



HM Government

DIRECTOR OF LABOUR MARKET ENFORCEMENT 2020 / 2021 STRATEGY:

CALL FOR EVIDENCE

Closing date: 24 January 2020

December 2019



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Contents

Introduction	5
Background	5
Structure of call for evidence	6
Call for Evidence Questions	7
Section 1 – About you	7
Section 2 – Four High-Risk Sectors	7
A. Sector Specific Questions – Hand Car Washes	8
B. Sector Specific Questions – Agriculture	11
C. Sector Specific Questions – Social Care	14
D. Sector Specific Questions – Construction	16
Section 3 – Non-compliance in other sectors	19
Section 4 – Cross-cutting issues	20

General information

Call for Evidence details

Issued: 16 December 2019

Respond by: 24 January 2020

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How to respond

Email to: LMEDirectorsoffice@beis.gov.uk

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Introduction

This call for evidence sets out the issues on which Matthew Taylor, the interim Director of Labour Market Enforcement, seeks evidence to inform his Strategy for 2020/21.

The Labour Market Enforcement Strategy for 2020/21 is due to be delivered to Government at the end of March 2020. In order to meet our statutory requirements, the available window to gather your views and evidence is unfortunately narrower than in previous years and the call for evidence will have to take place over a truncated period, namely 16 December 2019 to 24 January 2020.

The Director would welcome evidence from stakeholders via:

- **written feedback** on these questions and any relevant evidence that you may wish to bring to our attention; and/ or
- **round table meetings** to hear views and evidence from stakeholders directly.

Three stakeholder events have been organised for the beginning of January (in London): one on the 6th of January and two on the 9th of January and we invite you to sign up to these by contacting the office at LMEDirectorsoffice@beis.gov.uk. If you wish to host a roundtable to discuss any of these issues this would also be welcomed, particularly out of London, and the Director or a representative from his Office would try to attend, or you could feed back as a group.

Background

The role of Director of Labour Market Enforcement was created under the Immigration Act 2016 (the Act), jointly sponsored by Home Office (HO) and Department for Business, Energy and Industrial Strategy (BEIS), to bring better focus and co-ordination to the enforcement of labour market legislation. The Director has overarching responsibility for setting the strategic direction of the three labour market enforcement bodies: HMRC National Minimum Wage/National Living Wage (NMW/NLW), Gangmasters and Labour Abuse Authority (GLAA), and Employment Agency Standards (EAS).

Sir David Metcalf was the first Director of LME and retired in June 2019. Matthew Taylor was appointed interim Director in late summer 2019.

The first two Strategies from the Director can be found here:

<https://www.gov.uk/government/people/matthew-taylor>

The Government has yet to respond to the recommendations in the 2019/20 Strategy.

One of the main requirements of the Act is for the Director to produce an annual Strategy to set the strategic direction of the enforcement bodies. This is to be submitted to Government before the end of the financial year (i.e. the 2020/21 Strategy is due by the end of March 2020).

The call for evidence is integral to informing the Strategy and helping the Director shape his recommendations to Government. The Director and his team are very keen to hear your views,

concerns, ideas and evidence to supplement the analysis, research and inter-departmental discussions that also feed into the development of the Strategy.

This year, the appointment of a new Director, the consultation on the Single Enforcement Body (SEB) and the General Election have meant that the stakeholder engagement is happening much later in the year than for previous Strategies. Consequently, we unfortunately have a much-compressed timetable in which to seek your views. We hope to still speak to as many of you as possible and encourage you to provide your evidence.

Structure of call for evidence

This call for evidence is structured in four sections:

Section 1: About you

Section 2: Questions on four high-risk sectors: hand car washes, agriculture, social care and construction.

Section 3: Questions on non-compliance in other sectors

Section 4: Cross cutting issues – looking for evidence and views on non-sector specific issues.

The Director is not seeking views at this stage on the Single Enforcement Body (SEB) and will not cover this in any detail in this Strategy. The Director has already provided his initial views to the Government on this issue (available [here](#)) and is now awaiting the results from the BEIS consultation to be published and for clarity of political direction before developing these ideas further. The Director may therefore wish to make further submissions to Government on the SEB in due course and would want to elicit views and evidence from stakeholders at that time.

It is not expected that you answer every section, or every question. Please skip Section 2 if you do not have evidence specific to those high-risk sectors. You are of course welcome to submit any documents (e.g. research, reports or media articles) to which you refer in your evidence.

We may wish to quote evidence received in the published Strategy to support its conclusions and recommendations and will attribute these to the individual or organisation that supplied it, unless we are explicitly asked not to do so. **Accordingly, please highlight whether any of the information you submit is of a sensitive nature or if you wish to remain anonymous.**

Please send your evidence to: LMEDirectorsoffice@beis.gov.uk by **Friday 24th January 2020** and feel free to contact the Office at the same address if you have any questions.

Call for Evidence Questions

Section 1 – About you

1.1 Please briefly tell us about you / your organisation and your interest in enforcement of labour market regulations.

The Rights Lab at the University of Nottingham (UoN) is the world's largest group of modern slavery academics. Our extensive and multidisciplinary staff members develop research to assist progress towards the Sustainable Development Goal target (8.7) of ending slavery by 2030. Evidence presented here is drawn from colleagues in our Modern Slavery Evidence Unit (MSEU), and our Business and Economies programme, which over the last 2 years have produced research on all 4 of the high risk sectors on which this consultation focuses. As a result we are well-positioned to respond at length to Section 2 in particular, and provide insights from our wider work for Section 4.

Section 2 – Four High-Risk Sectors

In previous Labour Market Enforcement Strategies, assessments have been made using the available intelligence and wider evidence to identify those sectors that are at risk of labour exploitation. We focused on three of these priority sectors (warehousing, restaurants, hotels) in our 2019/20 Strategy. For this current Strategy (2020/21) we are focusing primarily on non-compliance and enforcement in the following four sectors:

- **Hand car washes**
- **Agriculture**
- **Social care**
- **Construction**

The Strategy will go into detail on each of these, looking at what is known about the scale and nature of non-compliance, what is currently being done to enforce labour rights and what options there are for improvements going forward. In this section, we therefore ask for evidence that is specific to these sectors.

We recognise that risks are seen in other sectors beyond the listed above and these continue to be monitored. If you do not have evidence specific to the four sectors listed above, please go straight to **Section 3**.

A. Sector Specific Questions – Hand Car Washes

2.1 What are the issues of non-compliance in hand car washes? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of the issues?
- What evidence do you have on the **scale** of the issues in this sector?

In 2018, the Rights Lab produced a joint-report with the Office of the Independent Anti-Slavery Commissioner which sought to provide a coherent evidence base for those wishing to understand and tackle labour exploitation in the HCW sector¹. Our research brought together research and information already in existence, in combination with new information from police authorities and key stakeholders.

To assess the nature and scale of the issue in this sector, we collated and analysed existent materials from a range of sources including press reports, parliamentary evidence submitted to the Environmental Audit Committee and research on exploitation and criminal activity relating to labour issues found at car washes. We consulted with a number of key industry stakeholders such as the Gangmasters and Labour Abuse Authority, the Petrol Retailers Association, Belgian Association Vehicle Cleaners and Waves, Tesco's HCW supplier. We also interviewed and surveyed officials from police forces to capture experiences from different areas of the UK. Key issues identified included underpayment of wages, lack of formal contracts, health and safety issues and sub-standard accommodation. Though our research was published in 2018, its findings still reflect the current problems of non-compliance in hand car washes today and would advise reviewing the findings of our report in full to understand the nature and scale of the issues the HCW sector faces related to labour exploitation.

In 2019, we also published a report on the findings of The Clewer Initiative's Safe Car Wash app². The report provides an insight into the nature and scale of issues relating non-compliant HCWs which also identified health and safety, pay and modern slavery like conditions as recurring labour issues in the industry.

2.2 What enforcement or worker rights protection activity are you aware of in hand car washes? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)
- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

¹ <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/mseu/mseu-resources/2018/october/hand-car-washes-report.pdf>

² <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/mseu/mseu-resources/2019/march/safe-car-wash-app-apr-19.pdf>

- The Responsible Car Wash Scheme (RCWS) was developed by a consortium of stakeholders (GLAA, Police, HSE, HMRC, the Environment Agency, the Petrol Retailers Association and Unseen) to improve compliance of the sector with labour laws. The scheme was launched in October 2018 and piloted in East and West Midlands in 2019. The related code of practice is available at: <https://rcws.org.uk/code-of-practice/>
- Clewer Initiative – Safe Car Wash App (launched in June 2018). This is a community intelligence-led response to gathering data on the sector. The data was analysed and a report published by the Rights Lab in April 2019 (as referenced above).
- Finally it is also important to mention the role that environmental policy could play in improving labour standards in HCWs. Our 2018 report suggested that the proliferation of HCWs in the UK could be indicative of inadequate enforcement of environmental policies. There is a clear difference between environmental bodies approach to investigating non-compliance. The UK has a number of regulations to protect the environment and a number of regulatory bodies to ensure compliance. Though environment policy is devolved in the UK, permits are required from relevant environmental agencies to discharge trade effluent. In England, the Environment Agency (EA) operates on a ‘risk based and proportionate’ response approach, meaning that they assess the severe impact of operations on the environment. Such an approach heavily relies on sufficient evidence that an activity poses a significant risk to the environment, thus allocating resources to more severe incidents. HCWs tend not to be considered the most severe incidents and therefore are usually addressed through ‘advice and guidance to correct any problems or warning letters.’ Contrarily, under Scotland’s General Binding Rules (GBR), in a set of compulsory rules which cover certain low-risk activities, the prosecution is based on a more observable threshold, as it only needs to be proved that trade effluent was disposed into surface water drainage systems. Lack of data on HCWs makes it a challenge to compare the impact of environmental policies in England and Scotland on this sector. To encourage good practice in the prevention of pollution to the environment, Natural Resources Wales, the Northern Ireland Environment Agency, and the Scottish Environment Protection Agency, established the Guidance for Pollution Prevention Vehicle Washing and Cleaning (GPP13). GPP13 educates car wash businesses on the relevant environmental regulations and outlines measures they should take to prevent their operations from harming the environment. The advantage of such a document is that it sifts through environmental regulations, drawing on those that are specifically relevant to car washing. This provides such businesses with a comprehensive understanding of the measures that they should adopt to ensure that they are complying with the law. Inadequate enforcement of regulations and in effect turning a ‘blind-eye’ to the impact of HCWs on the environment may have contributed to the growth of such operations in the UK, opening the floodgates to non-compliance in other areas such as labour and employment practices.

2.3 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

- RCWS – The evaluation of the RCWS pilot is not in the public domain, and so we are unable to comment on its effectiveness. However, whilst such voluntary schemes can help raise standards in the sector, they cannot compensate for inadequate enforcement of regulations. The growth and persistent problem of exploitative HCWs in the UK is indicative of poor enforcement of existing regulations.

- The Safe Car Wash app - Between June 2018 and December 2019, forty-one percent of users of the app were requested to call the Modern Slavery Helpline. Of these 18% called the helpline and 82% did not. Research on local media and public perceptions of modern slavery highlighted several concerns that hinder public reporting of modern slavery cases, such as the lack of sufficient information to be able to confidently report on behalf of potentially exploited persons and the concern that reporting might make matters worse for workers. Consequently, whilst the app is an important tool to inform law enforcement and raise awareness of potential modern slavery cases in car washes to members of the community, similar to RCWS, such a tool cannot protect vulnerable workers and fill the gap in poor regulation.

2.4 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in hand car washes?

1. Licensing and registering of hand car washes
2. Introduction of a Single Enforcement Body to capture all areas of non-compliance and stricter enforcement of regulations. Hand car washes are often described as unregulated operations but like other businesses operating in the UK, there are regulations to which they should adhere. These include planning permission, paying business rates, environmental policies – including permission to dispose of liquid waste – paying national insurance, corporate tax, national minimum wage, and health and safety. However turning a “blind eye” to noncompliance has allowed operations to flourish. A single enforcement body could help capture all areas of non-compliance and ensure stricter enforcement of regulations.
3. Education and training of law enforcement to adequately enforce labour laws. In our [2018](#) research we found that there appeared to be confusion around the relevance of consent in identifying cases of labour abuse, modern slavery and/or human trafficking. Law enforcement officials report not pursuing investigations, prosecutions or other mechanisms due to workers failing to self-identify as victims and stating their consent to their conditions. This is at odds with Part 1, Section 1(5) of the Modern Slavery Act.

B. Sector Specific Questions – Agriculture

2.5 What are the issues of non-compliance in agriculture? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of these issues?
- What evidence do you have on the **scale** of these issues in this sector?

The ILO rank Agriculture, Forestry and Fishing as the 4th most likely industry to have slave labour within it (behind domestic work, construction and manufacturing)³. Through engaging with business as part of our research and stakeholder engagement, we can confirm that as a sector 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. The result of this industry profile can lead to the full spectrum of labour exploitation; from not getting holiday pay, to threats of violence about not being hired next season, to systemic exploitation and modern slavery – the sector provides the environment but multiple labour abuses to occur.

Due to Agriculture being a high risk sector, Rights Lab research on the compliance and quality of modern slavery statements from the agri sector showed concerning results. Research was undertaken in 2017 on the first two years of statements and then again in 2019 to compare performance⁴. Results showed that all engagement (number of businesses completing a statement has risen), quality had reduced. Statements showed a tick box approach, with small numbers setting year on year targets. Overall, analysis of content indicated little concern for modern slavery as an issue these businesses should be taking seriously.

In a further piece of research Rights lab undertook in 2018, "Understanding labour exploitation in the Spanish agricultural sector using an agent based approach"⁵, we showed that farmers communities are completely segregated from the workers communities. 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 which offers him workers at the last minute. Learnings from this suggest that whilst much labour exploitation in agriculture may not be intentional, it can be reduced by effective regulation and taking offenders out the labour provider system – not just removing their GLAA license/license to operate.

2.6 What enforcement or worker rights protection activity are you aware of in agriculture? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)

³ https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf

⁴ 2017: <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/mseu/mseu-resources/2018/november/modern-slavery-act-and-agriculture.pdf>

2019: <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/mseu/mseu-resources/2019/september/agriculture-and-modern-slavery-act-reporting.pdf>

⁵ <https://www.sciencedirect.com/science/article/pii/S0959652618340095>

- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

The only activity we are aware of that sought to improve working condition in agriculture, amongst other high risk sectors used by food retailers, was the Oxfam Behind the Barcodes scorecard⁶. This NGO scorecard assesses the performance of top food retailers approach to 4 key areas of human rights: Transparency, Workers, Farmers, & Women. As Farmers mostly refers to their support for smallholder farmers outside the UK, the Workers category is more relevant here. Of the supermarkets scored, the best result on workers was determined to be 58% compliant, and the worst at 6% showing much more scope for businesses to engage further in upholding vulnerable workers' rights.

Similar investigation and pressure from labour enforcement for businesses to improve, would be welcome.

2.7 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

Oxfam Behind the Barcodes scorecard: The metric available as an indication of efficacy is the improvement of supermarkets scores year on year. On average the Workers score across the 6 UK supermarkets assessed increased from an average of 21% compliance in 2018, to 31% compliance in 2019. This increase is due to the pressure of the scrutiny and report and whilst it doesn't directly demonstrate actual improvements on the ground, it has been successful in encouraging engagement in the issue.

Whilst we don't propose this is an approach which the Labour Market Enforcement Strategy adopts, efforts such as this from the third sector can be supported by stringent legislation proper enforcement of existing legislation. It is easy for branded businesses to deny responsibility when unscrupulous labour agencies are allowed to continue to operate, and therefore we suggest working closely with businesses to share information and tackle the issue together.

2.8 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in agriculture?

1. Extension of minimum standards required of gangmasters/labour providers to be considered certified; we would advocate for higher levels of professional accreditation and formal assurance by labour market law enforcement that this was met by anyone supplying workers to agriculture (and other sectors)
2. Workers be legally required to be on the pay roll of the employer/farmer, not the gangmaster/labour provider, thus reducing the risk that an unscrupulous gangmaster can inject into an employment contract. We acknowledge however that not all businesses would adopt or welcome such an arrangement, in which case we would suggest that only the most

⁶ <https://oxfamapps.org/behindthebarcodes/>

highly accredited gangmasters are able to keep seasonal temporary workers on their own books, when supplying into a high risk sector like agriculture. Where a business chooses to use a labour provider outside of the 'highly accredited' bracket, they should be legally required to employ them and pay them direct.

3. More indirectly – legislation should be introduced which protects an employer's reputation where their due diligence is found to be 100% satisfactory in the instance on modern slavery being identified on their premises. Fear of disproportionate retribution on the part of the employer, we believe stops employers being as open and honest with labour market enforcement as would be helpful. 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 and benefit everyone in the long run.

C. Sector Specific Questions – Social Care

2.9 What are the issues of non-compliance in the social care sector? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of the issues?
 - What evidence do you have on the **scale** of the issues in this sector?
- The threat of labour exploitation in care was identified in the Labour Market Enforcement Strategy 2019/20, with many workers in the sector not receiving the national minimum wage and the issue of ‘sleep over’ rates receiving much national attention. Such illegal, informal, norms and practices in other sectors have been found to increase the risk of deliberate and more extreme forms of labour exploitation such as modern slavery. Structural changes to the delivery of social care provision have increased the vulnerability of care workers, with a significant proportion of local authority care budgets now spent on social care delivered in the home by personal care assistants.
 - Our evidence relates to two research projects, conducted in 2017 and 2018 respectively, by Dr Caroline Emberson and Dr Alexander Trautrim of the University of Nottingham Rights Lab with Nottinghamshire County Council to identify and reduce modern slavery risk in adult social care provision. The first project involved 10 semi-structured interviews with local authority adult social care procurers, commissioners, care home and agency managers followed by a survey of 341 residential care and nursing home managers across the county. The second involved an impact-focused workshop with officers from Nottinghamshire County Council, and their Support Service Providers, engaged in the administration of direct payments for adult social care. Papers arising from these studies have been presented at peer-reviewed academic conferences (Emberson and Trautrim, 2018; 2019a) and published as a peer-reviewed book chapter (2019b). A further academic journal article is currently under review.
 - Our research provides evidence in relation to the nature of labour market non-compliance in the social care sector in England. 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 a, b). Risks included a lack of visibility with respect to working excessive hours (with the potential to impact upon payment of the national minimum wage); employers’ illegally withholding wages from their personal care assistants and the risk of physical and sexual assault – all potential indicators of forced labour, as identified by the International Labour Organisation. The nature of the social care sector, and the distinct vulnerabilities we found in particular modes of delivery are described below.
 - In common with the warehousing and hospitality sectors, singled out for attention in the last Labour Market Enforcement Call For Evidence, the social care sector faces significant cost pressures which impact upon both workers’ pay and conditions. The sector is characterised by care workers employed by private, residential care and nursing homes; and specialist care agencies and service-user recipients of ‘direct payments’ - a local government administered cash for care scheme. The sector is regulated by the Care Quality Commission. Our research examined the risks of modern slavery risk posed to care workers employed in residential care and nursing homes (including where employees were employed by subcontracted agencies)

and personal care assistants employed under direct payment arrangements. These delivery modes present distinct, if different, challenges for labour market enforcement.

- As previously publicly owned and run residential care and nursing homes are contracted out, there is evidence that the use of specialist employment agencies to cover staff sickness and absenteeism may weaken recruitment and selection practices, leading to a greater risk of exploitation. Indeed, one agency manager interviewed as part of our research reported the creation of unscrupulous labour agencies who preyed specifically on workers without the legal right to work in the UK, who were denied the national minimum wage since their vulnerable employment status made it difficult for them to bring this exploitation to light. Such nefarious business practices threaten the viability of legitimate businesses and the integrity of practices throughout the sector.
- Given that they may be employed singly, personal care assistants are particularly isolated, potentially invisible and hence especially vulnerable to exploitation and abuse, including extreme forms of labour exploitation such as modern slavery. Individual workers may have limited awareness of their employment rights, with national training initiatives such as Skills for Care Certificate focused upon patient safety rather than workers employment rights.
- The lack of understanding of employees' rights and employers' responsibilities is of particular concern in 'direct payment' delivery modes. While the work performed by personal care assistants is funded by public money, they may be employed directly by the direct payment recipient, with some care workers engaged by their employers via so called 'introductory' agencies, unregulated by the Care Quality Commission. In general, workers in direct payment care are employed without the management oversight afforded to those employed in residential care and nursing homes. And direct payment recipients may have limited understanding of their duties as an employer. Furthermore, the nature of the employment/carer relationship can be opaque – with payment recipients at liberty to receive payments for, and pay for care delivered by, members of their family.
- Local Government monitoring procedures focus on the financial probity of direct payments, not on care-workers conditions. Our research suggests that where support agencies were used by direct payment recipients to manage employees' tax and payroll administration, modern slavery risks were more likely to come to light and so could be addressed. Such an approach to enforcement would be of the greatest effect where local government is resourced to recommend and deliver widespread direct payment support service provision. There is, however, some evidence that the use of these agencies has been discouraged due to the cost involved.
- While our research provides some insight into the nature of the risks in adult social care provision, we know little about the scale of the problem and further research commissioned as part of the DLME 2020 strategy would be welcome.

2.10 What enforcement or worker rights protection activity are you aware of in the social care sector? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)

- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

None.

2.11 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

None.

2.12 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in the social care sector?

We would suggest one common, and two delivery-mode specific changes to enforcement:

1. Engagement with Skills for Care to embed an understanding of workers' rights and complaints procedures into the care workers' Care Certificate curriculum.

'Hard' enforcement techniques may prove effective in the residential care and nursing sector, where employers are more often private companies:

2. Application of the principle of joint responsibility to Local Authorities and/or Residential Care and Nursing Home providers for the practices of subcontracted practices within social care labour supply chains and the leverage of fines

'Soft' techniques related to education, negotiation and persuasion combined with the sanction of compensation orders may be more appropriate to enforcement within the direct payment sphere, where more individuals are employers. Where care workers are directly employed by the recipient of the care, exploitation may be the result of ignorance on the part of one or other party:

3. Collaboration between the SEB and Local Government and NHS procurers and their Direct Payment Support Service Providers to raise awareness among direct payment recipients of their duties as employers, coupled with the use of compensation orders to recompense care workers for lost earnings.

D. Sector Specific Questions – Construction

2.13 What are the issues of non-compliance in the construction sector? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of the issues?
- What evidence do you have on the **scale** of the issues in this sector?

- From our engagement with research and businesses on this issue, we know that workers can face the full spectrum of labour exploitation within construction. Similar to agriculture, the industry functions on mostly temporary contracts, uses low skilled workers who work in small groups isolated from any central operations, and the on the site managers charged with managing workers are not usually the individuals who manage contracts and paperwork.
- There is by nature a lot of sub-contracting, often significant time pressure to complete contracts and the large skills gap which the UK is currently experiencing in construction, all amount to often less scrutiny than should be applied to the source of labour.
- There is minimal formal research on the scale of labour abuses in construction but it is widely held to exist, due to the nature of industry detailed above.

2.14 What enforcement or worker rights protection activity are you aware of in the construction sector? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)
- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

- GLAA – Construction Protocol Toolkit: Building on the work of the Construction Protocol (2017), the GLAA & constructions firms created tools to be used on site to raise awareness of possible labour abuses to workers.
- Social Value Act. We are aware of and engaged in ongoing work between the Local Government Association and Social Value Portal to create additional indicators which would seek to determine the performance of contractors bidding for publically procured contracts, regarding their prevention of modern slavery and labour exploitation in their business.
- Action Sustainability, People Matter Charter – Launched last year, this is a good example of a conscious effort to raise standards in construction, and of advancing the exploitation debate towards a decent work debate. It encourages businesses to sign up to an 8 point charter which includes multiple principles related to preventing labour exploitation and ensuring labour market regulations are met⁷.

2.15 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

⁷ <https://www.supplychainschool.co.uk/wp-content/uploads/2020/01/People-Matter-Charter-Final-Jan2020.pdf>

Construction Protocol: Whilst we have no knowledge about the impact of the Protocol Tools as yet, there is a more 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.

We are also unaware of any measurement of the efficacy of the People Matter Charter, and the Social Value work is still in development.

2.16 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in the construction sector?

1. Further regulation around minimum wage should be implemented immediately, specifically to include the final customer taking responsibility for their indirect workers' pay if found lacking.
2. Consideration of regulation around workers who have been on agency contracts for over 1 year, being moved to direct employment with their primary work giver would again place more responsibility on the labour user, and reduce the vulnerability of the worker.
3. Legislation on historical responsibility liabilities. If formally curated 'employment biographies' were to be created as a condition of being a contract construction worker, once identified, an individual who has experienced sub-standard employment or exploitation might disclose where else they worked under the same gangmaster. The companies who didn't identify it whilst the worker was paid by them, albeit indirectly, should be obliged to implement changes and identify why they didn't find the labour abuses, with the GLAA be able to enforce this agreed action plan. We note that errors in management systems which lead to labour exploitation are not necessarily happening maliciously, but not learning from mistakes needs to be addressed.

Section 3 – Non-compliance in other sectors

In this section, we are seeking evidence and views about sectors other than those covered above. We have asked the same questions to understand the scale and nature of the issues, what enforcement activity is already taking place and what could be done to improve the situation going forward.

3.1 Which sector/sectors are you concerned about and providing evidence on?

3.2 What are the issues of non-compliance in the sector? Have there been any changes in the past 12 months?

- What evidence do you have on the **nature** of the issues?
- What evidence do you have on the **scale** of the issues in this sector?

3.3 What enforcement or worker rights protection activity are you aware of in the sector? Has there been any change/ developments in the past 12 months?

- By the three enforcement bodies (GLAA, EAS, HMRC NMW)
- By other government bodies (e.g. Health and Safety Executive, Local Authorities)
- By non-government bodies (e.g. by sector bodies, charities, campaigning groups, etc.)

3.4 What impact do you think these interventions have had? i.e. are they effective? Why? What would make them more effective?

3.5 What **three** changes to enforcement do you think would have the most impact on workers at risk of exploitation in the sector?

1.
2.
3.

Section 4 – Cross-cutting issues

The Director is also interested in non-sector specific issues that affect labour market non-compliance and pose a risk to workers' rights and work conditions. In this section, we are seeking evidence and views on cross-cutting issues that fall under the remit of the three enforcement bodies that you think are important as risks or opportunities to improve labour market conditions for vulnerable workers. Issues that we are likely to cover in the Strategy include IR35, the growth of online apps for recruitment, umbrella companies and supply chains.

4.1 What are the **three** most important emerging trends, risks or issues in labour market exploitation / non-compliance that you have seen in the past 12 months, other than those you have covered above? What issues should the Director of Labour Market Enforcement be prioritising?

1. Enforcement bodies front line expertise for recognising and then providing appropriate victim support. This is an area that needs investing in so that when victims are discovered they are appropriately supported and can continue to promote the benefit of labour market enforcement bodies to colleagues who may be experiencing similar conditions.
2. The decreasing pool of labour for low-wage low skilled work, likely leading to cutting corners in recruitment practices and potential exploitation, is an indirect issue which the Director should consider taking a stand on. Reduction of related risks like this, need to be addressed hand in hand with increased labour regulation enforcement, acknowledging this as a key factor which reduces an employer's likelihood to take due diligence seriously when recruiting under pressure and which therefore increases the risk of labour exploitation.
3. The contracting-out of services exposes weaknesses in a reliance upon contract law rather than labour law for the enforcement of labour standards, which has been noted in other country contexts (e.g. Australia). This shift threatens to weaken the range of enforcement options available, reducing sanctions to contract termination by the contracting authority. Without a commensurate increase in labour market enforcement, workers' in contracted out services such as social care risk an erosion of both their rights and appropriate means of redress.

4.2 What **three** changes do you think would most impact on labour market enforcement? Or what are the three greatest opportunities for improving enforcement?

1. Volume/capacity of enforcement agencies so enforcement of existing regulations happens; officers need to be more visible and available, and stronger consequences for non-compliance need to be re-communicated and enforced.
2. A single market enforcement body would create more streamlined, simpler to understand, more potent model for enforcing labour rights in the UK. Benefits would be felt to workers, employers and labour providers and as long as such a body is well resourced, could be a much more influential body than currently exists.

4.3 Please let us know about any other issues you would like to bring to the attention of the Director.

The Rights Lab encourage the Director of Labour Market Enforcement to ensure they take a victim centred approach throughout the consultation and decisions being made. Ensuring that those with lived experience of labour abuse are at the heart of policy recommendations and activity, is wise and appropriate given the mission of the Director's office. Rights Lab recommend this toolkit⁸ and the 'Voices' database⁹ for direction on using victim voices in decision making.

Thank you for providing your views and evidence to the Director of Labour Market Enforcement. Please send this to LMEDirectoroffice@beis.gov.uk

⁸ <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/mseu/mseu-resources/2019/september/voices.pdf>

⁹ <http://www.antislavery.ac.uk/solr-search?facet=collection:%22VOICES:+Narratives+by+Survivors+of+Modern+Slavery%22>

This consultation is available from: www.gov.uk/government/consultations/labour-market-enforcement-strategy-2020-to-2021-call-for-evidence

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.