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Managing the Risks of Being a Victim of Severe Labour Exploitation: Findings from a Research Project Exploring the Views of Experts in the UK

1. INTRODUCTION

The 2015 report published by the European Union Agency for Fundamental Rights (FRA) on the severe labour exploitation of workers in the European Union (EU)¹ highlights the need to address the factors that increase the risk of being subjected to exploitative working conditions.² This article begins by setting out the principal risks that impact upon an individual's vulnerability to severe labour exploitation, according to the country data from the 21 EU Member States involved in this project.³ Then, by focusing on the empirical research conducted in the UK,⁴ the article discusses some of the measures, put forward by the UK research participants involved in the study, that could be implemented to manage the risks identified. Based upon the research participants' recommendations, the authors will draw conclusions on how better to manage the risks of labour exploitation.

2. FRA RESEARCH

This article utilises data collected for the FRA project 'Severe forms of labour exploitation' as presented in the UK National Report.⁵ The authors were part of the UK

¹FRA (European Union Agency for Fundamental Rights), *Severe labour exploitation: workers moving within or into the European Union*, June 2015, <http://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>.

²Ibid., pp 13–4, 43–52.

³FRA, *Severe forms of labour exploitation—country data*, August 2015, <http://fra.europa.eu/en/country-reports-selex> (accessed 16 November 2015).

⁴FRA, Social Fieldwork Research (FRANET), *Severe forms of Labour Exploitation: Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States, United Kingdom*, 2014, http://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_uk.pdf.

⁵Disclaimer: The UK National Report was commissioned under contract as background material for a comparative analysis by the European Union Agency for Fundamental Rights

National team based at University of Nottingham and were responsible for all data collection, analysis and reporting.⁶ Thirty-seven interviews and two focus groups collected the views of professionals representing: monitoring bodies (denoted as M) such as inspectorates and health and safety executives, law enforcement agencies (P), support groups (S), lawyers (L), recruitment agencies (R), workers' organisations (W), employment organisations (E) and a national policy expert (N). Acting on FRA guidance, only data reported in the national reports and comparative reports are used here.

The term 'severe labour exploitation' is employed throughout the article and refers to all forms of labour exploitation that are criminal under the national legislation of the EU Member State where the exploitation occurs, consistent with the terminology applied by the FRA research.⁷

3. IDENTIFYING RISK FACTORS

The FRA comparative research categorised the most prominent risk factors to severe labour exploitation as: i) factors relating to the legal and institutional framework; ii) factors concerning workers' personal situations; iii) factors relating to workplaces.⁸ However, in the current presentation of the research, the identification of the risk factors has been further collated—A to E below—to demonstrate their interconnected nature which will be key to the subsequent discussion regarding risk management.

A. Social Isolation and Dependence upon Employer

Victims of severe forms of labour exploitation are socially isolated and this is a key risk factor.⁹ This isolation means that workers are not informed of their employment rights. This particularly has an impact on domestic workers and agricultural workers who are housed either in close proximity to or at their place of work.

(FRA) for the project '*Severe forms of labour exploitation*'. The information and views contained in the national report do not necessarily reflect the views or the official position of the FRA.

⁶ University of Nottingham Human Rights Law Centre, FRANET UK Contractor, <http://www.nottingham.ac.uk/hrlc/research/fra.aspx> (accessed 17 November 2015).

⁷ Ibid., pp 34–6.

⁸ Ibid., pp 13–4, 43–52.

⁹ Austria, p 29; Belgium, p 24; Bulgaria, p 28; Cyprus, p 23; Czech Republic, p 23; Finland, p 27; France, pp 26, 28; Germany, p 48; Greece, p 45; Hungary, p 29; Ireland, p 33; Italy, p 26; Lithuania, p 38; The Netherlands, pp 26–7; Poland, p 30; Portugal, p 29; Slovakia, p 72; Spain, p 24; UK, p 37, FRA SELEX country data, August 2015.

B. Personal Characteristics

There are certain personal characteristics which migrant workers may possess that heighten the chance of exploitation, such as lack of language skills and low levels of education.

C. Socio-economic Background and Acceptance of Poor Working Conditions

Migrant workers often come from economically poor parts of their home countries and this leads to the need to work to support their families.¹⁰ This financial imperative fosters a willingness to accept working and living conditions offered in the country of destination, even if they amount to exploitative working conditions.¹¹

D. Low Risk of Prosecution and Punishment

Institutional risk factors increase the chances of migrant workers being exploited,¹² one of the most significant being the perceptions of exploitative employers that there is a low risk of punishment and prosecution.¹³

E. Lack of Monitoring and Inspection

There is an absence of institutions monitoring the economic sectors in which labour exploitation occurs¹⁴ or indeed, where monitoring exists, the lack of effective monitoring as a crucial risk factor.¹⁵ The main reason for this discrepancy is the lack of human and financial resources¹⁶ to adequately supply enough inspectors for all economic sectors affected by severe forms of labour exploitation.¹⁷ The absence of the effective monitoring of all areas of the economy increased the risk of exploitation with the potential for unmonitored exploitation to occur, for instance in the catering, construction and hospitality sectors.¹⁸

¹⁰ Ibid., Greece, p 32; UK, pp 32, 37.

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¹² FRA SELEX Report, June 2015, pp 44–5.

¹³ Ibid., Belgium, p 28; Bulgaria, p 26; Cyprus, p 20; Czech Republic, p 21; Finland, p 21; France, p 29; Germany, p 21; Hungary, p 21; Ireland, p 32; Italy, p 24; Lithuania, p 26; The Netherlands, p 37; Poland, p 32; Portugal, p 28; Slovakia, p 37.

¹⁴ Ibid., Cyprus, p 20; Italy, p 24; Malta, p 34; Slovakia, p 38.

¹⁵ Ibid., Finland, p 22; The Netherlands, p 36.

¹⁶ Ibid., Belgium, p 23; France, p 30.

¹⁷ Ibid., Austria, p 26.

¹⁸ Ibid., UK, pp 17, 59.

4. LABOUR EXPLOITATION RISK MANAGEMENT IN THE UK

Taking into account the principal risk factors presented in the last section, the focus of the article now moves on to how these risks can be better managed in the UK, according to those experts who had participated in the research.

A. Mandatory Regulation of Recruitment Agencies

Regulating and monitoring recruitment, in sectors where labour exploitation flourishes, would permit better risk management, by ensuring employers and recruitment agents acted within the current legal framework, by shielding and protecting workers from labour exploitation rather than facilitating exploitative working conditions.

The difficulty in monitoring in the UK arises from the distinction between regulated sectors—wherein the GLA operates where there is a mandatory licensing scheme where failure to register is a criminal offence—and the unregulated sectors where there are voluntary registration schemes,¹⁹ but no mandatory monitoring of labour providers and recruitment agencies. Despite mandatory licensing in the GLA sectors, experts who participated in the research suggested that such regulation no longer takes the form of pro-active monitoring, where agents and workplaces are inspected, as the GLA's resources and workforce have been reduced. Nevertheless, the picture painted by experts to the study with regards to monitoring outside of the GLA sector was not positive.²⁰

Taking account of limited resources, one way to mitigate the limited regulation of recruitment agencies might be a joined-up multi-agency approach where intelligence is shared across agencies, in particular, with NGOs working closely with and passing information to law enforcement agencies. Similarly, in regulated sectors, the inability to adopt a proactive approach to monitoring has seen a shift towards awareness raising and information sharing to ensure that employers and recruitment agents are aware of the law. The GLA also works to prevent exploitation through education and guidance.²¹ This is most notable with regards to the Supplier Retailer Protocol, which aims to protect workers but also promote intelligence sharing.²²

B. Increased Monitoring and Labour Inspection of Workplaces

The UK study reported that the existing inspection and monitoring of workplaces was insufficient but that increased monitoring and the presence of inspectorates in

¹⁹ Association of Labour Providers, Recruitment and Employment Confederation.

²⁰ UK, p 36, FRA SELEX country data, August 2015.

²¹ GLA Academy—tackling Modern Slavery in supply chains, Press Release, 15 November 2015, <http://www.gla.gov.uk/PageFiles/1692/academy.pdf> (accessed 16 November 2015).

²² GLA, Supplier/Retailer Protocol, October 2013, <http://www.gla.gov.uk/PageFiles/1004/Supplier%20Retailer%20Protocol%20Final%207%20October%202013.pdf> (accessed 16 November 2015).

the field would lead to increased detection and the identification of exploitative conditions, leading to more prosecutions. Another advantage of implementing improved labour inspection was that it would result in better prevention.²³

However, to achieve this, inspection authorities had nevertheless to be equipped with appropriate tools and the use of inspection criterion and guidance as this could uncover cases where workers had not been given information or the information was misleading, or where workers were working or living in conditions that were hazardous and isolated.²⁴

C. Improved Enforcement of Minimum Wage Legislation

As previously noted, the economic imperative to earn a living leads to the acceptance of poor working conditions. Therefore, information and awareness of entitlement to minimum wage also has to be supported through the enforcement of the minimum wage. For instance, recent evaluations have highlighted the ineffectiveness of minimum wage enforcement in the care sector, as evidenced by higher and increasing levels of non-compliance with NMW legislation than previously found.²⁵ In response, Her Majesty's Revenue and Customs (HMRC) announced that the budget for minimum wage enforcement has been increased by £3 million for the period 2015–16.²⁶

One further drawback noted in the research was the non-recognition of the employment rights of irregular migrant workers, including entitlement to the minimum wage. Therefore, one clear risk management standard is the enforcement of the entitlement to the minimum wage, a universal concern which impacts upon all migrant workers, regardless of their migration status.

D. Raising Awareness among Workers of Their Employment Rights

Pre-departure programmes in countries of origin could potentially help reduce labour exploitation, so that migrant workers are educated about their rights before departure, ensuring that they know the differences between workplaces in their destination country and those in their country of origin. The study found that there were

²³ Independent Anti-Slavery Commissioner Strategic Plan 2015–17, p 26.

²⁴ Health and Safety Executive (2010) Tool Inspection Pack for Migrant Workers, p 8, www.hse.gov.uk/foi/internalops/fod/inspect/migrantworker.pdf (accessed 3 November 2015).

²⁵ HMRC, *National Minimum Wage compliance in the social care sector*, p 5, November 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262269/131125_Social_Care_Evaluation_2013_ReportNov2013PDF.PDF/ (accessed 28 January 2015).

²⁶ HMRC, Government names and shames 37 National Minimum Wage offenders, Press Release, 15 January 2015, <https://www.gov.uk/government/news/government-names-and-shames-37-national-minimum-wage-offenders> (accessed 5 November 2015).

few examples of effective pre-departure programmes in the UK and their absence was of real concern, as it represented a real gap in a potential powerful tool for strategies aimed at risk management and prevention.

The study suggested as an example of best practice in this regard, the Stronger2gether awareness-raising initiative developed by the Association of Labour Providers (ALP). The scheme works with members of ALP (who are supplying labour into the agriculture sector) to educate and to ensure they are compliant with the GLA's licensing system.²⁷

5. CONCLUSIONS

The research highlighted a number of risk factors, resulting from the personal characteristics and initial situation of the migrant worker, the situation of migrant workers at their workplace and the legal and institutional setting. The research has shown that these factors are, in reality, interlinked. For example, there is a low chance of detection or successful prosecution because recruitment and working environments are not monitored and/or regulated in *all* economic sectors. Similarly, personal characteristics, such as poor English language skills, mean that workers are unaware of their labour rights and as a result are vulnerable to exploitation.

Taking into account the findings of the FRA research, the authors suggest that it is important to ensure that risk management standards should predominantly focus on labour market regulation in *all* economic sectors, including the mandatory registration of recruitment agencies. In addition, that sufficient resources should be made available for labour market inspection, as well as a clear, specific mandate being given to a designated authority. While the activities of such authorities must inevitably be primarily reactive, through monitoring and inspecting of workplaces, the good practice of multi-agency information sharing and intelligence gathering must also be mainstreamed across all economic sectors.

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²⁷ Stronger2gether, <http://stronger2gether.org/> (accessed 3 November 2015).