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Response to the Director of Labour Market Enforcement's consultation:
Informing the UK Labour Market Enforcement Strategy 2018 to 2019

by

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The Unchained Supply project at the University of Nottingham has been researching modern slavery in supply chains for several years. Our research is interested in the detection of modern slavery in supply chains, the design of supply chains that are resilient to modern slavery, and the diffusion of good practices in global and domestic supply chain networks. All of our research has been conducted in close collaboration with practitioners from industry, government and NGOs. Although much of our research looks at modern slavery in supply chains and procurement in general, we have been working particularly closely with the UK construction and facilities management sector, adult social care, and on car washes. In the following submission we make general comments, followed by sector-specific remarks in response to each of the questions asked.

Development of the intelligence hub

1. What information is available from your sector or organisation that might usefully be fed into the intelligence hub?

Adult Social Care

There is information from the adult social care sector that may usefully be fed into the intelligence hub. Residential care, nursing homes and managed care agencies are regulated by the Care Quality Commission (CQC). Although with a patient care slant, the CQC produces inspection reports of its annual visits, which include an assessment of staff recruitment and selection procedures (including reference, right to work and identity checks) and the adequacy of staffing rotas.

Construction

The construction sector has -for larger construction firms- thorough processes to check health and safety provision and to check the right to work on site. Suppliers who fail these checks may simply work for competitors and the intelligence gathered by the private sector checks do not lead to a reduction of poor labour practices but only shift the supplier concerned to other -less thorough- sites. Sharing of check results -as is common with credit checks- may be helpful. We have been speaking to many procurement and supply chain practitioners who were unsure what to do if they found a supplier to be 'dodgy' as they tend to have insufficient evidence to alert law enforcement bodies but they have sufficient concerns to refuse to use the supplier as they perceive them of being too high risk. As an absence of health and safety provision indicates that a low value is placed on a worker, triangulating information sources, and using information from health and safety inspections and investigations may also prove useful for the intelligence hub to build a more complete picture.

Approach to enforcement: issues common to all the enforcement bodies

2. How can we more effectively promote awareness of rights and responsibilities of both workers and employers? Should reporting non-compliance (especially of one's own employer) be made easier?

General Comments

Victims of modern slavery and other forms of labour exploitation tend to be from vulnerable communities with control being exercised over them. Access to justice and to self-reporting of non-compliance is therefore difficult and of risk to the victim. The victim is also in danger of losing the only source of employment, even if that employment comes with very poor working conditions.

Many victims may also not be comfortable accessing justice through traditional law enforcement routes. Some of our current research is therefore aiming to understand how communities can become slavery-resilient. This work will involve engaging with community groups such as faith groups and black lives matter, who may have a stronger trust relationship with victims and who may be in a better position to observe cases of exploitation.

Adult Social Care

There are opportunities to promote the awareness of workers and employers rights and responsibilities within adult social care. As part of local authority market-shaping, there is evidence that some local authorities already host care provider meetings and carry out workforce development and quality auditing activities with their providers. The existing agenda could be expanded to include the promotion of workers' and employers' rights and this information cascaded down providers' subcontracted labour chains. Since most Councils now operate a mixed model of social care provision, arrangements would need to include providers of residential care and nursing home placements, managed agencies used for home-care and by direct-payment recipients and those direct payment recipients who chose to employ their own personal assistants recruited directly, or via so called 'introductory agencies'¹.

Reporting non-compliance should be made easier. Our research suggests that non-compliance might be reported either through the police or adult safeguarding channels to a regional multi-agency safeguarding hub (MASH). Neither of these existing channels appears to offer employees a risk-free process.

¹ Introductory agencies provide a personal assistant finding service although they do not monitor the service provided, review the care plan nor organise a rota of assistants.

3. Given finite resources, how should the enforcement bodies balance enforcement activity that is reactive to individual complaints and that which is proactive based on information and intelligence indicating the likelihood of non-compliance?

General Comments

The *risk* of modern slavery could be used by enforcement bodies to balance reactive and proactive enforcement activity. Where victims have close customer interaction and anticipate support from their customers or from institutions, the risk of labour exploitation and modern slavery is lower. Outsourcing of low value-adding tasks to external service providers (for example cleaning) however increases the risk. As more and more research is being conducted on which business and supply chain features increase or lower the risk of labour exploitation, such knowledge can provide a further dimension to resource allocation decisions.

Adult Social Care

As an example, in the adult social care sector reactive activity as a result of instances recorded by the Modern Slavery Helpline or National Referral Mechanism could be balanced with the proactive inspection of non-CQC registered introductory care agencies. Proportionate to the allocated resources, a stratified sample of non-regulated agencies could be audited based upon their geographical location in districts with a high proportion of non-British, minority ethnic, populations: groups shown by National Crime Agency statistics to be at a proportionally greater risk of Modern Slavery.

4. a) What evidence is there on the effectiveness of different penalties at achieving redress for workers and changing the behaviour of employers?

General Comments

Current penalties are an insufficient deterrent.

More and more research is confirming that consumer activism and a naming and shaming approach has almost no effect. Or, that when it does work, it is only in sectors with particular stakeholder constellations. We can for example see consumer activism work in areas of competition for ethically conscious consumers and where ethical substitutes are available at the same price level. This is however a niche proportion of the UK economy. In contrast, no lasting effect on Primark's sales could be seen after the collapse of the Rana Plaza factory in Bangladesh, and neither did its owner's share price suffer from the event. More recently the appalling work conditions at Sports Direct were portrayed widely in the national media, with no observable effect on Sports Direct's financial performance. We must therefore conclude that naming and shaming has very limited effect unless it triggers action such as blacklisting from public and private sector procurement (as for example through Brazil's 'dirty list') or avoidance by ethical investors.

However, we can observe that, in some sectors, shareholder and customer pressure is a key feature of initiating change. Ethical investment is increasingly becoming a key driver. This pressure however will only apply to areas of the supply chain that are dominated by publicly listed companies and where ethically conscious investors hold a significant proportion of the shares. Customer pressure will only be effective if sufficient buying power demands improvement of labour conditions, which is hard to achieve in fragmented sectors.

Our research on supply chain networks, in which we used agent-based modelling techniques to analyse the effect of interventions on real-world supply chain networks in which labour exploitation was documented, showed that the only effective intervention is to take those actors who are exploiting labour out of the system entirely. This could be achieved by revoking the licence to practice in the sector or by imprisonment, but is much less likely to be achieved by monetary fines.

In our research, early results show a tendency to promote the use of criminal charges against perpetrators of modern slavery and the use of financial penalties against responsible individuals in business organisations and a loss of their 'fit-to-practice' status.

Adult Social Care

Evidence from our research into the provision of adult social care supports the assertion that existing penalties are ineffective. An interview with an agency manager suggested that introductory agencies could make extraordinary profits from exploitation of the vulnerability of non-British nationals with no right to work in the UK. The manager explained to us that he was aware of care workers with fake documentation. Although he carried out detailed checks, including the use of a scanning app, to ensure he didn't employ such people he felt that other, non-CQC regulated, agencies could exploit them since migrant workers without the right to work were unlikely to voice concerns about illegal business practices such as the failure to pay the national minimum, or living, wage. Rather, our interviewee suggested, these workers might even feel that the agent was doing them a favour by offering them work. Exploiting workers made vulnerable by their migrant status reduced the risk of the exploitation coming to light.

According to the legitimate agency manager to whom we spoke, the problem was not so much the ability of illegitimate businesses to undercut his prices, but rather that they made additional profits by withholding legal wages from the care workers' they supplied. While clearly being unlawful, such practices made identification of exploited care workers by CQC registered residential care and nursing home managers all the more difficult – since care homes still paid the going rate for each worker and would not necessarily realise, therefore, that particular workers may be being underpaid.

b) How can the enforcement bodies target their different enforcement tools to greatest impact, both addressing non-compliant behaviour and supporting compliant businesses?

There may be opportunities to target different enforcement tools for greater impact. Fines of introductory agencies employing workers paid below the national minimum or living wage may be effective in reducing the superior profits made by these businesses when compared with organisations abiding by the law. The immigration status of some migrant workers makes them vulnerable and seems also to mitigate against such individuals reporting on the perpetrators of labour abuse. Perhaps an amnesty system, within which exploited workers who reported perpetrators were not themselves penalised, could be effective in identifying the organisers of these crimes.

5. How and when can agencies benefit from working together and sharing information, and what other organisations should they be working with, both nationally and at a local level?

General Comments

Many sectors already have regulators or inspection bodies in place whose regimes can be expanded to identify indicators for labour exploitation and to make use of their sector-specific knowledge and capacity.

The split of enforcing labour market law across multiple agencies with different remits and missions reduces effectiveness as the agencies have different remits and performance metrics. The split along the type and seriousness of offence runs the risk that HMRC as the agency with the by far widest and most robust enforcement powers is focussed on recovering tax revenue and not on liberating victims or protecting workers and employees.

One area of our research is currently looking into how our production-focused understanding of a supply chain doesn't hold true anymore in a service dominated economy. Following labour chains may therefore be a more relevant approach in identifying modern slavery and other forms of labour exploitation. The use of agency workers is seen as a factor that increases the risk of labour exploitation and modern slavery entering a supply chain. However, it is unclear how the resources of the EAS can be assumed to monitor effectively the number of labour agencies covered under its remit.

The GLAA is well placed to hold specialist knowledge that local police forces cannot acquire in the same width and depth as a central specialised force. Concentrating resources in the GLAA as a de facto national labour inspectorate would make investigations seamless and reduce the risk that a case which falls outside the agency's remit was not pursued.

We believe it would be helpful to acquire customer and supplier lists from businesses where labour exploitation or modern slavery is being found. This will

allow organisational learning as customers can identify why their auditing, procurement and supply chain management procedures did or did not detect these issues. It also increases the likelihood that more labour exploitation or modern slavery will be found in the upstream supply chain.

Adult Social Care

Other organisations with which agencies should be working include the Care Quality Commission and Local Authorities. There are also several relevant industry associations including the Care Home Association and the Recruitment and Employment Confederation.

Car Washes

Based on our research we conclude that HMRC would be in the strongest position to identify and prove labour exploitation in car washes as it has access to accounts and financial data of businesses and individuals. However, the potential for tax loss recovery is comparatively small and therefore doesn't appear to be pursued intensively despite the need for action against labour exploitation in the car wash sector being visibly obvious to most car users in the UK.

6. Overall, is the enforcement resource adequate? Are the resources provided to the enforcement agencies proportionate to their roles? If these were to be altered, on what type of activities should the agencies focus their resource?

General Comments

The staffing levels for the GLAA seem very modest, considering the UK workforce's size of 32.14 million people in work (ONS labour market bulletin September 2017). As for the EAS, a staffing profile of 11 employees for over 18,000 agencies would appear woefully inadequate.

Currently these agencies perform mainly reactive operations. However, widening their scope to prevention, inspection and regulation of areas of the labour market, the level of resources will need to be adjusted accordingly. Many roles that traditionally labour unions used to 'police' are today without such oversight, leading to poor work conditions.

We are unable to comment on resource levels for HRMC.

7. How would each of these practices work in your sectors? Do you have suggestions as to how else this problem could be tackled?

Adult Social Care

For the adult social care sector our central recommendation would be to extend the remit of the Care Quality Commission regulator to include introductory care agencies. Certification of these agencies would be less effective. While the structure of the industry means that the purchasing power of public procurement is significant, evidence from the local authority with whom we worked suggests that, without additional resource, leveraging their power to support significant

supplier development is unlikely. We are not sure that introducing a limit on the number of layers in the supply chain would be enforceable or, indeed, effective in dealing with the occurrence of slavery-like practices. This is because our research evidence suggests that exploitation may emerge only two tiers from the point of local authority commissioning. Since these are labour supply chains, embargoing non-compliant products would have no effect.

8. What additional measure could be brought in to sanction industries with relatively high levels of non-compliance? How would we ensure compliant businesses were not over-burdened?

General Comments

Industries that are characterised by a commoditisation of labour would be best overseen through a licencing scheme or a whitelist of registered providers who must fulfil certain formal qualification levels.

Supply chain directors, human resources directors and COOs could be held personally responsible if their organisations are found to use slave labour or other forms of labour exploitation. This responsibility should also include responsibility for the supply chain by holding procurement directors responsible for repeatedly selecting suppliers in which labour exploitation and slave labour is found that could have reasonably be known or detected by reasonable monitoring. This responsibility could lead to a loss of a professional status, unfit to work in such a position and personal liability. It is indeed surprising that medical professionals or finance workers are being held responsible for unethical practices, whereas professionals in supply chain management, procurement or human resources -at often similar remuneration levels- are not being held accountable.

It is strongly recommended that any future sanctions regime does not incentivise an offloading of responsibility through outsourcing. Law in Brazil for example holds businesses responsible more widely for occurrences of modern slavery in their upstream supply chain.

Issues specific to each enforcement body

HMRC

9. What systemic employment issues facilitate or are linked to the failure to pay national minimum wage/ national living wage? How could these be addressed?

General Comments

In sectors of predominantly commoditised labour where service providers are selected only on cost and not from a value-adding perspective, a tendency to lowering conditions and undercutting the minimum wage (whether unlawfully or through self-employment) will occur naturally.

Since labour unions have disappeared as the watchdog against lowering conditions, false self-employment, and exploitation, the need arises for a

government body to oversee and regulate the labour market more closely. In our research we tend to find that more ethically-conscious managers are keen to see regulation as it creates a level playing field for all businesses in the sector. Otherwise the more responsibly behaving businesses experience a first mover disadvantage for behaving responsibly.

Adult Social Care

Cost pressures across the care sector mean care providers state that, despite progressive pricing changes, local authority rates fail to allow providers to make a fair profit. There is a discourse that suggests private residents effectively cross-fund local authority placements. In addition, in the area we researched, local authority sleeping rates have only recently been amended to ensure that the national minimum/living wage is paid for those on-call overnight. And in the homecare sector there are still reported instances where a task-time rate is paid which excludes care workers' travel and waiting times. Although we have no specific evidence, it would seem reasonable to suggest that these factors lead to a culture where payment of national minimum/living wages is seen as optional rather than obligatory. These issues are alleviated where open-book accounting is employed and local authorities are given sufficient funding to pay their care providers a fair price for care.

10. How should HMRC balance responding to individual complaints against proactive, risk-based enforcement?

No comment

11. Should the remit of the NMW/NLW team within HMRC be extended to cover other types of non-payment of wages.

No comment

GLAA

12. How can the GLAA most effectively use its extended remit and resources to enforce non-compliance?

General comments

The GLAA might most effectively use its extended remit and resources through sector-specific marketing of its services (including the existence of the hotline) and through targeting resources to respond to concerns registered by social care providers and agencies who report questionable practices.

Through several cases that have been discussed in local and national media the GLAA is already building a brand for acting against labour exploitation and modern slavery. Such a brand recognition is very important as it signposts victims and members of the public to the relevant law enforcement agency.

13. Is there a case for extending licensing into new sectors such as construction, care, or cleaning? What might this look like for different sectors?

General comments

Licensing should be used only in areas where there is evidence for widespread labour exploitation, poor work conditions or modern slavery. The GLAA's initiative to enact licensing for the nail bar sector therefore appears to be an appropriate move. However, in the eye of lowly resourced public services, in some sectors professional bodies may also be in a position to play a role in overseeing a sector by enforcing that businesses in particular industries can only be operated with adequate qualification levels and accreditation.

Adult social care

For social care the case for extending GLAA licensing faces some difficulties that would need to be overcome. The advantage, over an alternative approach that extends the remit of CQC inspections, is the GLAA's specific focus on labour rights. There are however, some significant drawbacks. The care sector is a fragmented industry with many small care providers. GLAA action may, therefore, criminalise providers who inadvertently make use of an unlicensed care agency. It would also produce an additional level of bureaucracy for managed service agencies who would need not only to seek CQC registration but also apply for a GLAA licence. There could also be potential difficulties with the criminalisation of individual direct-payment recipients who, again inadvertently, might employ a personal assistant via an unlicensed home care provider. This raises the question whether the GLAA would have the capacity, or the will, to take individual direct-payment recipients through the courts. A more practical alternative might be to extend the remit of the CQC to include workers' rights and the examination of introductory agencies.

EAS

14. Should EAS remit be extended to cover:

a) Regulation of umbrella companies and other intermediaries in the supply chain

Yes. There is a strong need to stop outsourcing being used as a way to offload responsibility for an acceptable treatment of the workforce.

b) Compliance under the Agency Workers Regulations (requiring employers to treat agency workers and permanent staff equally on certain contract terms)?

Yes. The power relationship between agency workers and labour agencies suggests that such compliance should be included in an inspection or auditing regime and not left to employment tribunals which are difficult to access for those workers who are likely to be victims of non-compliance.

15. Should employment agencies be required to provide greater clarity on the information they provide workers, for example, explaining all deductions and setting out the full amount workers will get paid in people's contracts?

Yes. The burden to provide clear information and statements should lie with the labour agency and not with the worker.

16. How can EAS evolve to deal with the emergence of online platforms and apps which provide job finding service (sic)?

No comment