name has identified and taken successful action against severe labour abuse within their supply chain. This is both to publicise the work within the industry and increase the deterrent effect. Development of the SEB should be mindful of existing barriers that might prevent the current enforcement bodies from doing this.

**Recommendation 15:****All Bodies – ongoing recommendation**

Across sectors, where the LME bodies identify severe labour exploitation, there should be an automatic and systematic review of the extended labour supply chain to:

- a. Identify vulnerabilities and potential wider exploitation related to the initial case;
- b. Inform and educate the organisations in the supply chain about weaknesses in their systems; and
- c. Identify organisations where there is repeated failure of expected levels of due diligence.

## 4.4 Hand car washes

The hand car wash sector has been a concern for some time now, both among the enforcement bodies and increasingly in the media. Our own annual intelligence assessment has consistently ranked this sector as having a severe risk of labour exploitation. My predecessor had recommended in his 2018/19 Strategy that a pilot licensing scheme be carried out in this sector. This was endorsed in 2018 by a separate inquiry by the House of Commons Environmental Audit Committee (EAC, 2018e). Set out below is an update on the evidence and enforcement efforts.

### 4.4.1 Sector context

The Hand Car Wash (HCW) sector is a relatively new business sector in the UK. HCWs were virtually non-existent before 2004 as the sector had been based on mechanical vehicle washes since the 1970s (Clark, 2018). HCWs involve washing cars by hand rather than by machine, this can be both internal (valeting) and external cleaning of vehicles. Research by Professor Clark and his team at Nottingham Trent University describes HCWs as very much part of the informalised economy:

*“...there are different types of HCW with different degrees of visibility, presence and longevity in England and Wales; for example, there are pop-up washes, washes present on supermarket car parks and in city centre car parks. Other HCWs occupy abandoned spaces on former petrol station forecourts, former pub car parks or pub spaces, which have now been demolished. Similarly, some HCWs occupy spaces, which were previously car dealerships, tyre replacement outlets, or road-side garages” (EAC, 2018a).*

HCWs are neither specifically identified nor measured within national statistics, and therefore no reliable official estimates exist of their volume. The actual number of hand car washes in operation, and the size of the workforce they employ, is therefore difficult to ascertain. The analysis below draws from a number of sources to look at this question.

Research submitted to the DLME by the Car Wash Association suggests there may be as many as 20,000 informal HCWs in addition to an estimated 800 or more HCWs either on supermarket or commercial dealer sites. By comparison it estimates around 4,000 automated car washes across the UK.

Other research and projects undertaken at local authority level indicate that the number of HCWs may in fact be considerably lower (see for instance Clark et al., 2020). The researchers at Nottingham Trent University shared their more recent (as yet unpublished) analysis with us which included a larger scale mapping of HCWs that, by the end of 2020, has covered more than a quarter of all local authorities in England and Wales, and estimates HCW volumes at between 6,500 and 8,000.

From our own calculations using the available local authority data from a variety of studies since 2018, we estimate there are, on average, approximately 10.1 HCWs per 100,000 population. Using this ratio and grossing up the national level would give a UK-wide total of around 7,000 HCWs (Table 4.4.1).



**Table 4.4.1: Local Authorities HCW counts, population and UK total estimates**

Source	Local authority	Population (millions)*	HCWs identified	HCWs per 100,000 population
Southwark Council (2018)	Southwark	0.317	17	<b>5.36</b>
Operation Flinch	Slough	0.149	19	<b>12.74</b>
NTU (2019)	Bristol	0.463	44	<b>9.5</b>
Clark et al., (2020)	Leicester, Derby, Nottingham, Lincoln, Loughborough**	1.225	110	<b>8.98</b>
NTU mapping estimate (unpublished)	Birmingham	1.141	144	<b>12.62</b>
<b>Total of above</b>		3.295	330	<b>10.14</b>

\* Source: ONS (2019) population estimates mid-2018  
\*\* Charnwood population used in place of Loughborough

Much of the sector is made up of micro-sized companies. During our stakeholder engagement, Waves, a commercial operator with nearly 300 sites, told us there are an average of seven workers in their HCWs, while academic research (Clark, 2018) identified as many as 10 operatives working at HCWs at any one time. On this basis, our best estimate, multiplying the estimate of the number of HCWs and an average number of workers, is that total employment in the sector is around 50,000 to 70,000.

The structure and composition of the UK car wash industry has changed dramatically over the last decade. Factors that have had an impact include a supply of low-cost labour from Eastern Europe. Reliable stakeholder evidence indicates Romanian and Bulgarian workers make up more than half of the HCW labour force, but there are also reports of irregular migrants finding work from Albania, Iraq and Vietnam. There is also the increased availability of disused sites like pubs, forecourts and machine washes and wasteland (EAC, 2018d). The use of these abandoned spaces, as well sites in petrol forecourts and supermarket car parks has allowed HCWs to thrive and displace many traditional mechanised car washes, especially along arterial roads.

## 4.4.2 Risk factors for labour exploitation in the hand car wash sector

There are several factors in the HCW industry that may facilitate a non-compliant environment and potentially provide the conditions for labour exploitation:

- Cash transactions mean that there are often no records of takings or of money paid out to workers. Often business practices at HCWs are highly informal and undocumented. This also has ramifications for tax and worker welfare benefits when compared to traditional machine washes;
- Reliance on migrant workers. The GLAA reports typical exploitation victims as men of Eastern European origin generally aged 17 and 24. Furthermore, many workers come from a background of poverty in their home country and so are willing to put up with low pay and poor working conditions. Poor English language skills can also leave workers ignorant about their rights and unable to report abuse (GLAA, 2019f);

“When you’re new to the country, £25 is enough for you but after three months or six months, you realise that it isn’t and that basically it’s slavery. Working ten or eleven hours a day”.

“When you move to England first you don’t know how things work so you go along with it.”

Worker Interview (IFF Research, 2020b)

- Close and co-reliant employment relationships: Workers at HCWs tend to be the same nationality as their employers. Recruitment and employment often happen through kinship networks and can also involve direct overseas recruitment. The nature of these relationships makes workers less able to report exploitation and abuse;
- Employers acting as landlords are known to provide accommodation in residential properties close to, or on, the site of HCWs. This situation makes workers particularly vulnerable to high rental payments for very poor or substandard housing, they are also reliant on their exploiter for shelter making them less able to speak out or take action; and

“These car wash guys normally have a house or something nearby that they can put you in. It’s quite cheap but they get five guys in there so they’re still making money”.

“[...] They give you nothing but there’s nowhere to go and they make it hard to leave by withholding money... they use the fact that they’re giving you somewhere to live too. They remind you that you pay cheap rent and you couldn’t get somewhere else”.

Worker Interview (IFF Research, 2020b)

- Strong competition in the market exerts downward pressure on prices and margins to stay in business. Evidence shared with ODLME by Waves (Tesco’s HCW provider) points to a typical break-even price of between £6 and £9 for an external wash. Yet during our discussions, stakeholders reported to us that many HCWs are known to charge as little as £3 to £7.

“For example, if they have 20 people working in a car wash with only 5 cars [serviced] so they are not going to get paid a lot, and there’s a lot of that in different areas, but I don’t know enough people to know this for sure”.

Worker Interview (IFF Research, 2020b)

“Some guys had issues with their skin because the protection wasn’t good enough. The chemicals started burning their skin and two or three people had to leave after a couple of months because their skin just couldn’t cope with it”.

Worker Interview (IFF Research, 2020b)

### 4.4.3 Non-compliance in HCWs

All the factors listed above contribute to a high level of non-compliance across the full spectrum of regulations, from lack of Personal Protective Equipment (PPE) to harmful effluent drainage, and underpayment of national minimum wage to coercive or forced labour relations (EAC 2018b, CWA 2020, RCWS 2020).

Evidence suggests that a broad range of non-compliance is prevalent in the HCW sector, including some modern slavery and human trafficking, but mostly lower levels of labour market non-compliance and exploitation (Clark, 2018). Stakeholders have attested that minimum wage non-compliance is endemic, and underpayment of the minimum wage is a recurrent issue in almost every HCW inspected. Presently no single inspector or officer has the remit or training to deal with the full spectrum of non-compliance issues arising in HCWs.

### Zoltan – Car Washer and Valet

When Zoltan first came to the UK in 2007, he spent the first five years of his time in the country working in Hand Car Washes.

Zoltan had no awareness of his employee rights when he first came to the UK, which is something he thinks is extremely common for people in situations like his. Pay was always cash in hand and there were no payslips, nor written contracts. Zoltan recalls one day when an official from the Home Office visited the car wash, the owner produced payslips for everyone to show the official but the workers were never given them.

The owner “had loads of payslips with an NI number even though we didn’t have one. He said not to worry about it – he’d sort it out. The Home Office looked at them, but we never even had them in our hands. I’m sure it was dodgy paperwork”.

Worker Interview (IFF Research, 2020b)

NGOs have played an important part in raising the profile of labour issues in HCWs and developing ways for the public to spot and report potential problems to bodies such as the GLAA. Presented below are the findings around the level of non-compliance from two of the main NGO interventions in this sector: the Modern Slavery Helpline and the Safe Car Wash app.

#### 4.4.3.1 Modern Slavery Helpline

Unseen’s Modern Slavery Helpline (MSH) and Resource Centre is a 24/7 service that is independent and confidential. The public can report concerns around possible modern slavery of all types via telephone, online forms and Unseen’s own app. In the case of HCWs, the MSH has published a set of 11 common indicators (such as lack of protective clothing; workers being paid in cash; the price of the car wash being excessively low) that might suggest whether forced labour may be being used in this sector, thus helping to guide the public in reporting their concerns (Unseen, 2017). Only one indicator is needed to warrant a call to the MS Helpline.

HCWs rank as one of the most commonly reported sectors for potential modern slavery to the helpline. In the 21 months between October 2016 and June 2018, the MSH received 360 reports of modern slavery in HCWs. Of these:

- 316 were in England, with 20 in Wales, 17 in Scotland and five in Northern Ireland;
- 88 per cent were classified as forced labour, and 12 per cent as human trafficking;
- 52 per cent of the reports came from a third party who had observed suspicious activity, 34 per cent involved a direct contact of a potential victim, and 9 per cent involved an indirect contact; and
- Only 1 per cent of all HCW reports came from a potential victim themselves, suggesting that while serious offences are happening, victims are either unaware of this reporting option or are unwilling to come forward (Unseen, 2018).

These cases resulted in 401 referrals to law enforcement agencies (including the GLAA and police) and local authorities. These reports identified 2,170 potential modern slavery victims in the sector, accounting for 23 per cent of all reports to Unseen.

#### 4.4.3.2 Safe Car Wash App

The Clewer Initiative was set up by the Church of England and the Santa Marta Group in 2016 to help counter Modern Slavery and Human Trafficking (MSHT) in the UK. Part of this initiative was the creation of the Safe Car Wash app launched in June 2018. This asks users a series of questions about the car wash they have visited.

An analysis of the Safe Car Wash's 2,271 app entries received between June and early December 2018, by the Rights Lab, University of Nottingham (2019) found that:

- 17 per cent of users identified fearful workers at the car wash;
- 8 per cent of reports logged children working on site;
- 14 per cent of reports said that workers were living on the car wash site;
- 48 per cent of Safe Car Wash app reports commented that workers did not have access to suitable clothing;
- 80 per cent of car wash visits had a cash only policy, 41 per cent of users had to pay the manager directly and 87 per cent were not offered a receipt; and
- The average price paid for a HCW service was £7.10.

Of those who submitted entries to the app, 41 per cent of users were prompted to call the Modern Slavery Helpline (MSH). However, only 18 per cent of those prompted actually did so – 82 per cent of users who were prompted did not call. More recent data indicate that, in the year ending May 2019, the number of entries to the app had increased to almost 5,000, with just less than half (47 per cent, or 2,332 users) being advised to call the Modern Slavery Helpline and only 361 (around 15 per cent) actually doing so (Rights Lab, University of Nottingham 2019).

The wider Clewer initiative was originally set up for three years and was due to finish in November 2019. However, Clewer has announced that the initiative would be extend for a further 10 years to continue to tackle modern slavery.

Evidence from the enforcement bodies confirms that non-compliance appears to be widespread. GLAA enforcement officers we spoke to as part of our call for evidence stated that they had never visited a fully compliant HCW. Issues range from lack of personal protective equipment for workers to underpayment and minimum wage breaches, and to a lesser extent, more serious cases of forced labour and modern slavery. However, as explained further below, although there is a narrative of hand car washes being associated with modern slavery, the actual incidence of this may be less than is sometimes suggested.

HMRC informed us that record keeping is done poorly, incorrectly, or not at all, workers are not given pay slips, and taxes are not paid. This lack of formal transparency is a major issue for HMRC NMW inspectors, but as explained below, where there is underpayment identified, the average amount owed to workers can be considerably more than in other sectors.

## 4.4.4 Existing labour market enforcement

In terms of labour market enforcement in this sector, of the three bodies within my remit, hand car washes are chiefly of interest to GLAA and HMRC NMW.

### 4.4.4.1 Enforcement interventions

Published information from the BEIS minimum wage Naming Scheme (BEIS, HMRC, ACAS and LPC, 2018) show that in the year to July 2018<sup>42</sup> some 32 car wash owners were identified,<sup>43</sup> each owing on average £2,400. Over £77,000 in wage arrears was identified for 117 workers in hand car washes, averaging £662 each. By comparison, across all sectors over the same period, £6.26m of arrears were identified for over 61,000 workers, averaging £102 per worker.<sup>44</sup>

Measured on this basis, the scale of arrears identified in HCWs compared to the average across all sectors, would indicate that wage underpayment is a more serious issue in the HCW sector.

More recent targeted enforcement activity by HMRC NMW in the first half of 2019/20 resulted in 12 closed cases in the car wash sector.<sup>45</sup> Half of these found arrears amounting to £8,138 for 19 workers (£428 per worker on average).

Of the 441 enforcement investigations undertaken by GLAA between April 2018 and end December 2019, 49 (11 per cent) were in the hand car wash sector. Overall, these investigations have identified 334 potential victims of labour exploitation where, for 189 of these, the principal offence was modern slavery and human trafficking. 11 individuals have been referred to the NRM with a further 48 MS1 (duty to notify) referrals, where the potential victims chose not to enter the NRM.

### 4.4.4.2 Referrals to investigations (GLAA)

It is helpful to understand the origins and nature of flows of information into GLAA around labour exploitation and how these translate into enforcement activity. Using data presented by GLAA to the House of Commons Hand Car Wash Inquiry in 2018 (EAC, 2018c), Table 4.4.2 below provides a mapping of the 178 HCW-related referrals GLAA received in the year to May 2018.

Over this period most (80) of the referrals to GLAA came from the Modern Slavery Helpline, with a further 47 from partner law enforcement agencies. Almost one in five of all referrals (18 per cent) to the GLAA at this time involved HCWs (EAC, 2018c).

42 BEIS NMW Naming Scheme was under review and suspended since the July 2018 round. BEIS announced its resumption in February 2020 and published a new naming round at the end of 2020.

<https://www.gov.uk/government/news/rogue-employers-named-and-shamed-for-failing-to-pay-minimum-wage>

43 These do not include every HCW that has been paid below the NMW but just those that were eligible for naming under the BEIS Naming scheme.

44 Some or all of these employers would also have been subject to financial penalties. This information is not published by HMRC NMW.

45 HMRC do not distinguish between types of car washes.

Table 4.4.2: HCW referral flows to GLAA, May 2017 to May 2018

Total HCW referrals	178	Nature of allegation		GLAA-led investigations	34
Modern Slavery Helpline	80	No PPE	26%	<i>Commenced and closed after 1 April 2017*</i>	25
Partner agencies (incl. police, HMRC, IE)	47	Vague information	23%	No offences disclosed	10
Crimestoppers	22	NMW	13%	Non-GLAA offences > referral to another agency	9
3rd Party	14	Withheld wages	6%	Intelligence only	2
Potential Victim	5	PAYE and Tax	4%	Insufficient evidence > no action	1
Industry	4	Physical treatment	3%	No value to GLAA	1
Other	6	Sleeping on site	3%	Tasking not progressed – closed w/o further action	1
		Substandard accommodation	2%	Not progressed – insufficient resources	1
		Excessive working hours	2%		
		No contract; environmental concerns; no breaks; withheld ID docs; control of movement; debt bondage; no pay slips (1% each)	7%	Other GLAA-led investigations	9
		Other	11%		

Source: GLAA evidence to EAC HCW Inquiry (EAC 2018b)

Notes: \* When GLAA's wider remit and powers became operational

In summary, of all HCW referrals to GLAA during this period:

- Around one in five of all HCW-related referrals in this period led to a GLAA-led investigation or were linked to an existing investigation;
- One in 10 were passed on to another appropriate enforcement agency (mostly HMRC for minimum wage-related cases); and
- Almost two-thirds (62 per cent) were for intelligence purposes only and no further action was taken.

Table 4.4.2 shows that although most referrals received by GLAA came from the Modern Slavery Helpline, the vast majority were not judged to involve modern slavery and relatively few led to a GLAA-led investigation.

More recent data from GLAA – covering the period April 2018 to end December 2019 – highlights a marked increase in referrals (574), giving rise to over 700 initial issues reported. Of these, 448 (63 per cent) were for intelligence purposes only and involved no further action or had insufficient information, 125 (18 per cent) were referred to other government departments or to the police and 98 (14 per cent) led to further intelligence development or investigation. Of the total referrals over this period, only 65 (11 per cent) were from the Modern Slavery Helpline. Most referrals (52 per cent) are now coming from other enforcement bodies. Only 2 per cent (12 referrals) were as a result of direct worker complaints in this sector.

In terms of serious labour exploitation, GLAA reported that ongoing investigations where serious offences have been uncovered have led to three cases being submitted to CPS for possible prosecution.

#### 4.4.4.3 LMEUs and prosecutions

Since their introduction in 2017, the enforcement bodies have made increasing use of Labour Market Undertakings and Orders (LMEUs/Os). HMRC NMW in particular has used this intervention in the car wash sector in which it has issued 11 of its 19 LMEUs in 2018/19. LMEUs can be in place for up to two years. It is too soon to say how effective these have been in terms of improving compliance in the sector. Anecdotal reporting by HMRC, based on follow-up visits and ongoing monitoring activity, suggest a positive impact on compliance at the businesses involved, though there has also been evidence of ‘phoenixing’ and changes of ownership to avoid undertakings.

GLAA does not currently have any LMEUs or LMEOs in the hand car wash sector. Since April 2018, GLAA has however served one enforcement notice and referred one case to the CPS for potential prosecution.<sup>46</sup> To date, neither HMRC nor GLAA have had a successful prosecution in this sector.

It should be noted that modern slavery cases can be among the most challenging to prosecute (ONS, 2020). In 2018, there were 91 prosecutions brought in England and Wales for either forced or compulsory labour offences under the Modern Slavery Act or for slavery, servitude or forced labour under pre-existing legislation. This resulted in convictions for 21 offences. In Scotland there have been no slavery or forced labour offences convictions since 2013-2014, and in Northern Ireland no slavery, servitude or forced labour offences prosecuted since 2013 (ONS, 2020).

#### 4.4.4.4 Other enforcement activity

The volume of enforcement activity of HCWs from regulators outside of my remit is also significant and growing. Evidence submitted to the Environmental Audit Committee (EAC) Hand Car Wash Inquiry in 2018 highlighted that HCW inspections undertaken by the Health and Safety Executive increased tenfold over three years to reach 100 in 2017/18. Of 152 HCW inspections since 2015/16, 103 resulted in enforcement action, with 45 leading to an immediate stop to work activity. The remainder were either served improvement notices (27) or were served with more minor enforcement action. There had been no HSE-led prosecutions (EAC, 2018e).

In response to concerns about HCWs, several local authorities have initiated projects to better understand the compliance issues around HCWs in their areas (Box 4.4.1 – 4.4.3). All of these initiatives considered compliance across different regulatory areas including labour market issues.

<sup>46</sup> As noted earlier, it is a decision for the CPS whether a prosecution is in the public interest, not a decision for the GLAA.

In April 2020, the Local Government Association (LGA) published new guidance for local councils on tackling labour abuse and modern slavery in the hand car wash sector (LGA 2020b). This is really a valuable and welcome development and will complement earlier guidance for councils on tackling modern slavery generally.

#### **Box 4.4.1: Hand Car Washes in Southwark Project**

Southwark Council (2018) – the Metropolitan Police and the GLAA carried out a hand car wash raid in Southwark in January 2018, which resulted in the arrest of an Albanian man on suspicion of human trafficking, money laundering and the illegal importation of tobacco products, as well as the identification of 18 Romanians thought to be victims of trafficking for labour exploitation. Southwark Council subsequently initiated a project to identify and map all operational hand car washes in the borough; to provide health and safety advice to all Southwark hand car wash operators; to ensure all workers in Southwark hand car washes have safe systems of work; and, to identify any potential modern slavery.

Some 28 potential hand car wash locations had been identified in Southwark, and 17 were confirmed as operational. Of the 17 sites visited by Southwark’s Health and Safety team, two raised sufficient concern on the basis of health and safety and potential modern slavery and were referred to the HSE and GLAA respectively.

Southwark Council’s project evaluation made a number of recommendations, including that modern slavery awareness training be arranged for Southwark Council’s frontline staff and managers, including information on the reporting mechanisms for safeguarding adults and children.

#### **Box 4.4.2: Belfast City Council**

Belfast City Council (2020) will be undertaking work this year, following a Council motion passed in November 2019 expressing concern about unregulated car washes and calling for a detailed report to be prepared on the number of unregulated car washes across Belfast. The investigation and report will be led by Council officers and involve experienced staff from all relevant statutory bodies, in particular the Police Service of Northern Ireland. The report will cover all aspects of unregulated car washes, including potential human trafficking, employee contracts and wages, environmental and health and safety issues.

#### **Box 4.4.3: Operation Flinch, Slough**

Operation Flinch (2019) was coordinated by the South East Regional Organised Crime Group (SEROCU) and the Government Agency Intelligence Network. The aim of the scheme was to promote the Responsible Car Wash Scheme (RCWS) by proactively visiting all HCWs in Slough, to help educate and support genuine business owners that have ambition to be legitimate HCWs. The borough of Slough was chosen because it is densely populated, culturally diverse and has the second most HCWs in the Thames Valley area.

Visits focused on safeguarding welfare and took place over two days. Each visit took approximately 25-30 minutes and the officers and inspectors involved visited every one of Slough’s 19 HCWs.



## 4.4.5 How severe is the modern slavery threat in hand car washes?

Despite widespread media reporting of the labour exploitation threat in hand car washes, the available evidence suggests that only a small proportion of this would constitute severe labour abuse or modern slavery. In seeking to make recommendations around the appropriate enforcement response in this sector, it is important for me to have a good understanding of the spectrum of non-compliance. The evidence presented to me over the past few months has highlighted widespread non-compliance in terms of environmental, health and safety and less severe labour market offences, such as underpayment or non-payment of the minimum wage. Of course, more serious labour exploitation does exist in this sector, but the following evidence suggests perhaps this is not as widespread as is sometimes expressed.

Research undertaken jointly by the Office of the Independent Anti-Slavery Commissioner and the University of Nottingham's Rights Lab in 2018 (IASC, 2018) found no evidence of workers being trafficked from abroad to work in HCWs. That said, the report did highlight that:

*"The lack of data visibility in the HCW sector makes it difficult to assess the extent to which labour abuse within these operations constitutes MSHT, or lower-level forms of abuse. There is a lack of evidence on the number of workers referred to the NRM from HCWs and subsequently positively identified as victims. This is partly due to the NRM system aggregating all labour and criminal exploitation into one category, rather than breaking it down by sector. The Office of the Independent Anti-Slavery Commissioner has recommended to the Home Office that this is rectified as part of the NRM digitisation project currently underway."* (IASC, 2018)

Home Office has progressed the digitisation of the NRM records in 2019/20 and consulted in early 2020 resulting in improvements in reporting of NRM statistics during 2020/21. Although some data is collected on exploitation by sector, this is currently not robust enough to be published formally as part of the quarterly NRM statistics release. Until then, the only NRM sector information available has come from academic research and earlier reporting via the NCA.

Cockbain et al. (EAC, 2018b) undertook analysis of a sample of NRM reports between 2009 and 2014 which included 40 cases of potential victims of modern slavery in HCWs. In their evidence to the EAC Hand Car Wash Inquiry in 2018, DEFRA cited NCA data showing that 94 potential victims of modern slavery were referred to the NRM in 2017, where there was a specific reference to work in hand car washes. This was an increase from 73 potential victims a year earlier. Those referred in 2017 equated to just under 4 per cent of all labour exploitation referrals to the NRM. As stated above, more recent data on referrals by sector are not currently published, however, between 2017 and 2018 the total number of potential victims of labour exploitation across all sectors had risen from around 2,300 to almost 4,000, therefore it is likely that the HCW related referrals would be even higher now.

According to the MSPTU (2020) there were 45 modern slavery operations carried out by police explicitly stating the involvement of labour exploitation in car washes in the year to February 2020. This was down from 51 in the year to February 2019, though still considerably higher than in 2018 (30 investigations) and 2017 (17 investigations). It is not clear what the overall outcomes were from these operations, nor the number of potential victims of modern slavery identified and referred to the NRM. Where there is reporting, this again suggests the relatively low levels of labour exploitation actually found in HCWs:

*"Since 2015, the Police Service of Northern Ireland has investigated 48 car washes and spoken to 212 workers but it has not been able to secure any prosecutions for labour exploitation. ...Whilst we have spoken to 212 workers, to date only six potential victims of labour exploitation have been recovered from hand car washes"* (BBC, 2019e)

It is important not to be complacent. Although the evidence to date may point towards less severe non-compliance in HCWs, I do also recognise that data for this sector remains imperfect and that, rather than trying to delineate different forms of non-compliance, we should instead understand this as a continuum of exploitation. Furthermore, the Rights Lab/IASC research (IASC, 2018) found that some workers return to exploitative HCWs after being in the National Referral Mechanism (NRM).

#### 4.4.6 Government response to date

My predecessor raised concerns about non-compliance in this sector in his Labour Market Enforcement Strategy for 2018/19 (DLME, 2018). Specifically, he recommended:

*“Two pilot schemes should be run and evaluated to test the feasibility and impact of GLAA licensing of businesses in different sectors. These should be done on a geographically limited basis and cover:*

- a. Hand car washes*
- b. Nail bars”*

In its response to the 2018/19 LME Strategy, the Government partially accepted this recommendation and stated that:

*“While the Government understands the intention of the proposal for pilot licensing in hand car washes there is a need to further explore and identify the issues within this sector to enable the development of a robust evidence base that will help to determine the most appropriate regulatory approach and enforcement body. The Government believes that this can be better achieved by a voluntary pilot approach over a compulsory pilot licensing scheme.”* (BEIS and Home Office, 2018)

Recognising the GLAA’s expanded remit to tackle labour market abuse, the Government explained that it was supporting an industry-led pilot scheme: the Responsible Car Wash Scheme which launched in October 2018. This scheme went further than the existing GLAA licensing scheme remit in that it includes environmental and planning criteria. The following details are from their forthcoming final report (see Box 4.4.4).

#### **Box 4.4.4: The Responsible Car Wash Scheme**

The Responsible Car Wash Scheme (RCWS), involving a number of industry and government partners, launched in October 2018 and uses a code of practice to help raise standards and compliance with existing environmental and health and safety regulatory standards and other labour market offences that cut across the operation of hand car washes. The initial scheme focused on hand car washes operating on five of the major supermarket forecourts across the Midlands. It focused on two business models in the sector: fixed car wash/valet and mobile trolley washes. RCWS code of practice is formed of the following four principles:

- 1) To protect worker’s rights;
- 2) Compliance with legal and regulatory obligations;
- 3) Protection of the environment; and
- 4) Provide a proper standard of service to customers.

Car wash owners are expected to be compliant with all of the principles if they are to be certified by RCWS. 44 HCWs located in East and West Midlands participated in the pilot launched in March 2019. All but one of these sites were located in supermarket car parks. Operators who are members of larger HCW networks were treated on a site-by-site basis for RCWS certification.

Supporting documentation for all areas of compliance is required, including planning permissions, effluent licenses, insurance cover, employment contracts, pay-slips and tax registration and receipts. The aim of audits, which were unannounced, was primarily to talk with workers about their terms, condition, and working practices on site. The bulk of the audits were undertaken by the RCWS and the GLAA, advice was also provided by the Environmental Agency and the HSE. Careful attention was paid to trying to interview workers not in the presence of their employers.

As noted above, the House of Commons Environmental Audit Committee (EAC, 2018d) conducted its own inquiry into hand car washes in 2018. Although focused on environmental issues within HCWs, the Committee also noted the indications of exploitation in this sector produced by the Independent Anti-Slavery Commissioner (IASC). The Committee therefore also asked, as part of its inquiry, how the Government was meeting its commitment under the UN Sustainable Development Goal 8 on decent work and economic growth.

The Committee published its final report in November 2018, with one of its recommendations being:

*“To make enforcement easier, the Government should trial a licencing scheme for hand car washes that brings together all of the major compliance requirements, including on environmental pollution, into a single, more easily enforceable, legal requirement.”* (EAC 2018d, p.33)

The Government response to the Committee’s report in January 2019 reiterated the voluntary pilot approach it had chosen to adopt, but stated:

*“The scheme will be evaluated to allow us to more thoroughly test existing regulations and legislation in order to understand where the gaps are and to help inform future decisions, including considering the scope for rolling the scheme out more widely.”* (EAC 2018e, pp5-6)

An evaluation of the RCWS pilot was undertaken in July 2019 (RCWS 2020). Overall, of the 44 sites audited it found that 61 per cent passed, 25 per cent failed and the remaining 14 per cent were pending until further information was made available.

Labour exploitation issues noted by RCWS and GLAA auditors to be commonplace include:

- Uncertain employment status;
- Worker rights with regard to self-employment;
- One individual collecting all the money and then determining rates of pay for workers;
- Workers not having or being asked to provide National Insurance numbers; and
- Lack of English and no reliable way to interpret documentation; excessive working hours and low pay.

The auditors also reported cases of workers fleeing HCW sites at the time of their visits. These workers did not exist on any documents or records, suggesting they may have been working illegally and therefore at higher risk of exploitation.

As well as providing valuable additional evidence and intelligence, this industry-led approach serves as a helpful blueprint for how HCWs might be better regulated in the future. However, it also highlights that even in that part of the HCW sector previously considered to be largely compliant, there were still a number of non-compliant operators.

In the 2019/20 LME Strategy (DLME, 2019a) my predecessor had expressed reservations about the Government response to his recommendation on piloting licensing in the HCW sector. Although welcoming the industry-led RCWS he believed that, due to its voluntary nature and the fact it would primarily target car washes on supermarket sites (which would be expected to operate to higher standards), this intervention would be insufficient to identify what appeared to be a long tail of deliberately non-compliant companies.

What the evaluation of the RCWS has shown is, in fact, that a significant minority of the hand car washes on supermarket sites failed the RCWS audit. To me, this suggests the problem of non-compliance in hand car washes is more widespread than previously thought.

The RCWS has since proposed a new pilot scheme that will see the GLAA and regulatory partners work with local councils at borough level, targeting all hand car washes and enforcing compliance through the RCWS Code of Practice. RCWS accreditation, co-badged with the local authority, will provide a public acknowledgement that the operator has signed up to the scheme and agrees to uphold its standards. The RCWS Code of Practice, together with sites that have achieved RCWS accreditation, will be promoted by the Council so that consumers can make an informed choice on which site to use. Roll out of this new pilot, tentatively scheduled for early 2021<sup>47</sup>, is subject to appropriate co-funding from industry and government.

#### 4.4.7 Conclusions and recommendations

What is clear from the evidence I have seen and heard is that the sector itself is not lacking in regulation, but rather that these regulations are not fully or properly enforced. Part of the problem is that there is no single lead agency to deal with wider non-compliance in the sector. Non-compliance, as set out above, is commonplace across a number of areas including labour, health and safety, tax and environmental laws. Apart from instances of severe labour exploitation and modern slavery, for each individual enforcement and law enforcement agency, non-compliance in the HCW sector does not rank highly enough to make it a priority for intervention. This can sometimes be further complicated by a division of responsibility between local authorities and national enforcement bodies. To some extent, this may be an issue that the Single Enforcement Body can help overcome.

I am also pleased that Clewer will be extending and aiming to improve use of its Safe Car Wash App. Consumers have a clear role to play here, both in terms of voting with their feet and reporting concerns they see at HCWs. However, a risk I see here is that the terminology used around modern slavery does not sufficiently align with the actual scale and nature of the risks to workers on the ground.

The Government chose not to take forward the recommendations my predecessor made for HCWs, opting instead to tackle the problem via the Responsible Car Wash Scheme (RCWS) discussed above. The original RCWS scheme has proved to be a helpful scoping exercise, but it reaffirmed widespread non-compliance across even those who voluntarily agreed to undertake an audit. In March 2020, I originally called for more impactful measures to address the long tail of the problem, as non-compliance associated with HCWs remains largely untouched, and recommended a mandatory licensing scheme of hand car wash operators.

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<sup>47</sup> The RCWS launched a pilot project in May 2021, funded by the Home Office.

There are a number of existing models the Government could potentially draw on to develop such a scheme, such as other local authority licensing schemes and the GLAA's licensing standards approach. Equally, there will be much to learn from the RCWS and its Code of Practice. Key to all of this will be how such a scheme might be resourced (LGA, 2020).

Since March 2020, with the proposal of the renewed RCW Scheme, I have revised my recommendation and accept that there is value in using the Local Authority pilot scheme being developed by RCWs (in 2021) to explore and test the effectiveness of compulsory licensing across the whole HCW sector. However, in order for this to be effective and robust the Home Office should support the pilot through funding and independent evaluation. If found to be successful, this model should be rolled out nationally.

### **Recommendation 16:**

#### **HO, BEIS and GLAA –two-year delivery period**

The Local Authority pilot scheme being developed by RCWS (in the New Year 2021) should be used to explore and test the effectiveness of interventions across the hand car wash sector. The Home Office should support the pilot through funding and independent evaluation, and if found to be successful it should be considered in the context of the single enforcement body.

### **Recommendation 17:**

#### **All Bodies – two-year delivery period**

Recognising existing work by HMRC NMW, all enforcement bodies should explore the opportunities to make greater use of innovative technologies such as predictive analytics to complement existing enforcement efforts to identify areas of risk, together building up expertise to feed into the SEB.

### **Recommendation 18:**

#### **GLAA and HO – one-year delivery period**

As per recommendation 9, the LME bodies should undertake analysis and work in partnership with academics and JSTAC to fill key evidence gaps in understanding labour market non-compliance and the effectiveness of enforcement. This will be especially important to feed into the SEB development.

Specifically, the enforcement bodies and wider law enforcement should seek to better understand why so few referrals result in the identification of modern slavery offences, to help achieve a more efficient use of their resourcing.

### **Recommendation 19:**

#### **GLAA and HMRC NMW – one-year delivery period**

GLAA and HMRC NMW should work more closely with NGOs who are active in the HCW sector, such as the Safe Car Wash app and the Modern Slavery Helpline, to improve the quality of the information and intelligence relating to non-compliance in hand car washes.

## **4.5 Other sectors**

As well as the four sectors examined above, I also want to comment on some others on which we received stakeholder evidence or where there are continuing concerns.

## 4.5.1 Textiles

The textile industry in Leicester has been highlighted in previous LME Strategies as being of concern (DLME 2018, DLME 2019a) and there continues to be media investigations about significant non-compliance in the area.<sup>48</sup> The fashion firm Missguided provided evidence during the call for evidence, setting out some of the problems and the impact on businesses who are trying to be compliant.

*“The level of enforcement in the sector so far is very low by any of the agencies. The lack of enforcement encourages more rogue players to enter industry. GLAA launched Apparel and General Merchandise Public Private Protocol to which we are signatories, but we have not seen or heard any substantial enforcement activity.”* Missguided response to Call for Evidence

*“We call for an extension of licensing in other high-risk sectors, beyond those currently regulated by GLAA, including garment manufacturing and warehousing”* Anti-Slavery International response to Call for Evidence

My Annual Report (DLME 2020b) discussed the joint working pilot which the three bodies – HSE, Immigration Enforcement, Police and the City Council – undertook in 2018/19. The evaluation conducted by my Office concluded that while the enforcement bodies worked well together for conducting joint visits, repeating the same approach would not provide value for money unless greater intelligence was sourced and compliance activity was undertaken more widely, and communicated effectively to create a deterrence effect.

In early 2020, the City Council have funded and recruited a co-ordinator to bring partners together to tackle the issue and have set up a steering group which includes the enforcement bodies, wider national and local partners such as DWP and the Leicestershire and Rutland Modern Slavery Action Group. This role should provide some capacity to do two things:

- Bring together evidence, data and experience of the group to develop better understanding of non-compliance trends and features to improve strategic understanding of threat, risk and harm; and
- Support awareness raising and communication to both employers and individuals to raise standards and support victims to report issues of exploitation.

I am supportive of the efforts of the City Council. However, this will take more than the efforts and time of one person – other agencies will need to actively play their part here and provide information, expertise, resource and willingness to try new approaches. Cracking this complex issue involving multiple non-compliance, complicit workers, fraud and possibly involvement of organised crime groups will need long-term joint focus and creativity to find a solution through education, enforcement and disruption activities.

Clearly this is not just a problem in Leicester – many other centres of textiles such as London and Manchester report similar issues, as do other manufacturing sectors, especially areas of low skill/low added value work. However, Leicester has been the focus of media attention which has fed into a narrative that Leicester has a particular issue.

<sup>48</sup> Note that this Strategy was written before the significant media interest in a Leicester garment factory over the Summer 2020 and the subsequent intensification of enforcement activity undertaken by the enforcement bodies in partnership with the City Council and others. As this work is ongoing as of December 2020, this section has not been updated but ODLME will report on this activity when results from investigations are known.

I find there are contradictory messages around the issues in Leicester: media investigations repeatedly report that the situation for workers is poor and non-compliance is widespread, yet the enforcement bodies say that, despite the Apparel Protocol, they do not receive information that enables them to mount an investigation and are therefore limited in their powers, while businesses say that they report where the problems are, and nothing happens. Workers do not report non-compliance because they are scared or are complicit. So there is a continuing mismatch – either the non-compliance is not as bad as is portrayed in the media, in which case it should be demonstrated conclusively that the sector is largely compliant, or the media and other reports are correct, and there is a serious need to break into the sector and change working practices. Currently it is difficult to separate anecdote from evidence.

I am hoping that over the next year, the work sparked by the co-ordinator, and supported by enforcement partners, can help us all to understand the nature and scale of these problems, as well as develop new mechanisms to tackle them. Undoubtedly this will require time and resources.

I will be pursuing this issue further in the coming year and am really looking to see a step change in the level of activity and evidence in this area. In particular, I think this is an important area for consideration for the Single Enforcement Body. Are there additional powers that the enforcement bodies need to be able to apply in such circumstances, akin to trading standards or food safety? Or is it the case that some of these blockages, particularly in reporting and understanding the problem, can be overcome through better joint working between local and national partners? What pressure can be brought at the broader system level, to address the aggressive buyer behaviour of retail brands that creates the conditions for non-compliance to flourish in the first place? Ultimately, changing these structural issues will be necessary to conclusively tackle non-compliance.

These are questions I will ask my team to investigate and support further, not only in the immediate case of Leicester and other textile manufacturing areas, but also more broadly in other sectors with similar issues.

## 4.5.2 Nail bars

Nail bars have been of concern for some time, indeed the 2018/19 LME Strategy recommended testing licensing of nail bars. The Government chose not to pursue this option but committed to explore how local authority licensing of nail bars in London operates to identify any gaps and to build the evidence base to better understand the issues (BEIS and Home Office, 2018).

The conclusion from this work was that while some local authorities have licensing schemes for special treatments (which include some treatments relating to nail bars), the licensing standards are focused on health and safety and product safety and do not cover employment law or rights.

The MoRiLE analysis concluded that the threat of nail bars overall remains medium, but some types of nail bars are considered higher risk, often linked with illegal working. The main issues are around non-payment of minimum wage for those allowed to work in the UK, but there have been reports of severe exploitation in this sector, including of children, and links to trafficking, organised crime, tax evasion and immigration crime. While increased public awareness has helped to improve the evidence base on the scale and nature of non-compliance, the real level of incidence of this exploitation remains unknown.

Overall, I feel that the level of risk of exploitation identified with nail bars (e.g. IASC, 2017) warrants greater attention and urgency to understand the nature and scale of exploitation within this sector. In particular, how can labour abuses be distinguished from other forms of criminality and how can the enforcement bodies work together and with local authorities and other stakeholders to effectively deal with the problem?

Over the next year, I will pursue this further both with Home Office and GLAA, and wider stakeholders.

### 4.5.3 Entertainment industry

We received evidence from Equity, highlighting the issues in the entertainment industry. Short-term engagement, lack of clarity on contracts, unpaid travel time or preparation time, no holiday pay, pension contributions and pay below NMW/NLW were all reported. There was also the fear within the industry that raising questions and taking action on poor pay and conditions would lead them to be seen as troublemakers and lose future work.

*“On a given day it is possible to go on job boards [and find] an excess of 300 jobs that don’t pay NMW”* Equity response to Call for Evidence.

Equity members report a lack of clarity around employment status, misleading or inaccurate advice and guidance on minimum wage compliance, lack of awareness of Acas and no visible enforcement.

To address this issue, an action advocated by Equity is for sector-specific advice for the entertainment industry around the application of labour rights. I have addressed this with Recommendation 2b that HMRC should re-examine whether it should produce sector-specific guidance.

### 4.5.4 Teachers

We received evidence from the Teachers’ Union (NASUWT) highlighting a range of labour market issues for supply teachers including increased use of zero-hour contracts, unpaid working time, and misinformation and lack of transparency about pay rates when teachers were engaged through an umbrella company. These problems were largely the impact of the increased fragmentation of the employment relationship resulting from outsourcing from local authorities to private supply agencies, resulting in more precarious employment situations for workers.

*“Workers are getting less, schools are paying more, whilst agencies and offshore umbrella companies are engaged in profiteering”* NASUWT response to Call for Evidence.

In response, the NASUWT called for increased resources for enforcement, greater penalties and awards for workers and for HMRC to enforce holiday pay. Their submission also asked for licensing of education employment businesses.

Not all the suggestions from NASUWT fall within my remit, however I address the importance of enforcement of holiday pay and issues with umbrella bodies in Section 5. At this point, I do not believe that licensing education employment businesses would be proportionate, however, similarly to the care sector, actions to improve public procurement of the public sector could be an effective way of changing the risks for workers in this area. Improved worker protection within public procurement is a theme I will continue to advocate.



## 4.5.5 Cleaners and hospitality

Stakeholders, including UKHospitality, British Beer and Pub Association and FLEX, raised concerns about cleaning and the hospitality sector with us during the call for evidence. There have also been recent media reports about problems in these sectors (see for example BBC 2019a, BBC 2020, Reuters 2020 and The Guardian 2020). The DLME has previously looked at these sectors – cleaning was included in the research report accompanying the 2018/19 Strategy (Humphries and Koumenta 2018) and hospitality was one of the case study sectors in the 2019/20 Strategy (DLME 2019a).

Recently published research by FLEX (FLEX, 2021) on these sectors, demonstrated issues related to:

- People not being paid the full or correct amount, not being paid for all the hours worked, and late payments;
- Discrimination;
- Dangerous working conditions; and
- Sexual harassment.

None of the workers or industry stakeholders interviewed for the research had seen or experienced enforcement or worker rights protection activity by the three enforcement bodies or by other government bodies, although unions had provided help to some of them. As highlighted in our analysis in previous Strategies, the root problem for the industry continues to be outsourcing and the fragmentation of employment relationships.

In their evidence to us, FLEX called for licensing of agencies and outsourced companies in cleaning and hospitality, improvements in the enforcement bodies working together with community groups and workers' organisations.

The British Beer and Pub Association were critical of a lack of clarity around national minimum wage regulation and felt HMRC's approach was engaging in "fishing expeditions". They asked for sector-specific guidance, which was a strong theme in many of our discussions with employers during our roundtables and further discussions, and is partly addressed through my Recommendation 2b.

While we have not focused on these two sectors in this Strategy, they continue to feature on the list of sectors at risk, and recent media reports highlight risks to labour rights within the industries. Given the profiles of workers in these sectors, the new immigration rules are likely to have an impact. The industry is understandably raising these concerns in terms of risk to their businesses (e.g. UKHospitality, 2019) but the parallel risk to workers is of increased risk of non-compliance and exploitation. I will continue to monitor the situation through the intelligence reports and discussions with stakeholders throughout the year.

## 4.6 Summary

The sector analysis shows how structural issues within each sector combine to create the financial pressures and workforce dynamics that contribute towards the exploitation of workers. Some of these are largely immutable (e.g. the temporary nature and unattractiveness of seasonal work), while others are within the gift of government to change (e.g. funding levels within social care) but may come at considerable cost and re-prioritisation. Others are a product of a business model and culture that pervades the whole industry, and which needs to be tackled holistically in partnership with employers (e.g. hand car washes and construction). Overall, one of the most important factors increasing the risk of labour exploitation is that the work is low paid, low-skilled, and in industries with very low profit margins.

The sector analysis also shows consistently that there are particular groups of workers who are more vulnerable to exploitation than others, in particular migrant workers. This is due to these groups having fewer choices available, little knowledge of their rights or how to complain, social isolation, poor literacy and language skills, and relatively low expectations of their work environment.

Such vulnerabilities are exacerbated and compounded by information on rights and enforcement being overly complicated. Everyone struggles to know who to complain to in our fragmented enforcement landscape, but this is even more difficult for vulnerable workers. It is all too easy for key information on pay to be hidden from workers on purpose, for example, through lack of record keeping in hand car washes, or failures to accurately record working hours on care workers' payslips. Or this may be a by-product of industry practices, as seen with the complex supply chains in construction and mix of employment statuses applied.

The variety of regulatory bodies within each sector is an aggravating factor and creates a challenge for enforcement bodies to make sure the regulators are joined up and have information and referral mechanisms in place to signpost workers appropriately. There are opportunities to improve this, and LME bodies need to raise their profile with Local Authorities and sector regulators.

The deep dives my Office has conducted into these four different sectors bring to light certain themes. Unsurprisingly, most, if not all, have been covered in previous LME Strategies in one way or another. Such issues in enforcement are difficult to resolve and, while there has undoubtedly been improvement since the first LME Strategy, many of the same barriers and overarching issues will keep coming to the fore until there is a step change in strategic enforcement against known risks and raising awareness for workers and employers. The creation of a Single Enforcement Body, if properly designed (see my core principles set out in Section 6), has the potential to act as a major turning point in this respect, by embedding a more strategic and risk-based response to non-compliance and by raising the public profile of labour market enforcement, enabling the organisation to tackle both overarching and sector-specific issues.

As noted in Section 1, at the time of writing, the Government had yet to publish its response to the previous Strategy, so it was unclear which DLME proposals in this area were to be accepted and progressed. Some of my recommendations in this Strategy therefore build upon previous DLME suggestions, but I have sought to add to the evidence and nuance these recommendations to aid progress in this area, both in the short-term and looking ahead to a Single Enforcement Body.

The first theme of my recommendations is the need to **improve knowledge and information** in order to make it easy for people to identify and report non-compliance. In this Strategy, I make recommendations aimed at improving information for:

- **Workers** about their rights and how to complain: I recommend the improvement of guidance (Recommendation 2), understanding the effectiveness of different communication methods (Recommendation 9) and making it easier to report problems in such a way that the enforcement body can take action;
- **Employers** about their responsibilities and how to be compliant: I recommend actions to make information more timely (Recommendation 2a), specific and accessible (Recommendations 2b and 3a), and relevant to employers (Recommendation 14); and
- **Other regulators** by raising the profile of LME enforcement bodies where there is high risk of non-compliance (Recommendation 1a).

My second theme is **better partnership working**. In particular, I recommend actions for LME bodies to:

- Support local authorities and other regulators by sharing their expertise and training staff to recognise the signs of labour abuse (Recommendation 1b), and helping improve public sector procurement so that non-compliance can be detected and dealt with effectively (Recommendation 4a);
- Improve the sharing of intelligence and signposting between LME bodies and other regulatory bodies (Recommendations 1c and 4b);
- Identify opportunities to include labour market protection into existing regulatory systems (Recommendation 5); and
- Work with wider partners to explore new ways of working, including with the private sector in new ways such as exploring robust voluntarism (Recommendation 6), supporting NGOs and academic partners working in these areas (Recommendation 19), or through focused, co-ordinated taskforce groups that combine the experience and analytical potential, operational resources and legal powers of partners including outside the three bodies (Recommendation 12b).

An essential message throughout the report is that enforcement bodies and departments need to know **'what works' and improve the understanding of evolving problems within the labour market**, and how enforcement action impacts on this. My recommendations around this theme include:

- Identifying good practice in promoting workers' rights through the different models of social care across the UK nations (Recommendation 5). The principle of this recommendation could be equally applied to other sectors or enforcement issues where there is variation within the country;
- Understanding the impact of communication efforts by the enforcement bodies, and which reporting avenues are actually used by the target audience of vulnerable workers to learn where best to focus resource and effort (Recommendation 9); and
- Understanding why some referrals do not progress to a successful enforcement outcome and the characteristics of those that do, how these can be differentiated early and the impact this has on systems throughout the enforcement process (Recommendation 18).

Closely aligned with this theme is my emphasis on the importance of **using data effectively**. HMRC NMW are already doing interesting work here. In terms of the longer-term development of the Single Enforcement Body, I strongly believe that its success or failure will hinge on its ability to make the most of the data analysis: linking different sets of information, building on HMRC's technical abilities, applying cutting edge techniques to the design of the data framework that will build the Single Enforcement Body. For this reason, I make several recommendations on the long-term and strategic use of data (Recommendations 8b, 8c and 19). In the meantime, there are shorter-term opportunities to improve the use of data, particularly for GLAA which currently lacks analytical resource (Recommendations 7 and 8a).

The issue of complex supply chains and the role of different tiers within these is a theme that has emerged from my discussions around agriculture, construction and textiles and no doubt applies to many others. The Government is already considering a number of options in this regard but, in the meantime, I recommend that, where the LME bodies identify severe labour abuse, they should use their existing powers to conduct an automatic and systematic review of the extended labour supply chain to identify vulnerabilities and potential wider exploitation, understand weaknesses in

the system and inform and educate the organisations in the supply chain to prevent it happening again (Recommendation 15). This applies not just to construction, but to any sector in which supply chains are a significant issue.

I make several recommendations on **licensing**. I strongly feel that the GLAA licensing resource and model needs to be reviewed to ensure it is as effective as possible at dealing with labour market non-compliance (Recommendation 7) both in the short-term and in the longer-term within the Single Enforcement Body.

In addition, I recommend further investigating licensing one new sector: hand car washes (Recommendation 16). A similar recommendation was made in the LME Strategy for 2018/19 and was rejected by the Government in favour of testing a voluntary approach. Since then, the voluntary RCWS scheme has been tried. This proved to be helpful, but reaffirmed the widespread non-compliance across the sector, even among those who voluntarily agreed to undertake an audit. I accept that there is value in using the next steps proposed by the RCWs Local Authority pilot scheme (in the New Year 2021) to explore and test the effectiveness of compulsory licensing across the whole HCW sector. However, in order for this to be effective and robust, the Home Office should support the pilot through funding and independent evaluation. If found to be successful, this model should be rolled out nationally

My last theme is about making sure that **labour market enforcement and worker voice have a higher profile** and have a place at the table with regard to some of the major policy debates and developments currently progressing. I encourage the three bodies and two departments to be active, engaged and on the front foot given the substantial changes happening in the public policy sphere (Recommendations 10 and 11). The three most obvious dimensions to this are in relation to:

- The Single Enforcement Body, which must carve out its own remit and relationship with business and the public sector;
- EU exit with its significant consequences for important public policy areas including immigration, subsidies and regulation; and
- The current unknown impact on the labour market of the COVID-19 outbreak. Some of these issues are examined further in Section 5 and 6.

## Section 5. Thematic issues

The condensed period we have had to produce this current Strategy has meant that there has been insufficient time to examine in any great depth broader issues beyond those relating to our four priority sectors. I touch on some further issues in this section, mainly to signal concerns that will need to be addressed in the near future. However, I do not make any recommendations relating to any of these at the current time.

### 5.1 Immigration and labour protection

Ever since the creation of the role of Director of Labour Market Enforcement, it has been vitally important to maintain a clear dividing line between labour market enforcement and immigration enforcement. The aim of DLME and the enforcement bodies it oversees is to improve compliance among *employers*, not their workers. By contrast, the main focus of immigration enforcement is on ensuring *individual migrants* without lawful rights to remain are removed from the country, though here too, statutory obligations are placed on employers and the suppliers of key services (such as landlords, and providers of health, education and finance) to achieve this.

During the time the DLME has been in operation, stakeholders have voiced their concerns about the potential for this line to be crossed. But even if a separation is achieved in policy and enforcement operation terms, there is inevitably a significant degree of overlap in the labour market itself. Over the last three years, the MoRiLE assessment has consistently highlighted that migrants, particularly nationals from Eastern Europe, are at higher risk of exploitation and non-compliance. This is largely due to the work sectors they are employed in, language barriers and their own lower expectations due to the relatively limited earning power in their home country.

While EU nationals currently working in the UK may have obtained settled status post EU Exit, there is potential for exploiters to mislead workers as to their rights in the UK or look to fill their labour requirements through other means (such as UK nationals) if the number of EU workers reduced.

A significant concern for me over the coming year is our wider preparedness for the potential impact on labour market non-compliance of the forthcoming changes in the immigration system following the UK's departure from the European Union. These changes – recently announced as a policy paper (to be followed by detailed immigration rules changes) – will likely mean that work migration for low-skilled/paid sectors will be severely curtailed.<sup>49</sup> Analysis by the MAC (2018a)

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<sup>49</sup> In January 2021, a new points-based immigration system was introduced that now requires European Economic Area (EEA) – as well as non-EEA – citizens who wish to come to the UK for work to have a job offer from a licensed sponsor employer. Job offers must be at A level or equivalent skill level and are subject to minimum English language and salary requirements.

estimated that EEA national shares of total UK employment were particularly high in “food and beverage manufacture” (24 per cent), “warehousing” (18 per cent), and “accommodation and hospitality” (13 per cent).

All four sectors we have focused on in this current Strategy are heavily reliant on migrant labour. It is not for me to comment on sources of labour supply in these sectors, nor indeed on the Government’s proposed plans for a new points-based immigration system. But I am conscious of the practical implications and risks for labour market compliance and enforcement that such a change may bring. Until very recently, unemployment in the UK had been at a record low and businesses were concerned that reduced access to migrant labour would cause them severe problems. In the short-term at least, the impact of COVID-19 may in fact alleviate some of these labour supply concerns.

On one level, the ending of free movement and the introduction of an immigration system that entails closer monitoring of migrant flows should help reduce the level of exploitation by reducing the pool of vulnerable people at risk, and by strengthening the checks on those who are given permission to enter the country for work. However, on another level, some visa types – particularly for short-term stays – may heighten risks of exploitation.

Concerns were also raised by respondents to my call for evidence earlier this year around two principal risks. First, workers may be less inclined to report exploitation if their immigration status may put them at risk of immigration enforcement action. Second, the reduction in labour supply for employers may lead to a situation where employers are looking to cut corners in their recruitment efforts. Both are issues I will be looking to monitor closely.

I have been encouraged that the Government has convened five advisory groups to deepen engagement between government and industry as the future skills-based immigration system is developed (Home Office et al., 2019). These include groups representing major employers and vulnerable individuals respectively.

But I remain keen that this issue continues to be given a sufficiently high profile. DLME is prepared to play a key role here in helping the Government consider how to mitigate these risks. As part of this, I intend to write to the chairs of both the Home Affairs and Business House of Commons Select Committees to recommend they jointly undertake a Select Committee inquiry into this.

## 5.2 Holiday pay

Recommendations both by my predecessor and from my own Good Work Review in 2017 highlighted the need for holiday pay to be properly enforced. I am pleased that government has since committed to extending state enforcement, on behalf of vulnerable workers, to underpayment of holiday pay. This will be taken forward as part of the Single Enforcement Body.

In fact, my Good Work Review (BEIS, 2017) made several recommendations in relation to holiday pay, beyond calling for state enforcement, including:

- First, that worker awareness of this right be raised. Here BEIS has already launched publicity campaigns;
- Second, that the pay reference period be extended from 12 to 52 weeks; and
- Third, that dependent contractors have the opportunity to receive ‘rolled-up’ holiday pay.

The Government opted not to take forward the third recommendation on rolled-up holiday pay. I recognise there are important and understandable concerns: leave and holiday pay are determined by the Working Time regulations, which seek to ensure that workers get sufficient

breaks and time off. The fear with rolled-up holiday pay – whereby holiday pay is automatically added on a pro rata basis to pay for hours worked – is that there is no way to ensure that workers have been given the time off to which they are entitled.

The Working Time Directive is a European Union law, transposed into UK legislation. With the UK's departure from the EU, there is the opportunity to revisit how working time provisions generally should be applied. As such, rolled-up holiday pay could be combined with new working time rules. There is therefore now an opportunity to reconsider how this might be achieved, while ensuring we safeguard the working time protections of workers. Equally, reconsideration of the broader working time issue becomes necessary with respect to the gig economy too.

Although I had originally recommended HMRC take on the responsibility for enforcing holiday pay, I accept that this will now fall under the Single Enforcement Body. However, I do wish to set out how I think government could address the definition of 'vulnerable worker' in this case. I strongly believe that holiday pay enforcement should be captured as part of the national minimum wage regulations. I believe that powers should be added under the Employment Bill such that it should be a minimum wage offence if not paying holiday pay means that the wages fall below the relevant minimum wage rate.

## 5.3 Umbrella companies

### 5.3.1 Context

The Freelancer and Contractor Services Association (FCSA) defines intermediaries and umbrella companies as follows:

- **Intermediaries:** the firm at the bottom of the supply chain that engages workers on behalf of a recruitment agency or the hiring firm. This term includes, but is not limited to, umbrella companies; and
- **Umbrella firms:** employ contractors whilst also enabling them to have flexibility of working for numerous end-clients on short-term assignments. A compliant umbrella will provide workers with all 84 statutory rights and benefits of employment, whilst also giving the worker freedom to undertake a series of short-term contracts for multiple different end-hirers.<sup>50</sup>

FCSA's latest estimate is that there are over 400 umbrella companies operating in the UK engaging in excess of 600,000 people.<sup>51</sup> They also calculate that through the income tax and employer/employee national insurance contributions (NICs) paid through umbrellas, this realises at least £7 billion annual benefit to the Exchequer.<sup>52</sup>

The 2018/19 LME Strategy highlighted concerns around the use of intermediaries and umbrella companies, especially within low-paid sectors and, as with my own Good Work Review, recommended that EAS powers be expanded to include intermediaries.

The Government subsequently announced as part of its Good Work Plan in December 2018 that it would introduce legislation to expand the remit of EAS, with most of the focus being on umbrella companies (BEIS, 2018). This is where the evidence identified much of the problem, as highlighted by the 2018/19 LME Strategy.

One particular concern I have here is where unscrupulous umbrellas are making deductions from their employees.

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50 FCSA response to DLME Call for Evidence.

51 Ibid.

52 These figures do not include those umbrella companies that are registered offshore.

Agency workers are mostly classed as workers in employment law, meaning that they receive only basic protections (such as paid annual leave and entitlement to minimum wage) compared with employees. The employment agency remains responsible for deducting their income tax and NICs, as well as paying employer NICs, which is covered in the charge to the end hirer (including the agency fee).

However, in some circumstances, work-seekers are paid through an umbrella company, in which case they will, in most instances, be an employee of the umbrella company. The employment business will be paid its charge rate by the client, and in turn pass on the majority of the payment to the umbrella company after taking out its margin. Like any employer, the umbrella must cover employment costs including employer national insurance and any other statutory deductions. They also deduct the margin that they charge for providing these services. The remaining balance is then treated as the work-seekers income from which statutory and other deductions are made before the balance is paid to the work-seeker as their take-home pay. This process has given rise to confusion and misunderstandings, not least because many work-seekers were unaware that they were being paid through an umbrella company until they received a payslip.

The key point here is that any deductions made by the umbrella should be charged to the client business and not the individual work-seeker. Concerns have been raised by stakeholders in the industry that sometimes individuals are also being charged for certain perks offered by the umbrella company (e.g. for faster payment bank transfer). What is important is that work-seekers have clarity over the Pay As You Earn (PAYE) rate they will receive and the limited company rate charged to the end client. The Low Incomes Tax Reform Group (LITRG) and PRISM have jointly prepared excellent guidance on '*Working through an umbrella company*', which explains amongst other things employment rights, pay and holiday pay for individuals employed through an umbrella company (LITRG, 2017).

The Government has also introduced legislation with effect from April 2020 to try and resolve this transparency issue. The legislation will require employment businesses to provide work-seekers with a 'Key Information Document' that will set out the ways in which a work-seeker may be engaged and paid before they agree to work through an employment business. It will cover such things as who their 'employer' will be, who will pay them as well as deductions and their entitlement to paid holidays.

### 5.3.2 Changes to off-payroll working rules (IR35)

Off-payroll working rules (known as IR35) were introduced in 2000 to ensure that someone working like an employee, but through a company, pays similar levels of tax to other employees. There are tax and cost benefits for end hirers (they avoid PAYE income tax and employer NICs) if those fulfilling contracts for them are working as self-employed, by setting themselves up as intermediaries such as personal service companies. It was then for the intermediary to determine their own employment status in these cases.

Non-compliance with these rules is understood to be widespread. Efforts have been made to tighten up on these rules. However, in themselves these have been insufficient to address the non-compliance issue. The cost of non-compliance to the Exchequer is estimated to reach £1.3 billion by 2023/24 (HM Treasury 2020).

More significant changes to the off-payroll working rules were introduced in 2017 for end-users in the public sector, where responsibility for determining employment status now became the responsibility of the end-hirer. From April 2021, this change will be further extended to medium



and large end-hirers in the private sector<sup>53</sup> (this change was due to come into effect in April 2020 but was delayed until 2021 because of the pandemic to help businesses and individuals to deal with economic impact of COVID-19).<sup>54</sup>

Evidence submitted to my Call for Evidence by the FCSA highlighted that the 2017 change resulted in the *“proliferation of tax avoidance schemes, which aggressively targeted public sector workers, enticing them into arrangements that promise to maximise their income (which would otherwise be reduced by being taxed via PAYE)”*.

According to the FCSA evidence, these schemes do not work and can leave users of such schemes with significant tax bills. They reported that: *“many scheme promoters set themselves up to appear similar to a compliant umbrella employer, and they operate unchallenged in situations where there is insufficient due diligence undertaken on the supply chain”* (FCSA response to Call for Evidence).

Two main future risks were highlighted to us by stakeholders. The first is the concern that these schemes will further proliferate after the April 2021 rules change. The second is that to avoid fines resulting from incorrectly determining employment status of their contractors, end-users will be incentivised to err on the side of caution and reduce their demand for self-employed contractors. In doing so, they argue, there is likely to be a shift of personal service companies to register with umbrella firms, thereby expanding considerably the volumes of people engaging with umbrellas.

Stakeholders expressed concern that some umbrellas engage contractors not as workers, but rather as self-employed and thereby denying those workers their employment rights.

The sector had hoped the proposed legislation to regulate umbrellas would be in place alongside the extension of the off-payroll rules to the private sector in April 2021. This will not be the case and, in the interim at least, the sector will have to self-regulate and/or provide effective guidance. The FCSA itself runs an accreditation scheme for around 50 members to help maintain compliance standards.

In addition to this, there has been considerable business concern around the introduction of the off-payroll changes from April 2021 and the non-compliance risks they may face arising from inaccurate IR35 determinations. HM Treasury undertook a public consultation in January and February 2020 to consider how implementation of the new rules could be better managed. Their report and conclusions were published in March 2020, concluding that businesses could, for the first year the off-payroll rules were in force, be absolved of any penalties they would otherwise have been subject to if found to be non-compliant (HM Treasury and HMRC, 2020).

Although I have been a supporter of these changes to the off-payroll rules, I do have concerns that this light touch regulatory approach to penalties proposed, for the first year, would heighten non-compliance risks significantly for the reasons outlined above. The reform exists to ensure compliance with the off-payroll working rules, which remove the tax-incentive for hirers to take on staff working like employees but through a personal service company. Insofar as employers delay responding to the reform because of a light touch approach to penalties is undertaken in the first year, this may delay decisions to review approaches to engaging staff by, for example, bringing staff on to payroll rather than encouraging them to work through a personal service company.

53 This would include those private sector organisations with a turnover of more than £10.2 million, a balance sheet total of £5.1 million and/or more than 50 employees.

54 <https://www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-intermediaries>

## 5.4 Recent labour market changes

As well changes in the enforcement of holiday pay, the Good Work Plan also announced several other significant changes in labour market regulations.

Since April 2020:

- **A day one written statement** of rights has been mandatory for all workers not just employees;
- A **key information document** must be given to all agency workers registering with an employment business; and
- The **Swedish Derogation** (which provided an exemption to the right to equal pay that an agency worker should receive under the AWR) was repealed following the Agency Workers (Amendment) Regulations 2019.

Enforcement of the day one statement will be via Employment Tribunals, while the key information document forms part of the Conduct Regulations placed on employment businesses and will be enforced by EAS.

As I stated in my Annual Report (DLME, 2020b), I welcome these changes. I am hopeful that the additional information being provided to a wider section of the workforce through the ‘Day 1 statement’ and the ‘Key Information Document’ will improve clarity around people’s employment rights and their work agreements and reduce the scope for non-compliance through misinformation. It should help employees and workers to challenge when they feel they have not been paid and treated as agreed.

The repeal of the Swedish Derogation is also an excellent development for the protection of workers, closing a loophole which enabled agency workers to be underpaid.

With all these changes, it is a matter of good practice that, after a sensible period of time, there should be a review or evaluation to find out how the changes are being implemented, what (if any) impact they have had, including any unintended consequences. I welcome BEIS’ intention to carry out a full review in 2025. In the meantime, my Office intends to monitor the situation through discussions with the bodies and stakeholders and, should there be evidence that these changes are either causing problems that were not anticipated, or not appearing to be effective, I would then encourage BEIS to look at reviewing this earlier.

## 5.5 Robust voluntarism

From discussions with trade associations, investors, major brands, public procurers and civil society organisations, I am clear that there is a wide appetite to strengthen compliance and enforcement. In addition, we know and must acknowledge that governmental compliance and enforcement capacity will never fully match the scale of the non-compliance and criminality.

I believe there is scope for the enforcement bodies (and the new Single Enforcement Body) to do more to support non-statutory efforts to enhance compliance. In particular, I would like to explore the scope for the bodies to support the development and audit of robust voluntary assurance schemes (such as trade body membership schemes, kite marks, assured provider status) so that employers, investors, procurers and citizens can be encouraged to make choices which reduce the risk of inadvertently being complicit in non-compliance.

I intend to explore this further with the bodies, with particular reference to the role of the Single Enforcement Body in developing an overall ecology of good work and compliance.

## 5.6 Consultation of Employees Regulations

One of the most effective ways of ensuring that employers are aware of potential problems within their workforce, including non-compliance is through employee engagement. As part of the implementation of the Good Work plan, from April 2020, changes to the Information and Consultation of Employees regulations (ICE) came into force. These changes mean the threshold for triggering the negotiation of an information and consultation agreement has fallen to 2 per cent of the workforce from 10 per cent (with a minimum number of employees needed to request set at 15).

I believe that the new ICE arrangements offer a major opportunity to not only promote good work, but to also provide routes for employees to discuss issues around compliance with labour market regulations.

I strongly encourage the Government and other stakeholders – for example, employers' organisations and trade unions – to promote and support the new ICE arrangements.

## 5.7 Employment Bill

The forthcoming Employment Bill is an important opportunity to take forward the Government's Good Work plan and to take steps to enhance labour market compliance and enforcement. I encourage the Government to use the Bill, in particular, as an opportunity to clarify issues around employment status.

My Office has signalled its willingness to play a significant role in the planning of the Single Enforcement Body, and I encourage ministers and officials at BEIS to engage my Office in the wider development of the Employment Bill.

## Section 6. Single Enforcement Body

I welcome the Government's commitment in the Queen's Speech in December 2019 to establishing a Single Enforcement Body to address non-compliance in the labour market. This follows a government consultation on the issue over summer 2019 to which I submitted an initial response (DLME, 2019b). Summarised below are the key points I raised and that I would urge the Government to consider in the design of, and legislative preparation for, the Single Enforcement Body.

The DLME response covered three overarching themes:

### 6.1 Aims and design principles for the Single Enforcement Body

This includes the organisation: having a strong, unified ethos; being high profile and credible; being influential and independent; being accessible and having an enabling culture; having a powerful and innovative use of data; having a credible and proportionate compliance and enforcement capacity; maintaining strong national and local partnerships; being an organisation that is accountable, transparent and is continuously learning; and being properly resourced.

### 6.2 Key issues to be resolved before establishing the Single Enforcement Body

The key underlying principle to guide the remit of the organisation should be to prevent and address harm to workers. Beyond this there are fundamental questions around:

- The customer journey – from provision of advice all the way through to tribunals and remedies;
- The scope of its activities – just the work of the three bodies under my remit, plus expansion to include enforcement of holiday pay (as already agreed by the Government) are significant undertakings for one organisation; therefore, any additional responsibilities, such as statutory sick pay, would have to be carefully thought through;
- The Single Enforcement Body's powers – the new organisation provides an opportunity to align or change existing powers and sanctions where this would help deal with new and emerging threats, including throughout the supply chain;
- Access to data (especially from wider HMRC) and the use of intelligence and joint working; and
- The optimal governance structures and how the work of DLME can be aligned with or integrated into this.

## 6.3 Other measures that could improve the Single Enforcement Body's chances of success

To be able to identify non-compliance and evaluate the effectiveness of compliance and enforcement interventions, the SEB must have both baseline and ongoing monitoring data. Additionally, I strongly favour the introduction of a single employment statement for employers which should bring simplification to their reporting requirements and improve transparency as a result.

The Single Enforcement Body provides a real opportunity to effect a step change in how labour market regulations are enforced in the UK and how the state, working with a broad array of partners such as business, trade bodies, unions and NGOs, can help employers be more compliant.

I understand BEIS will be taking forward a significant programme of work, culminating in an Employment Bill.

Participating in the development of the Single Enforcement Body is a key priority for DLME this year. I have discussed in Section 2.4 my intention to take forward significant research this year to help provide a firmer basis to assess the scale and nature of labour market non-compliance. This work is now even more urgent in the context of the SEB.

I have suggested to DLME's sponsor departments that, with some modest additional funding, my Office could play an important role as a bridge between the detailed Whitehall process of designing the Single Enforcement Body and the wider community of stakeholders with an interest in its success.

Following on from that, in winter 2020, my Office led a series of virtual workshops to help inform the development of some elements of the Single Enforcement Body (SEB) and to feed into the 2021/22 Labour Market Enforcement Strategy. The development of the SEB is at an early stage and this was a key opportunity to shape the future of enforcement. The overall purpose being to encourage ambition and creative thinking into the collaborative approach to the design of the organisation. The workshops focused on three critical topics for the SEB: community and worker engagement; engagement with employers and industry and a sectoral approach; and local/national models of working and effective engagement with local statutory bodies.

I provide feedback and further thoughts on the development of the SEB in my 2021/22 Strategy.

# Section 7. Office of the Director of Labour Market Enforcement 2020/21

I am delivering this Strategy at a time when the UK and many of the world's economies are in lockdown in an effort to delay the spread of coronavirus (March 2020).<sup>55</sup> There is currently considerable uncertainty as to when this period will pass.

Planning ODLME's programme of work for 2020/21 and foreseeing how this might realistically evolve over the coming months is, therefore, a challenge. Although I present below a number of areas of focus, it remains to be seen just how much of this programme it will be practical to deliver. I have statutory delivery obligations, however, these may well be subject to delay. In this case, I will be discussing with ODLME's sponsor departments how we might reasonably take these workstreams forward over the coming months, subject, of course, to the resource made available to my Office.

## 7.1 Statutory obligations

I have set out below the main workstreams regarding the statutory obligations I have under the Immigration Act 2016.

### 7.1.1 Annual Report 2019/20

The Director's Annual Report fulfils three functions: for the previous year's Strategy, it assesses the labour market enforcement activities of the three bodies; how the Strategy impacted on the scale and nature of non-compliance; and provides a statement of the work of the ODLME Information Hub.

The Director's Annual Report 2018/19 – submitted to government in February 2020<sup>56</sup> but as yet unpublished – was the first where a full assessment could be carried out of the progress made by government and the enforcement bodies to implement recommendations from the 2018/19 LME Strategy. That report, in fact, covered enforcement activity up to October 2019.

The 2019/20 Annual Report will look to assess the implementation and impact of my predecessor's 2019/20 Strategy recommendations. The ability of my Office to conduct a meaningful assessment to this end is therefore dependent on a Government response to the 2019/20 LME Strategy, providing an indication of which recommendations have been accepted.

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<sup>55</sup> Note that this workplan has not been updated in the December 2020 review of this Strategy.

<sup>56</sup> The Annual Report was published in July 2020.

<https://www.gov.uk/government/publications/labour-market-enforcement-annual-report-2018-to-2019>

## 7.1.2 LME Strategy 2021/22

The next Strategy is due for delivery to government by the end of March 2021. My Office would normally be publishing a call for evidence in summer/autumn 2020. Depending on whether and how quickly the Government intends to establish the Single Enforcement Body, there may be an argument to reconsider the timing of the next Strategy for it to contribute as effectively as possible to the Government's plans in this area. In addition, I am aware that the current timings of the annual LME Strategies, and the ensuing Government response, are not well aligned with the business and resource planning of the enforcement bodies.

## 7.1.3 Evidencing the scale and nature of labour market non-compliance

Subject to confirmation of the necessary funding from government, I am keen that this significant research work is taken forward early in the 2020/21 financial year, especially as progress has been made in identifying a co-funding partner. Not only is this an obligation of my role, but the resulting findings will be fundamental to how the proposed Single Enforcement Body approaches its work. The necessary research work itself is likely to take two years to complete, so launching this in the coming months should allow the knowledge it elicits to be ready for when the Single Enforcement Body becomes operational.

## 7.2 Other workstreams

There are then workstreams that fall outside of my statutory obligations, encompassing important areas that impact on labour market enforcement and where ODLME is a core stakeholder. I believe our position and expertise afford us the opportunity to make an invaluable contribution here.

### 7.2.1 Labour market enforcement in the context of COVID-19

The Coronavirus pandemic will impact significantly on labour market enforcement issues over 2020. As I set out in Section 1, my initial focus will be on the ODLME supporting the three labour market enforcement bodies during this challenging period, and work is already underway here. Further down the track, I believe our role will be to provide a more strategic response to changing enforcement environment.

### 7.2.2 Establishing a Single Enforcement Body

Both in this Strategy and elsewhere, I have made clear the beneficial role the ODLME can play in helping in the design of and transition towards the Single Enforcement Body. In the current circumstances, it would be understandable if the Government deprioritises the establishment of the new organisation for a few months at least.

### 7.2.3 Labour market enforcement implications of changes to the immigration regime from 2021

I highlighted in Section 5 that the introduction of a new points-based immigration system from January 2021 may have implications for labour market enforcement issues. It is important the risks are fully recognised and mitigations are sought. Again, I believe ODLME has a key role to play here.

## 7.2.4 Sector initiatives

This Strategy has highlighted the need for further joint working in the construction and textiles sectors. I see ODLME being a leader in this work and would want to see real progress made over the coming months to better understand the non-compliance risks and begin to tackle some of the long-standing labour abuses.



# Annex A: Labour market non-compliance and enforcement response

Note that this was written in March 2020 and figures have not been updated in December 2020.

## A.1 Estimated minimum wage non-compliance

### A.1.1 Overall underpayment of minimum wage by population group

BEIS analysis of the Annual Survey of Hours and Earnings estimated that around 424,000 workers in the UK were paid below the minimum wage in 2018/19 (BEIS, 2020a). This is equivalent to 1.5 per cent of all jobs in the UK undertaken by workers aged 16 and over. Around one in five (21.5 per cent) of the 1.975 million workers in low paid jobs, as defined by BEIS, were estimated to be underpaid.

As Table A.1 shows, overall, the vast majority of these workers (361,000) were aged 25 or over and not receiving the National Living Wage (NLW). However, apprentices were the group most likely to be paid below minimum wage: 4.7 per cent of relevant jobs were paid below the apprentice rate, with approximately 28 per cent of low paid jobs<sup>57</sup> for this cohort being underpaid.

**Table A.1: Minimum wage underpayment by rate, 2019, UK**

	No. of jobs paid below relevant minimum wage rate	Total no. of 16+ jobs	Coverage (low paid jobs)	Jobs paid below as a proportion of all 16+ jobs
Apprentice rate	9,000	190,000	32,000	4.70%
16-17 years	3,000	286,000	36,000	1.00%
18-20 years	19,000	947,000	115,000	2.00%
21-24 years (NMW)	33,000	1,972,000	154,000	1.70%
25+ years (NLW)	361,000	24,687,000	1,639,000	1.50%
<b>Total</b>	<b>424,000</b>	<b>28,083,000</b>	<b>1,975,000</b>	<b>1.50%</b>

Source: BEIS (2020)

<sup>57</sup> As defined by BEIS (2020).

## A.1.2 Overall underpayment of minimum wage by sector

The LPC (2020) estimated that over a third (35.5 per cent) of workers in *hair and beauty* were covered by the minimum wage. In *cleaning and maintenance* this was almost 30 per cent, and around 24 per cent in both *hospitality and textiles*.

BEIS (2020) indicated that the low-paying sectors with the highest volume of jobs below the minimum wage were *hospitality* (53,000), *retail* (51,000), and *cleaning and maintenance* (42,000). In contrast, this analysis showed that the sectors with the highest proportion of minimum wage underpayment were *childcare* (over 7 per cent of jobs), *hair and beauty* (6.6 per cent), *cleaning and maintenance* (5 per cent) and *hospitality and transport* (both 4 per cent).

## A.2 Employment agencies

The employment agency sector is broadly comprised of *permanent placement* agencies on the one hand and *temporary placement* agencies on the other. As Table A.2 below highlights, the sector overall continues to experience significant growth, though there is a clear difference between permanent and temporary placement agencies. The former tripled in number between 2010 and 2018, whereas the number of temporary placement agencies saw a slight decrease. Despite this, both areas experienced strong growth in turnover during this period, with turnover for permanent agencies more than doubling between 2010 and 2018.

Although the number of temporary agencies has fallen slightly since 2010, their associated employment increased by 20 per cent. This is against a backdrop of a significant decline in EAS staff headcount, from approximately 30 in 2010 to around 15 in 2018.

**Table A.2: Volume, turnover and employment of employment agencies by type, 2010 and 2018**

	Agency Type	Employment (000s)	Number of Agencies	Turnover (£m)	Approximate EAS Head Count
2010	Permanent	134	5,463	8,124	30
	Temporary	660	12,002	27,367	
2018	Permanent	207	17,522	17,756	15
	Temporary	792	11,739	44,520	
Change (%)	Permanent	54%	221%	119%	-50%
	Temporary	20%	-2%	63%	

Sources: ONS Annual Business Statistics, Section N (2019f); DLME (2019a)

The Recruitment and Employment Confederation (REC, 2020) independently estimated that, on any given day in 2018/19, there were 1.105 million temporary or contract workers on assignment. This is in addition to the 1.07 million permanent placements achieved throughout 2018/19.

## A.3 Labour exploitation and modern slavery

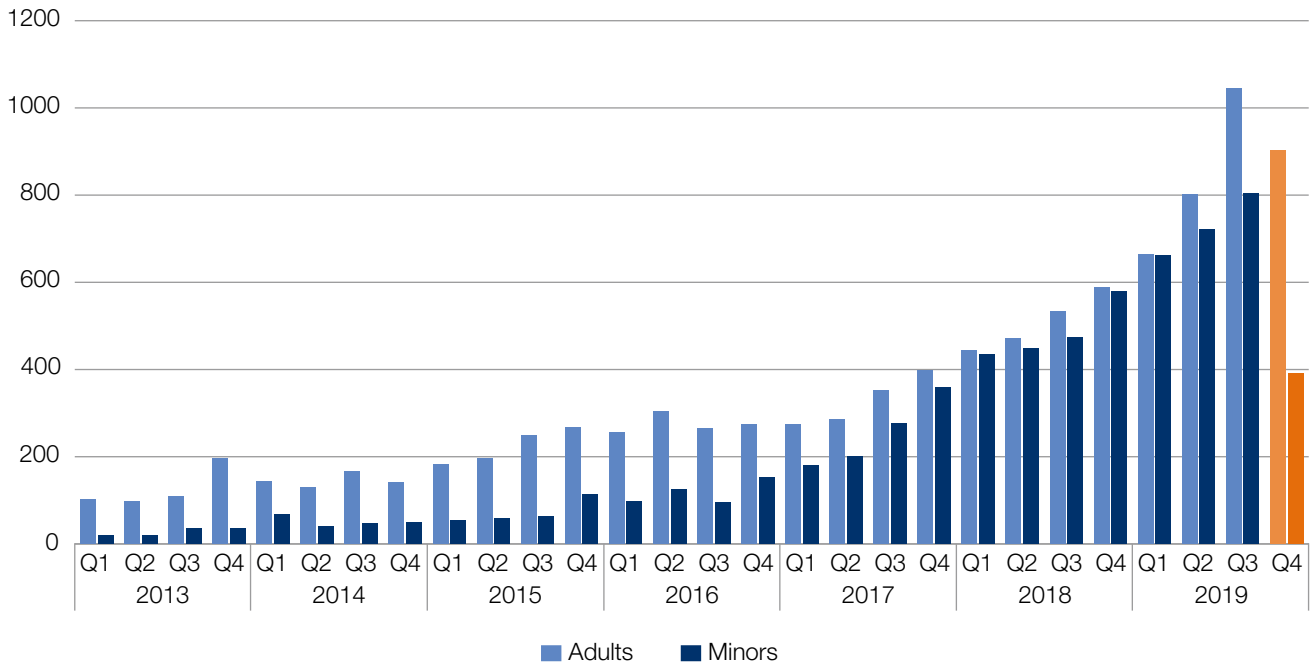
Referrals of potential victims of modern slavery under the National Referral Mechanism (NRM) continue to grow significantly (Home Office, 2020c). In 2019, total referrals across all types of exploitation reached 10,627, an increase of 52% from the previous year, and effectively a doubling of volumes over the last two years.

In 2019, the most common type of exploitation for both adults and minors in the NRM was labour exploitation. As illustrated in Figure A.1, the volume of labour exploitation referrals had been rising sharply, reaching a high of 1,045 in Q3 2019.

In October 2019, changes were introduced to the recording of exploitation types for NRM referrals. This allows for more detailed categorisation where multiple types of exploitation were present, particularly through the separation of criminal exploitation from labour exploitation. The estimates for labour exploitation referrals in Q4 2019, therefore, include those for: labour; labour and criminal; labour and domestic; and labour, domestic and criminal.

These changes are very much in line with suggestions made in the LME Strategy for 2019/20 (DLME, 2019a), particularly given the rise in ‘county lines’ activity that was likely contributing to rises in referrals for minors. However, this means that caution must be taken when comparing labour exploitation figures from before and after this change in reporting.

**Figure A.1: NRM adult and minor referrals for labour exploitation by quarter, 2013 – 2019**



Sources: National Crime Agency, NRM statistics (2013-2018); Home Office (2019b)

Data represent number of NRM referrals received by police forces by Devolved Administratio.

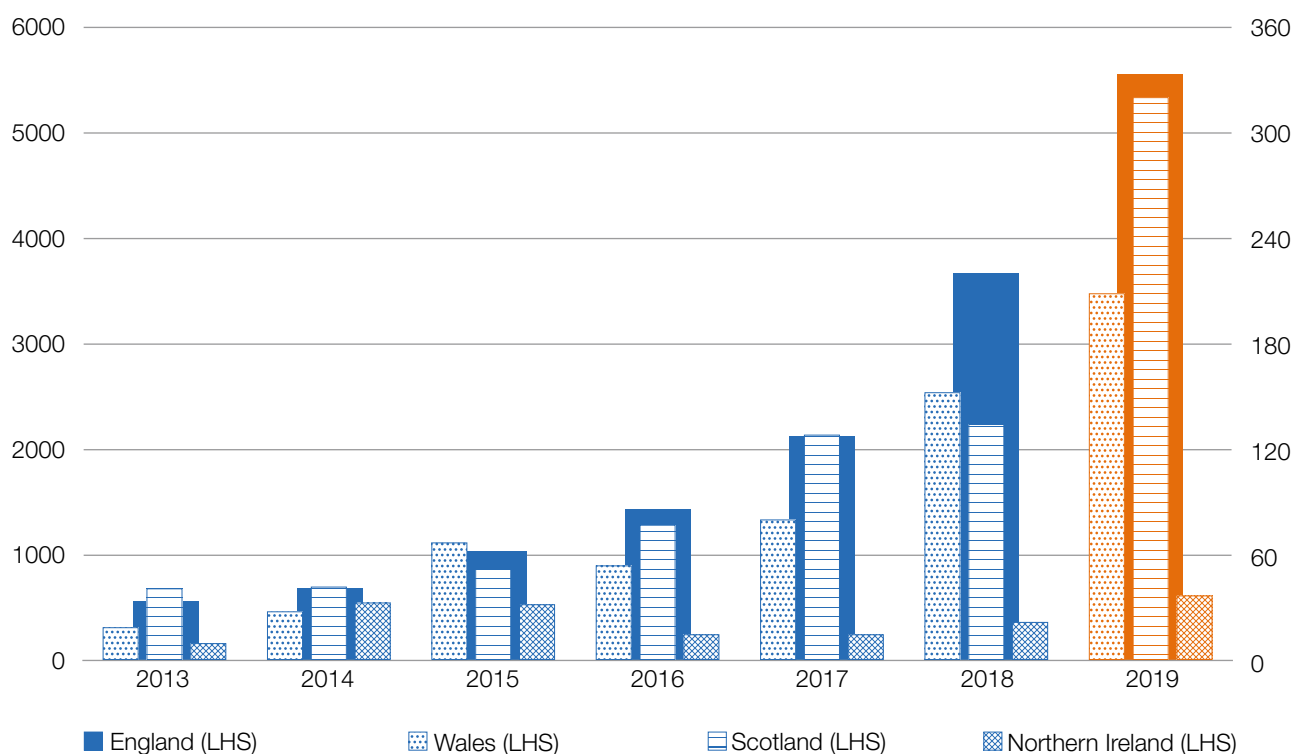
Note: Q4 2019 data represents the following four sub types of exploitation: Labour; Labour and Criminal; Labour and Domestic and Labour; Domestic and Criminal. Caution must be taken when comparing to older estimates which may include some referrals for criminal exploitation.

NRM data are reported for England and the Devolved Administrations. NRM datasets indicate a disproportionality in labour exploitation referrals in England. Mindful of the change in classification during 2019, approximately 91 per cent of all labour exploitation referrals between 2013 and 2019 were in England, compared with its 84 per cent share of UK population (ONS, 2019d).<sup>58</sup>

As illustrated in Figure A.2, the growth in labour exploitation NRM referrals in England has continued year on year. In comparison, the devolved administrations have had far lower volumes of labour exploitation NRM referrals with a less steady upwards trend since 2013.

58 As measured against 2018 mid-year population.

**Figure A.2: Number of NRM referrals for labour exploitation in England and the Devolved Administrations, 2013 to 2019\***



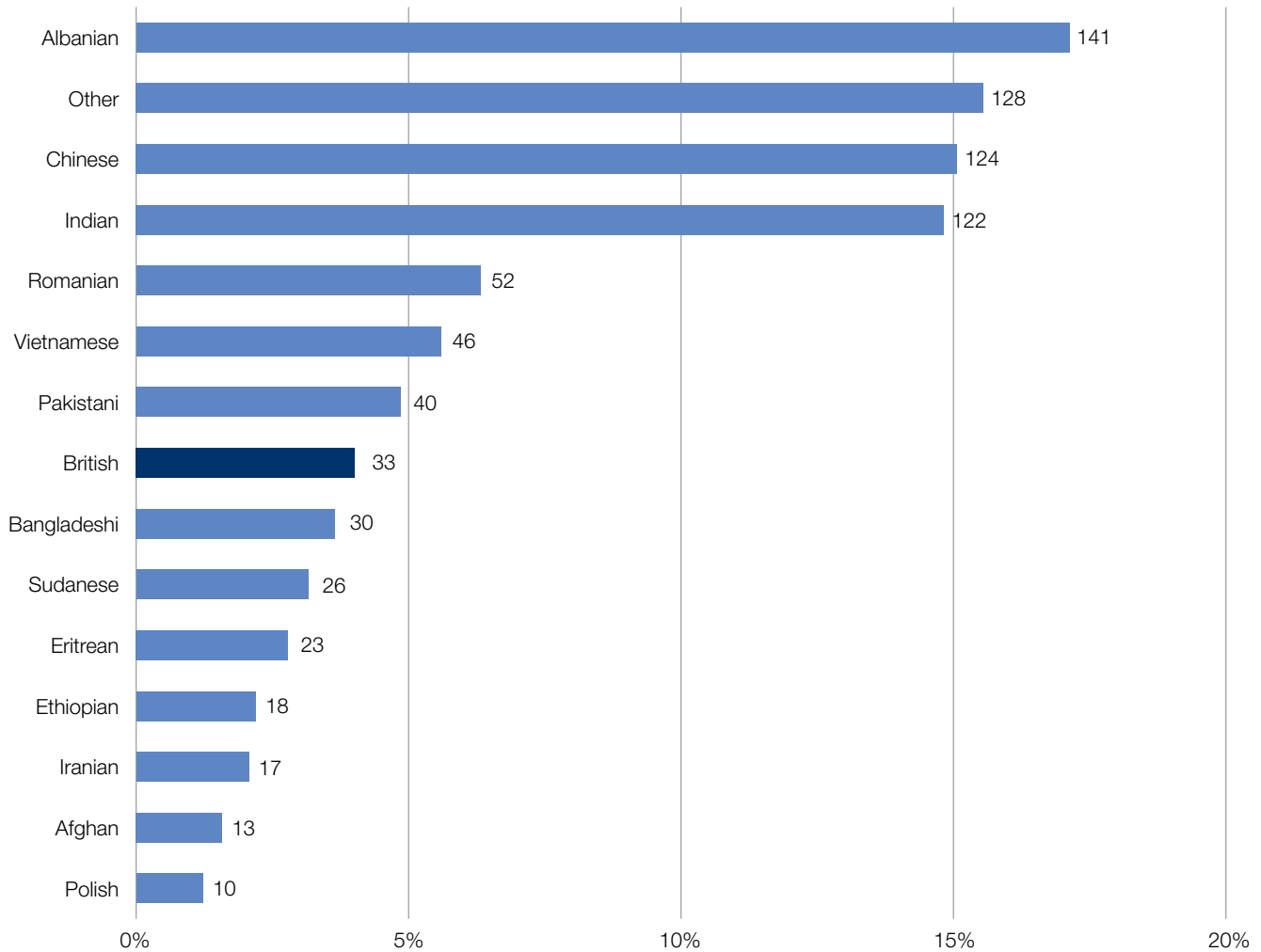
Sources: National Crime Agency, NRM statistics (2013-2018); Home Office (2019b)

Data represent number of NRM referrals received by police forces by Devolved Administration.

Note: Q4 2019 data represents the following four sub types of exploitation: Labour; Labour and Criminal; Labour and Domestic and Labour; Domestic and Criminal. Caution must be taken when comparing to older estimates which may include some referrals for criminal exploitation.

In Q4 2019, there were 823 NRM referrals for adult potential victims of labour exploitation. Figure A.3 shows that the largest share of these potential victims comprised Albanian nationals (141).

**Figure A.3: Number of individuals referred to the NRM that were potentially exploited as adults, by nationality and exploitation type (2019)**



Source: Home Office (2019b)

## A.4 Volume of enforcement activity and results

This section provides an overview of compliance and enforcement activity carried out by the three bodies from recent financial years. The remit, powers and approaches of each organisation is different, making performance comparisons across the three bodies problematic. Any interpretation of differential performance between the enforcement bodies should therefore be treated with extreme caution.

As stated earlier, where possible, we aim to present a time series comparison *within* each body (generally comparing recent performance against the situation in 2010/11, where data allow), though, again, the results from this should not be considered definitive for the reasons set out in my overall assessment.

## A.4.1 HMRC NMW

### A.4.1.1 Case volumes and resolutions

Resourcing for HMRC NMW, measured in both funding and FTE staffing terms, has effectively tripled since 2010/11. The volume of closed cases, though, is little changed over the period. There has been an increase in strike rate (proportion of cases investigated where arrears are identified) from 39 per cent to 45 per cent by 2018/19 (BEIS, 2020a).

As illustrated in Table A.3, total identified arrears increased significantly over this period from £3.8 million in 2010/11 to almost £24.5 million in 2018/19. In effect, the total value of arrears now almost equates to the funding of HMRC NMW. In the same period, the number of workers represented in these closed cases has risen almost tenfold to over 220,000.

Table A.3: Overall HMRC NMW performance 2010/11 and 2016 to 2019

Year	Funding (£m)	FTE Staff	Closed cases	Closed cases with arrears	Strike rate	Arrears identified (£m)	Workers	Arrears per worker
2010/11	8.1	142	2,901	1140	39%	3.82	22,919	£167
2016/17	20	352	2,674	1134	42%	10.92	98,150	£111
2017/18	25.2	413	2,402	1016	42%	15.62	201,785	£77
2018/19	26.2	429	3,018	1357	45%	24.45	221,581	£110

Source: BEIS (2020)

DLME (2019a) noted that average arrears per worker identified by HMRC NMW has fallen over time, which may be an indication generally of less serious breaches being uncovered. For instance, much of the increase in total arrears is due to a small number of large cases (34), yielding an average of more than £0.5 million per case and together identifying around £17.4 million in arrears for over 164,000 workers (BEIS, 2020a). In 2018/19, average arrears were £110 per worker, back up to around the 2016/17 level after a fall to £77 recorded in 2017/18 (BEIS, 2020a).

### A.4.1.2 Reactive versus targeted enforcement

Just over half of HMRC NMW closed cases in 2018/19 were the result of targeted enforcement, i.e. were cases where intelligence and modelling were used to identify potentially non-compliant employers (BEIS, 2020a), as opposed to complaint-led cases.

Typically, targeted enforcement has a lower strike rate than complaint-led cases, as the latter involves affected individuals raising issues directly with HMRC NMW. That said, targeted enforcement in 2018/19 resulted in significant increases total arrears identified (almost £10 million, from £3.8 million a year earlier) and the number of workers benefiting (over 96,000, up by around half compared to 2017/18) (BEIS, 2020a).

For both targeted and complaint-led enforcement, average arrears per worker is just over £100, while penalties for employers work out at between £50 and £100 per worker affected.

### A.4.1.3 Cases and resolutions by sector

According to BEIS (2020), over a third of minimum wage investigations (36 per cent) occurred in three sectors: *food and beverage service activities* (516 cases), *other personal service activities* (311) and *retail trade except of motor vehicles and motorcycles* (274). Arrears were identified in 39 per cent of cases in these sectors, compared with 45 per cent overall. Together, these three

sectors accounted for 54 per cent of all workers for whom HMRC NMW identified arrears in 2018/19. Average arrears per worker across these three sectors was £62, compared with an average of £168 across all other sectors.

The highest identified arrears per worker were in *travel agency, tour operator and other reservation service and related activities* (£3,104), *information and communication* (£2,326), *veterinary activities* (£1,239), and *water supply sewage, waste management and remediation activities* (£1,213).

#### A.4.1.4 Self-corrected arrears

HMRC NMW introduced self-correction in 2014/15 to support effective and efficient enforcement, where minimum wage underpayment is identified for a worker or group of workers (BEIS, 2020a). Self-correction is a mechanism whereby HMRC NMW can instruct the employer to check for minimum wage underpayment for the rest of their payroll or for former employees. Any further arrears identified through this process are repaid to individuals. However, the employer does not pay any penalty for those arrears identified explicitly through self-correction.

The number of workers benefiting from self-correction has increased over the past three years. Arrears were identified through self-correction for around 81,000 workers in 2018/19, each being owed on average £132. Of the £10.6 million in total arrears, just over £6 million was identified under the Social Care Compliance Scheme. By comparison, £13.8 million of arrears were identified as a result of assessment by HMRC NMW. This benefited over 140,000 workers who were on average each owed £98.

#### A.4.1.5 Minimum wage Naming Scheme

In July 2018, BEIS named 239 employers who had been found to be underpaying minimum wage, accounting for £1.44 million of arrears for over 22,000 workers.

This was the most recent BEIS naming round as the scheme has been under review following previous DLME recommendations. Prior to this, the naming rounds had been taking place roughly every quarter. In February 2020, BEIS announced the outcome of its review and revisions to the scheme (HMRC and BEIS, 2020). Naming rounds resumed in December 2020.

#### A.4.1.6 Minimum wage penalties

In 2018/19, HMRC NMW issued 1,008 minimum wage penalties to employers. This is up by a quarter on 2017/18 and is the highest number of minimum wage penalties issued in a single year.

The total value of penalties increased by over £3 million to £17.13 million in 2018/19 – more than four times the total value of penalties in 2016/17. Penalty income has been partly driven by increases in the penalty multiplier over time, such that penalties can now be levied at a rate of 200 per cent of identified arrears. For non-compliant employers, the average value of penalties issued for 2017/18 and 2018/19 is around £17,000, up from just under £5,000 two years earlier.

**Table A.4: Minimum wage penalties issued 2010/11 and 2016 to 2019**

	Penalties issued	Total value of penalties (£m)	Value per penalty issued (£)
2010/11	934	0.52	557
2016/17	821	3.89	4,741
2017/18	810	14.07	17,371
2018/19	1,008	17.13	16,999

Source: BEIS (2020)

### A.4.1.7 Promoting compliance and raising awareness

In recent years, HMRC NMW and BEIS have had a greater focus on their compliance approach to tackling minimum wage violations, by means of raising awareness and using a ‘promote’ strategy.

At the time of each annual minimum wage uprating (April), BEIS launches an awareness campaign for workers, helping them check they are being paid properly and directing them to further help. BEIS invests over £1 million in this campaign each year and estimates that the campaign that ran between April and June 2018 directly resulted in an additional 371 minimum wage complaints.

HMRC NMW uses ‘promote’ interventions to seek to change the behaviour of both workers (by encouraging them to check their pay, get further information and, if necessary, make a minimum wage complaint) and employers (by helping them to be compliant and encouraging them to self-review and, if necessary, correct errors around minimum wages). HMRC NMW employs a variety of engagement tools and methods, ranging from email nudges to employers, an HMRC minimum wage e-learning product, mass emails and SMS texts to employers and workers respectively and HMRC-delivered webinars. Such methods enable widespread and cost-effective reach – for instance, HMRC issued 1.4 million SMS texts to apprentices and working tax credit recipients, assessed as being ‘at-risk’ groups.

Finally, I am encouraged that BEIS and HMRC NMW have taken on board recommendations made previously by DLME, as well as by the LPC, to review and improve the guidance offered to employers around the minimum wage. Not only will the revised guidance be better targeted (e.g. thematically and tailored to different groups), but this will be supplemented by an educational bulletin that BEIS aims to issue quarterly.

## A.4.2 GLAA

### A.4.2.1 Regulated sectors

GLAA’s core remit for much of its existence (including as the Gangmasters Licensing Authority until 2017) has been to operate and enforce the licensing scheme for labour suppliers (gangmasters) in its four regulated sectors: agriculture, horticulture, shellfish gathering, and food processing and packing.

Gangmasters are required to hold a licence, which is renewed annually, to supply labour in these sectors. GLAA charges licensing fees as well as inspection fees for new applicants. In 2018/19 GLAA received fee income from licensing of approximately £0.9 million, mostly from the licence fee itself. This fee income covered less than half of GLAA’s costs in operating the scheme, which is supported by five licensing staff and 15 compliance officers.<sup>59</sup>

During 2019/20, GLAA will be considering proposals for revising fees such that GLAA moves towards greater financial self-sufficiency for its licensing operation.

59 On a headcount not FTE basis.



Table A.5 illustrates the licensing activity undertaken by GLAA for the stock of roughly 1,100 licence holders.

**Table A.5: GLAA Licensing Activity, and 2017 to 2020\***

	2017/18	2018/19	2019/20*
<b>Licences issued/renewed</b>	1,103	1,114	1,045
New Licence Applications	145	176	114
Licence Applications Cancelled	75	67	60
Licence Revocations	12	19	20
<b>Application Inspections</b>	134	137	94
Licence decisions of which:			
Granted	96	85	77
Granted with ALCs	22	28	17
Refused	15	16	14
<b>Compliance Inspections</b>	90	87	61
Compliance inspections	36	45	42
Change of principal authority	26	36	17
Compliance new business inspections and others	28	6	2
Allegations of licensing breaches	167	208	135
Licensing breaches identified	121	123	80
Source: GLAA/GLA Annual Reports; GLAA ad-hoc data requests			
Notes: * 2019/20 data is April to December 2019 only			

## A.4.2.2 Enforcement activity

In May 2017, GLAA acquired broader responsibility to tackle labour market offences in England and Wales utilising additional powers in the Police and Criminal Evidence Act (PACE) 1984. GLAA now has a cadre of specially trained authorised investigators – Labour Abuse Prevention Officers (LAPOs) – which permits them to investigate potential offences under the Employment Agencies Act (1973), the National Minimum Wage Act (1998) and the Modern Slavery Act (2015).

Table A.6 shows that, since acquiring these new powers, more than half of GLAA enforcement investigations have been outside of their licensed sectors.

**Table A.6: Enforcement activity and outcomes, 2017 to 2020\***

	2017/18	2018/19	2019/20*
Enforcement investigations tasked	189	247	194
of which: regulated sector	87	111	84
of which: non-regulated sector	102	136	110
Active investigations	68	147	110
Closed investigations	60	267	267

	2017/18	2018/19	2019/20*
Number of resolutions	N/A	72	32
Workers affected	N/A	53	1941
Total financial recoveries £000	£575	£95	£157
Arrests	107	48	24
Enforcement notices	75	17	37
Warnings	107	31	13

Source: GLAA Annual Report 2018/19 (GLAA,2020a); DLME ad-hoc data requests to GLAA  
Notes: \* 2019/20 data is for April to December 2019 only

### A.4.2.3 Labour exploitation referrals to the NRM

GLAA's enforcement activity on labour exploitation within modern slavery includes being a designated 'First Responder', leading GLAA to refer 33 potential victims of labour exploitation to the National Referral Mechanism (NRM) in 2018 (Home Office, 2019b). This was an increase from 22 in the previous year (NCA, 2018). In 2019, GLAA made eight NRM referrals (Home Office, 2020).

First responder organisations – including GLAA, law enforcement, local authorities and third sector bodies – also have a 'duty to notify' the Government using an MS1 form, of the numbers of potential victims who do not want to enter the NRM (Home Office, 2020a). Between April and December 2019, the GLAA identified 60 potential victims that led to the submission of MS1 forms, compared to 81 in 2018/19.

### A.4.2.4 Prevention activity

The GLAA has a strong focus on prevention interventions: three of GLAA's six strategic objectives are built around supporting compliant business, engaging with stakeholders and working in partnership.

GLAA activity in the latest reporting year (2018/19) has centred around:

- Sector-focused engagement to support compliant business and raise awareness of labour exploitation and modern slavery. This has included leading and establishing industry protocols in construction (with 100 signatories as of June 2019)<sup>60</sup> and the textiles industry (with 15 signatories including major retailers).<sup>61</sup> GLAA also helped to create the Responsible Car Wash Scheme, a pilot for an accreditation scheme in the hand car wash sector (see Section 4.4);
- Engaging with community to raise awareness of labour exploitation, including partnering with Boston College in Lincolnshire where modern slavery formed part of the curriculum for its students; and
- International engagement and cooperation, working firstly with the Foreign and Commonwealth Office to educate young potential migrants overseas about the risks of labour exploitation, and secondly continuing GLAA's close relationship with Europol's forced labour programme and participating in the EU-wide week of action of enforcement operations.

60 GLAA, 2019d.

61 GLAA, 2018c.

## A.4.3 EAS

### A.4.3.1 Caseload

Between 2017/18 and 2018/19, EAS experienced a 55 per cent increase in complaints received (see Table A.7). This volume was slightly more than double that received in 2010/11. The volume of cases cleared (1,805) in 2018/19 was also an increase on both the previous year (by 42 per cent) and since 2010/11 (64 per cent).

Between 2017/18 and 2018/19, targeted inspections increased by 80 per cent, likely associated with the increase in headcount in that period.

**Table A.7: EAS case statistics – 2010/11 and 2016 to 2019**

Cases	2010/11	2016/17	2017/18	2018/19	Change since 2010/11	Change since 2017/18
Complaints received	958	828	1,261	1,953	104%	55%
Complaints cleared	1,101	750	1,267	1,805	64%	42%
Targeted inspections	243	142	145	261	7%	80%
Infringements found (cleared cases and inspections)	2,065	782	1,071	1,242	-40%	16%
Total number of warning letters issued	917	387	321	415	-55%	29%

Sources: EAS (2020), BIS (2012), and DLME analysis

### A.4.3.2 Activity by sector

Table A.8 would suggest that over half of all EAS activity in 2018/19 was focused on the following four sectors:<sup>62</sup> Industrial (141 cases), Healthcare (127), Construction (111) and Teachers/Tutors (83).

Infringements per cleared case were highest among agencies supplying Models (promotional workers) (3.3) and Teachers/Tutors (2.2), and lowest in agencies supplying to the Industrial sector (0.9) and to the IT/online sector (0.9).

Type of agencies	Cases	Infringements	Infringements per case
Industrial	141	133	0.9
Healthcare (carers/nurses/doctors)	127	178	1.4
Construction	111	133	1.2
Teachers/Tutors	83	179	2.2
Secretarial/Commercial/Admin (office workers)	56	91	1.6
Drivers	44	74	1.7
Entertainment (actors/extras)	37	40	1.1
Professional/Executive (engineering/technical)	35	54	1.5
Hotel/Catering/Hospitality	34	47	1.4
Models (promotional workers)	31	101	3.3

<sup>62</sup> EAS does not record this information using ONS SIC classification.

Type of agencies	Cases	Infringements	Infringements per case
IT/Online (including Job Boards)	13	12	0.9
Nannies/Au Pairs/Childcare (domestic workers)	3	4	1.3
Sectors not listed	161	196	1.2
<b>Total</b>	<b>876</b>	<b>1242</b>	<b>1.4</b>

Source: EAS 2020 and DLME calculations

### A.4.4.3 Targeted operations

In 2018/19, EAS undertook 12 targeted operations, either by themselves to investigate particular high-risk sectors or as part of joint operations with other partners such as GLAA or HMRC NMW. Planning for such operations is informed by risk and intelligence assessment, and all of them were conducted in DLME priority sectors or EAS high-risk sectors. In total, these targeted operations included 230 visits involving EAS inspectors, who, on average, uncovered around four infringements per visit.

### A.4.4.4 Promote and raising awareness

EAS undertakes numerous activities to raise awareness and build compliance in its sector. These include:

- Providing training to Acas and other enforcement bodies to help them improve their understanding of the relevant agency legislation and the role of EAS; and,
- Working closely with representative bodies and businesses in the industry to provide support with a view to helping to raise compliance levels.

As with the GLAA, EAS has engaged with officials from other countries (Romania and Bulgaria) to help improve understanding of agency worker employment rights for those looking to come to the UK to undertake temporary work.

That EAS now has its own dedicated internet presence which also helps to raise its profile and increase awareness of its work in the sector.

## A.4.5 LMEUs, LMEOs, prosecutions and prohibitions

### A.4.5.1 Labour Market Enforcement Undertakings and Orders

Since their introduction as an additional enforcement tool in 2017, all three enforcement bodies have adopted the use of Labour Market Enforcement Undertakings and Orders (LMEUs and LMEOs).<sup>63</sup> Between them, the bodies had issued nearly 50 LMEUs at the time of writing, with HMRC NMW significantly stepping up its use of LMEUs in 2019 (see Table A.9).

Both GLAA and EAS have issued LMEOs since their introduction.

<sup>63</sup> S14 Immigration Act (2016) available at:

<http://www.legislation.gov.uk/ukpga/2016/19/part/1/chapter/1/crossheading/labour-market-enforcement-undertakings/enacted>

**Table A.9: Labour Market Enforcement Undertaking and Orders issued by HMRC NMW, GLAA and EAS since 2017**

	Year	HMRC NMW	GLAA	EAS
<b>LMEUs</b>	2017/18	0	2	0
	2018/19	8	10	4
	2019/20*	19	3	1
	<b>Total to date</b>	<b>27</b>	<b>15</b>	<b>5</b>
<b>LMEOs</b>	2017/18	0	0	0
	2018/19	0	2	0
	2019/20*	0	0	3
	<b>Total to date</b>	<b>0</b>	<b>2</b>	<b>3</b>

Source: GLAA (2020a) EAS (2020); BEIS (2020a); DLME analysis

Notes: \* for period 1 April 2019 to 28 March 2020

### A.4.5.2 Prosecutions and prohibitions

Criminal prosecutions have been, and continue to be, an under-utilised intervention across all three enforcement bodies.

There have been only 15 minimum wage prosecutions since 2007, with the most recent being prosecuted in November 2019 (BEIS, 2020a). I recognise the time and financial costs associated with pursuing prosecutions, as well as the fact that ultimately it will be the Crown Prosecution Service that decides whether or not to pursue a prosecution case. Here, I concur with my predecessor in that the combination of more prosecutions and greater associated publicity could have a powerful deterrent effect on other employers.

Between April 2019 and early January 2020, GLAA obtained three convictions for Section 12 offences in its licensed sectors. A further eight GLAA cases were with the CPS at the time of writing.<sup>64</sup> GLAA has yet to have a successful conviction for labour exploitation under the Modern Slavery Act 2015.

There were no successful prosecutions or prohibition applications brought by EAS in 2018/19, although the EAS Annual Report noted that there were 12 prosecutions and two prohibitions proceeding against the relevant agencies or employment businesses and were at different stages of the process (EAS, 2020).

### A.4.6 Joint working

There has been significant improvement in the joint working undertaken by the LME bodies over the last four years. HMRC NMW provided information that suggested that the volume of their joint operations almost quadrupled between 2016/17 and 2018/19. GLAA provided similar information that indicated that the volume of their joint operations nearly tripled over the same period.

Both HMRC NMW and GLAA are most likely to partner with the police for their joint operations. This likely reflects the fact that joint operations for HMRC NMW are led by their Serious Non-Compliance team, which are dedicated to dealing with the most severe minimum wages enforcement cases.

Similarly, GLAA typically partners with law enforcement in cases of potentially severe labour exploitation. EAS have partnered with the police, but much less frequently due to the nature of their scope and remit.

64 GLAA submission to ODLME.

# Annex B: Profiles of at-risk sectors from MoRiLE analysis

## Hand car washes

Threat remains severe – increased enforcement activity in this sector has improved knowledge of the nature of non-compliance but intelligence gaps around scale remain.

This sector is assessed as broadly non-compliant. Intelligence shows a range of labour exploitation mostly around non-payment of the minimum wage, but there have been cases of forced labour. The behaviour is deliberate non-compliance with a business model of not paying workers correctly, avoiding health and safety and environmental regulations, as well as tax evasion. There are reports of hand car washes employing illegal workers and, in some instances, severely exploiting vulnerable workers. As detailed in Section 4.4, the hand car wash sector presents difficulties for enforcement including workers not wanting to report or identify as victims, failure to keep records and rapid ‘phoenixing’ when challenged.

## Agriculture – seasonal workers

Threat remains severe – the nature of non-compliance is relatively well-documented, but intelligence gaps around the post-Brexit landscape leave uncertainties around future scale.

Within agriculture, the intelligence shows that the key vulnerable group are seasonal workers (as reflected by the licensing of labour providers in this area). As a licensed sector, it might be surprising that this remains a high-risk sector but, as described in Section 4.2, there are characteristics of the industry structure, type of work and characteristics of the workers that make this a sector vulnerable to exploitative practices. The sector experiences the full spectrum of labour exploitation from non-payment of minimum wage and holiday pay to instances of modern slavery involving control, threats and actual violence.

Difficulties for enforcement include workers not identifying as victims, vast geographical areas, a highly mobile workforce that may or may not live on site, social isolation and limited access to communication and transport. As discussed in Section 4.2, the limited resource behind licensing of labour providers is a key risk for enforcement.

## Care

Threat remains high – recent activity has improved understanding of the types of exploitation taking place, but intelligence gaps remain around the short- and medium-term scale of non-compliance.

The care sector continues to be assessed as high-risk and the threat remains consistent. There have been instances of workers suffering high harm labour exploitation, but mainly the workers are being exploited through non-payment of minimum wage. This may be around travel time, but also includes the ongoing court case regarding sleep-in shifts. As is discussed in Section 4.1, a key issue is the complexity of the sector and chronic levels of underfunding in an area of increasing demand.

## Construction

Threat increased from medium to high – there have been significant improvements in the intelligence picture generated between assessments around the nature of non-compliance within many of the subsectors, but still some intelligence gaps remain.

During MoRiLE assessment for the 2019/20 Strategy, it was identified that construction was an area where the level of intelligence was felt to be inconsistent with the perceived risk of the sector. Over the year, my team has worked with the three enforcement bodies and partners including HSE, Home Office Immigration Enforcement, National Crime Agency and Police to establish a better understanding of the main threats and risks. Consequently, the available evidence has improved, and this increased the risk score for this sector from medium to high. This is a large and diverse sector, but the threat and risks are mainly for those in low-skilled jobs, including demolition, or exploitation of migrant workers (BBC, 2019f). As discussed in detail in Section 4.3, the model of sourcing labour in this sector can drive behaviours which opens opportunities for non-compliance.

## Hospitality

Threat remains medium – improved intelligence around the nature of non-compliance in this sector has slightly lifted the score, but the full extent of these breaches is still not known.

Since the last assessment, significant improvements have been made in the intelligence picture of the hospitality sector. In particular, our understanding around exploitative practices taking place within takeaways and fast-food subsectors has been bolstered across the agencies, partially facilitated by more joint working by key enforcement partners in this area. Minimum wage risk modelling and intelligence received through worker complaints and third-party information identifies this sector as high-risk for non-compliance with the minimum wage.

## Shellfish gathering

Threat remains medium – improved intelligence on the wider impacts of labour market non-compliance has increased the score, but some intelligence gaps remain.

In this licensed sector, the GLAA have seen an increase in reporting, showing the threat from unlicensed activity is continuing, if not increasing. The threat is localised to specific areas where harvesting takes place, meaning there is a strong local community interest in the issue. There are significant health and safety issues for the workers as the work is conducted offshore and dependent on tidal activity. Unlicensed gangmaster activity, illegal poaching from closed or unclassified shellfish beds – often under the cover of darkness – makes this a difficult area to enforce, but partnership work in this area is strong to tackle it where it occurs.

## Nail bars

Threat remains medium – increased public awareness of this threat has improved the evidence base on scale and nature of non-compliance but its incidence is unknown.

Nail bars have been assessed as a continuing threat, with the MoRiLE assessment being unchanged for the past two years. The nail bars considered to be high-risk have a different profile in relation to illegal working to other compliant nail bars and sectors in this assessment.

The main issues are around non-payment of the minimum wage for those allowed to work in the UK, but there have been reports of severe exploitation in this sector, including of children, and links to trafficking, organised crime, tax evasion and immigration crime in the high harm examples of exploitation.

### **Poultry and Eggs**

Threat remains medium – intelligence on nature of breaches, particularly within licensing regime, is relatively strong, but the scale of non-compliance is not known.

Labour providers in the Poultry and Eggs sector must have a GLAA licence. The GLAA have assessed the threat as continuing. The key risks are around gangmasters who do not pay the minimum wage (with particular issues around travel time between sites and long hours), poor treatment of workers (around accommodation and health and safety) and some reports of severe labour abuse. The enforcement challenge is that this is a highly mobile workforce making identification and interception of gangmaster activity difficult.

### **Warehousing and distribution**

Threat remains medium – intelligence around the scale and nature is largely unchanged since the last assessment, with intelligence gaps remaining as to the incidence of exploitative practices.

In previous strategies, we have reported on research on warehouses and distribution (DLME, 2019a). The threat in this sector continues. The assessment concludes that most reporting is for the non-payment of the minimum wage and withholding of wages. However, there are wider risks of labour exploitation and some indicators of modern slavery and human trafficking. The indicators include working long shifts, controlling behaviour, unsuitable working conditions and illegal deductions from pay.

### **Food industry processing and packing**

Threat has increased from low to medium – increased intelligence flows have improved knowledge of the sector across agencies, though some intelligence gaps remain.

This GLAA licensed sector has been assessed as medium-risk in this assessment, compared to low-risk in previous iterations. This is a large sector employing a significant number of temporary workers. The main instances of exploitation within the sector, are non-payment of minimum wage, poor and overcrowded accommodation, health and safety issues and inappropriate charges or deductions for transport or other services. There are also reports of overseas workers being exploited, including coming to the UK to find there is no work as promised and unexpected costs and charges.

### **Garment and textiles manufacturing**

Threat has increased from low to medium – increased political and public awareness has raised its profile within MoRiLE, but intelligence gaps remain.

This is an area of continuing work for labour market enforcement (see Section 4.5). The MoRiLE assessment identified non-compliance, including examples of serious non-compliant businesses which have issues of poor worker conditions and pay, intertwined with benefit fraud and tax evasion. The challenge in this sector is a lack of reporting from workers and from the industry itself that would enable enforcement bodies to carry out targeted enforcement. There has been significant media and government attention on this sector, often centred around Leicester due to the concentration of the industry there, although clearly these are issues not just confined to this city. The enforcement bodies look to work where there are ‘hotspots’ around the country. The main reason for the increase in the assessment of risk within MoRiLE is a greater understanding of the financial impact of non-compliance, including non-payment of the minimum wage and tax losses to the Exchequer.



## Annex C: Acronyms

- Acas:** Advisory, Conciliation and Arbitration Service
- ADASS:** Association of Directors of Adult Social Services
- ALP:** The Association of Labour Providers
- AR:** Apprentice Rate
- ASHE:** Annual Survey of Hours and Earnings
- AWR:** Agency Worker Regulations
- BBC:** British Broadcasting Corporation
- BEIS:** Department for Business, Energy and Industrial Strategy
- BIS:** Department for Business, Innovation and Skills
- BPE:** Business Population Estimate
- C&E:** Compliance and Enforcement
- CIOB:** The Chartered Institute of Building
- CIW:** Care Inspectorate Wales
- Civ:** Civil
- COVID-19:** Novel Coronavirus 2019
- CPS:** Crown Prosecution Service
- CQC:** Care Quality Commission
- CSCS:** Construction Skills Certification Scheme
- CWA:** Car Wash Association
- CWAS:** The Car Wash Advisory Service
- DBS:** Disclosure and Barring Service
- DEFRA:** Department for Environment, Food and Rural Affairs
- DHSC:** Department for Health and Social Care

**DLME:** Director of Labour Market Enforcement

**DWP:** Department for Work and Pensions

**EAC:** Environmental Audit Committee

**EAS:** Employment Agency Standards

**EAT:** Employment Appeal Tribunal

**ESRC:** Economic and Social Research Council

**EU:** European Union

**EWCA:** England and Wales Court of Appeal

**FCSA:** The Freelancer and Contractor Services Association

**FIS:** Fraud Investigation Service

**FLEX:** Focus on Labour Exploitation

**FNET:** Food Network for Ethical Trade

**FTE:** Full-Time Equivalent

**GAIN:** Government Agency Intelligence Network

**GLA:** Gangmasters Licensing Authority

**GLAA:** Gangmasters and Labour Abuse Authority

**GVA:** Gross Value Added

**HCWs:** Hand Car Washes

**HCF:** Home Care Framework

**HCS:** Home Care & Support Framework

**HMO:** Houses in Multiple Occupation

**HMRC:** HM Revenue and Customs

**HO:** Home Office

**HOIE:** Home Office Immigration Enforcement

**HSE:** Health and Safety Executive

**IASC:** Independent Anti-Slavery Commissioner

**ICE:** Information and Consultation of Employees

**IT:** Information Technology

**JSTAC:** Joint Slavery and Trafficking Analysis Centre

**KID:** Key Information Document

**LA/LAs:** Local Authority/Local Authorities

**LAPO:** Labour Abuse Prevention Officer

**LGA:** Local Government Association

**LITRG:** Low Incomes Tax Reform Group

**LME:** Labour Market Enforcement

**LMEO:** Labour Market Enforcement Order

**LMEU:** Labour Market Enforcement Undertaking

**LPC:** Low Pay Commission

**Ltd:** Limited company

**MAC:** Migration Advisory Committee

**MHCLG:** Ministry of Housing, Communities and Local Government

**MSH:** Modern Slavery Helpline

**MSHT:** Modern slavery and human trafficking

**MoRiLE:** Measurement of Risk in Law Enforcement

**MSPTU:** Modern Slavery Police Transformation Unit

**NAO:** National Audit Office

**NASUWT:** National Association of Schoolmasters Union of Women Teachers

**NCA:** National Crime Agency

**NFU:** National Farmers Union

**NGOs:** Non-Governmental Organisation

**NHS:** National Health Service

**NICs:** National Insurance Contributions

**NISCC:** Northern Ireland Social Care Council

**NLW:** National Living Wage

**NMW:** National Minimum Wage

**NRM:** National Referral Mechanism

**NSO:** Non-standard operations

**NTU:** Nottingham Trent University

**OCG:** Organised Crime Group

**ODLME:** Office of the Director of Labour Market Enforcement

**ONS:** Office for National Statistics

**PACE:** Police and Criminal Evidence Act 1984

**PAYE:** Pay As You Earn

**PLC:** Public Limited Company

**PPE:** Personal Protective Equipment

**PSNI:** Police Service of Northern Ireland

**PSSRU:** Personal Social Services Research Unit

**RCWS:** Responsible Car Wash Scheme

**REC:** Recruitment & Employment Confederation

**RQF:** Regulated Qualifications Framework

**RQIA:** Regulation and Quality Improvement Authority

**SAWS:** Seasonal Agricultural Worker Scheme

**SCCS:** Social Care Compliance Scheme

**SCG:** Strategic Coordination Group

**SEB:** Single Enforcement Body

**SEROCU:** The South East Regional Organised Crime Unit

**SIA:** Security Industry Authority

**SIC:** Standard Industrial Classification

**SLF:** Supported Living Framework

**SMEs:** Small and Medium-sized Enterprises

**SMS:** Short Message Service

**SoS:** Secretary of State

**SSSC:** Scottish Social Services Council

**TISC:** Transparency In Supply Chains

**UK:** United Kingdom

**UKHCA:** The UK Home Care Association

**UKSC:** United Kingdom Supreme Court

**UN:** United Nations

# Annex D: List of organisations that responded to the Call for Evidence

## Written Evidence

A total of 38 written submissions were received. Not listed are one individual and one organisation that requested anonymity.

Anti-Slavery International joint submission with the Anti-Trafficking Monitoring Group (ATMG), The Human Trafficking Foundation and The Anti-Trafficking and Labour Exploitation Unit (ATLEU)

Association of Convenience Stores (ACS)

Association of Labour Providers (ALP)

Branch Members of the Public and Commercial Services Union on behalf of its members within the Gangmasters and Labour Abuse Authority

British Beer and Pub Association (BBPA)

British Retail Consortium (BRC)

Car Wash Association (CWA)

Care Quality Commission (CQC)

Chartered Institute of Payroll Professionals (CIPP)

Chartered Institute of Personnel and Development (CIPD)

Citizens Advice Scotland

Concordia

Confederation of British Industry (CBI)

Craig McGill

Equity

Focus on Labour Exploitation (FLEX)

Freelance & Contractor Service Association (FCSA)

Low Incomes Tax Reform Group (LITRG)

Missguided

National Association of Schoolmasters Union of Women Teachers (NASUWT)

National Farmers Union (NFU)

National Union of Rail, Maritime and Transport Workers (RMT)

PRISM

Responsible Car Wash Scheme (RCWS)

Rights Lab at the University of Nottingham

JobsAware (formerly SAFERJobs)

Security Industry Authority (SIA)

Stewart McDonald MP

Stop the Traffik

The Personal Social Services Research Unit (PSSRU) at the University of Kent

The Recruitment and Employment Confederation (REC)

Trades Unions Congress (TUC)

Union of Shop, Distributive and Allied Workers (USDAW)

Unison

Unite the Union

United Kingdom Homecare Association (UKHCA)

## Annex E: Stakeholders engaged with during Call for Evidence

This is a list of organisations that have either attended roundtables, sector specific workshops or who have engaged individually with my Office (excluding engagement with the three main enforcement bodies, sponsor departments, and other government departments).<sup>65</sup>

Aspire Business Partnership

Association of Convenience Stores (ASC)

Association of Directors of Adult Social Services (ADASS)

Association of Labour Providers (ALP)

Balfour Beatty

British Beer and Pub Association (BBPA)

British Retail Consortium (BRC)

Car Wash Association (CWA)

Care England

Care Inspectorate Wales (CIW)

Care Provider Alliance

Care Quality Commission (CQC)

Centre Circle

Chartered Institute of Payroll Professionals (CIPP)

Chartered Institute of Personnel and Development (CIPD)

Concordia

Confederation of British Industry (CBI)

Dial-A-Worker

Emmett UK Ltd

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<sup>65</sup> GLAA, EAS, HMRC NMW, BEIS, HOIE, Home Office, MCHCLG, HMRC Fraud Investigation Service (FIS), HMRC Hidden Economy Team, DEFRA, and DHSC colleagues.

Environment Agency

Equity

Ernst and Young (EY)

Ethical Trading Initiative (ETI)

Everest People Solutions

Focus on Labour Exploitation (FLEX)

Fresca Group Ltd

Fresh Produce Consortium (FPC)

G's Fresh

Greencore

Hermes

Hops Labour Solutions Ltd

Hopp Operations Limited/Bolt

Human Trafficking Foundation

Independent Anti-Slavery Commissioner's Office (IASC)

Institute for Employment Studies (ISE)

John Lewis & Partners

Local Government Association (LGA)

Low Incomes Tax Reform Group (LITRG)

NASUWT

National Farmers' Union (NFU)

National Union of Rail, Maritime and Transport Workers (RMT)

Nottingham Trent University (NTU) Hand Car Wash Research Team

Professor Gary Craig

PwC

Recruitment and Employment Confederation (REC)

Red Rock Partnership Ltd

Resolution Foundation

Responsible Car Wash Scheme (RCWS)

Responsible Construction Recruiters

Royal Society of Arts (RSA)

Sainsbury's

Shiva Foundation



Skills for Care

Social Care Wales

Staples Vegetables Ltd

Stronger Together

Sustain Alliance for better food and farming

TEAM

Tesco

Thames Valley Police/ South East

The Federation of Master Builders

The Pensions Regulator (TPR)

The Personal Social Services Research Unit (PSSRU) at the University of Kent

The Rights Lab at Nottingham University

Trade Unions Congress (TUC)

UK Home Care Association (UKHCA)

UK Hospitality

Union of Shop, Distributive and Allied Workers (USDAW)

Unison

Unite the Union

Unseen Modern Slavery Helpline

Waves

Welsh Government – Code of Practice

WMS Recruitment Ltd

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