

The House of Lords Select Committee on the Modern Slavery Act 2015

Inquiry into the Impact of the Modern Slavery Act 2015

Submission by the Work Informalisation and Place Research Centre, Nottingham Trent University

The Work, Informalisation and Place Research Centre (WIP RC) at Nottingham Trent University is one of the UK's foremost research centres that examines labour market non-compliance, workplace coercion and exploitation, and the associated potential for modern slavery. The Arts and Humanities Research Council, the then Department of Business, Energy and Industrial Strategy, the Home Office, and the National Crime Agency Modern Slavery and Human Trafficking group have each funded recent research projects undertaken by WIP RC.

We answer the questions posed in turn where our detail our expertise enables us to do so.

The extent to which the Modern Slavery Act 2015 has been impacted by recent legislation (for example the Nationality and Borders Act 2022 and the Illegal Migration Act 2023).

The provisions of the Modern Slavery Act (MSA) seek to control and regulate those convicted of modern slavery offences in relation to adults and children as well as promoting best practice in relation to the prevention of modern slavery via the creation of the post of The Independent Anti-Slavery Commissioner. Amendments to the Act aim to intercept modern slavery abroad by requiring those businesses with an annual turnover of £36 million to publish an annual anti-slavery statement that includes supply chains.

Whilst in broad agreement with the provisions of the legislation, published research by the WIP RC suggests that the centrality of modern slavery in academic, journalistic and policy discussion sometimes crowds out discussion of and regulation of workplace coercion and exploitation. Both may occur in the legitimate economy and amongst those employers who choose labour market non-compliance as a form of competitive advantage. For example, in the Leicester LE5 postcode area which is well known as a location for sub-contract garment manufacturers evidence published by WIP RC members and others demonstrates that whilst there is considerable labour market coercion and exploitation, and some labour complicity, there is no clear-cut evidence of modern slavery in its narrow definition. In fact, *Operation Tacit* initiated by BEIS was launched to examine these differences. WIP RC research also suggests that enforcement action against workplace coercion and exploitation is likely to deter employers from considering movement to forms of operation underpinned by modern

slavery, for example, labour bondage. Furthermore, qualitative and ethnographic research by WIP researchers found that in some sectors such as hand car washes, nail bars and more recently, the care sector that whilst migrant labour may be subject to forms of labour bondage in return for repayment of travel bills or visa documents many workers did not necessarily view themselves as modern slaves in comparative context, that is, in comparison to the living and working conditions they might typically entertain in their country of origin. Indeed, the comparative wages earned, for example, by those employed in car washes and nail bars (whilst being unlawful and exploitative) enabled them to send remittances to family in their country of origin. This is a clear reason why labour market enforcement is essential. Driving out non-compliant employers through greater enforcement will in our view reduce the supply of workers willing to work in coercive and exploitative workplaces.

One effect of the amalgamation and conflation of the MSA, and more recent legislation cited in the question, is the concentration of the association between labour market coercion, exploitation and the potential for modern slavery and unlawful migration (in a variety of forms) into the UK. Importantly, however, other evidence suggests that British subjects and settled migrants are too subject to significant cases of modern slavery.

The efficacy of the other key provisions of the Act, including definitions, sanctions, reporting, enforcement, and the statutory defence for victims

The WIP RC undertakes research on labour market non-compliance, workplace coercion and exploitation and the potential for modern slavery but our work is not singularly concerned with modern slavery. In our empirical and qualitative research with politicians, workers, enforcement agency strategists and enforcement officers, regulators, the Director of Labour Market Enforcement and the ODLME Head of Secretariat, stakeholders, and individuals from the business sector whose business models may be undermined by exploitative employers and practices, we have found that the following issues are regularly present:

- Firstly, in our engagement with the national and international press (and wider media outlets), for example, in relation to our work on hand car washes and food delivery workers we find that labour market coercion and exploitation and business malpractice appear as dowdy issues. This is the case even though the presence of labour market exploitation that is less than modern slavery in sectors such as food delivery, care work, construction, ethnic barbershops, car washes, nail bars, garment manufacturing and criminalised employment such as county lines drug supply businesses is extensive. We are continually asked about the modern slavery angle. We are not naïve and realise that modern slavery may be hidden in plain sight. For example, WIP RC research funded by the National Crime Agency that fed into their *Operation Aidant* in June 2022 found that modern slavery was present at a greater number of hand car washes than they anticipated. The point though is this, a concentration by the media on modern slavery because it is sexier than dowdy issues such as business malpractice, and workplace coercion and exploitation is part of what our research terms a 'permissive

regulatory and enforcement environment’ or permissive visibility. Therein enforcement actors and agencies possess significant strategic choice to shape their own operational environment but ignore other sectors for a variety of reasons sometimes associated with political or public attention, risk and resources.

- In our interviews with HMRC minimum wage compliance, GLAA Labour Abuse Prevention Officers, the NCA and many other bodies we found the presence of varied enforcement strategies, - compliance, deterrence, and intelligence but an overriding reliance and promotion of compliance centred approaches. Within these we found a liberal use of slavery and trafficking prevention orders that in our view effectively excused offending employers from prosecution on a ‘kind of’ bargained basis.
- Secondly, we found that many enforcement agency and regulatory actors thought that the definitions of modern slavery are too broad and crowd out issues relating to labour market coercion and exploitation. This may or may not be the case in a definitive sense, but the focus of much modern slavery research by UK based University researchers’ centres on the extent and drivers of modern slavery overseas that may or may not feed into UK supply chains. Whilst this research (for example that produced by the Modern Slavery Policy and Evidence Centre), is valid and necessary the view coming from regulatory overseers was that a greater concentration on the situation in the UK and the connections between labour market enforcement and modern slavery are equally valid - as is the study of labour market coercion and enforcement beyond modern slavery.
- Thirdly, the provisions of the MSA can be improved by a greater focus on the ‘lived experience’ of modern slavery by both survivors of ‘bad’ and ‘less bad’ experiences. The latter group are particularly important in terms of perceptions of Modern Slavery. As some of our research demonstrates, and Emily Kenway (2021) argues at length in *The Truth About Modern Slavery*, exploitative and coercive employment is for some workers (either settled or migrants) a route into the legitimate economy. For example, at car washes our initial research found workers whose credentials and qualifications were not recognised in the UK who were updating them or anglicising them at local Further Education colleges to support entry into the legitimate economy. Such groups included those with experience in hospitality front-of-house work, hairdressers, plumbers and even teachers and carers. The theme of Kenway’s book is the presence of a strong abolitionist tradition in UK legislation, which makes us feel good but may prevent or at least excoriate some – not all who appear on the modern slavery radar – who are simply seeking to secure a better life.

The role of the Independent Anti-Slavery Commissioner (IASC), including whether the post is sufficiently resourced, and the process of appointment.

It is not necessarily clear what the role of the IASC is and how they sit in relation to labour market enforcement agencies and regulators such as the Director of Labour Market Enforcement in the Department of Business and Trade.

Suggestions for improvements that could be made to the Act to help it to better achieve its aims.

The [2019 consultation on the establishment of a single enforcement body \(SEB\)](#), the development of which was paused by the current Government, would have enhanced the UK's response to forms of forced labour if done well.

This proposal would have gone further than the role of Director of Labour Market Enforcement, which was established in the Immigration Act 2016, which also broadened the role of the (then) GLA, gave it powers to investigate forced labour (but only in England and Wales, and renamed it as the GLAA.

The consultation made the case for the creation of a SEB, yet the Government has failed to deliver meaningful change to labour market enforcement, which would enhance the ability to tackle forced labour. On page 17 it said *"We want to explore whether there are other sectors where a licensing or other regulatory approach could drive up standards and so better protect vulnerable workers. This includes looking at whether existing regulations could be strengthened to help improve compliance."* The difficulty in controlling car washes, as well as the increased concerns over exploitation in the care sector, are two examples where a SEB, with an expanded licensing remit, could build on the effectiveness of the GLAA licensing regime, which, though national, only applies in the agricultural sector.

The 2004 creation of the GLAA's licensing regime, required legislative change to disapply the regulation of Employment Agencies in the agricultural sector from the oversight by BEIS' Employment Agency Standards (EAS) team. Similar legislative changes would appear necessary if expansion of the licensing regime was considered. However, as both of those organisations were candidates to transition into a SEB, their amalgamation might have provided a more seamless method of achieving greater cohesive regulatory control across the labour market.

The SEB proposal also considered it taking on responsibility for TISC enforcement. TISC enforcement remains an area of weakness, despite the ground-breaking approach of the original requirement, which other countries are now developing. The [2021 TISC](#) consultation proposed a new sanctions regime, and for the SEB to potentially enforce it.

Prosecution is not always effective when weak sanctions are determined by the Courts. Whilst this could be improved by clear sentencing guidelines, civil sanctions could provide a more proportionate, and pressure for compliance, where monetary fines have a hard impact. Civil sanctions were also proposed for breaches of the GLAA's licensing standard in the SEB consultation (page 35). Primary Legislation already exists which could assist in the introduction of appropriate sanction regimes. In [2008 the Regulatory Enforcement and Sanctions Act introduced a suite of potential sanctions](#) that a regulator could use. However, the de-regulatory focus of the Government, and the consideration of avoiding burdens on business prevented the implementation of these sanctions for regulators.

Whilst the Immigration Act 2016 gave the GLAA police powers under PACE it did not enable them to have similar powers in the devolved authorities in Northern Ireland and Scotland. Other priorities and the lack of an Assembly in NI would contribute to the lack of development in this area, if it had been considered when legislation was developing. However, had it been developed, and implemented, a more comprehensive consistent approach would apply throughout the UK.

The SEB consultation (pages 36/37) considered how the GLAA's PACE powers would operate within a SEB. Though the consultation considered that it would enable more coordinated and focused use of the GLAA's PACE powers across the labour market it was silent on the impact for the devolved authorities. Nonetheless, the SEB could have created the opportunity to address this issue. Cases of serious, criminal, NMW non-compliance require criminal investigation, and NMW use PACE trained colleagues from other parts of HMRC for this purpose. NMW operate throughout the UK including NI, and therefore it follows that NMW require the ability for criminal investigations in those jurisdictions, for which reliance on other parts of HMRC would also require them to be authorised to operate in those jurisdictions, which they are – see [HMRC's criminal investigation powers and safeguards- GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/hmrc-criminal-investigation-powers-and-safeguards).

If a SEB is created, and if the NMW is transferred to it, this new institution would require the legislative cover to maintain the ability to conduct such criminal investigations, with the powers that HMRC minimum wage compliance possess. Founding legislation would need to make that clear. In doing so it could be vehicle to provide access to the same powers exercised by HMRC for other SEB officers charged with the authority to investigate forced labour (currently exercised by the GLAA's LAPOs).

The GLAA has been able to exercise the use of LMEUs and LMEOs in England and Wales, and Scotland, but not NI. It has also been able to make use of STPOs/STROs in England and Wales, but not in the devolved authorities where their own legislation introduced similar legislation for STPOs/STROs. These alternative sanctions also assist in the control of exploiters and assist in prevention and control. Creating aligned legislation, with consistent sanctions, for organisations with the same powers throughout the UK, would enhance the fight against modern slavery, but enable proportionate enforcement at the lower end of the spectrum, which, if not tackled can evolve into modern slavery. Therefore, the need to tackle non-compliance across the labour market is essential as part of a zero-tolerance approach to prevent modern slavery offending from increasing from its current unacceptable level.

WIP is currently undertaking an applied research project to explore the wider role of regulation to tackle the broad forms of unlawful practices within the hand car wash sector. Whilst we recognise the resource challenges of developing and maintaining a license to operate scheme our initial work on the feasibility of such a national scheme managed by local authorities has generated interest from sector stakeholders interested in improving standards and highlighting malpractice and illegal activity. WIP believes that the current status quo cannot continue due to endemic labour

exploitation and wider unlawful practices. More pro-active enforcement is required to ensure that people are not exploited either as modern slavers or workers.

WIP RC colleagues are happy to share information on this or other aspects of our work and to give informal briefings or to be called to give evidence if the committee requires.

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