

Service not servitude: protecting the rights of domestic workers

Fiona Mactaggart MP and Mathew Lawrence

18 October 2011 is the UK's second Anti-Slavery Day; in the 17 Months since it was established by a Private Member's Bill sponsored by Anthony Steen MP, founder of the All Party Parliamentary Group against Human Trafficking, the government has not done enough to bring human trafficking and slavery in the UK to an end. The government delayed for months before adopting the council of Europe Anti-Trafficking Directive, refused to support the International Labour Organisation Convention on Decent Work for Domestic Workers and with a review of the Overseas Domestic Workers visa, it is increasing the risk that domestic workers will be subjected to slave-like conditions in the future. In too many policy areas vulnerable people are paying the price for cuts in spending and deregulation. The aim of this pamphlet is to show how different things could be in the future if the government were to adopt a clearer anti-trafficking stance and to make recommendations about how all of us, the government, citizens and other organisations can act to end exploitation of domestic workers.

The established historical image of slavery involves the sea voyage, manacles, the plantation owner's whip. Slavery today is different but still inhuman. In Bedfordshire, on 11 September 2011, 24 men from Britain and Eastern Europe, some as young as seventeen, were freed after being 'held against their will and forced to live and work like slaves.'¹ They are not alone. Since April 2010, when Section 71 of the Coroners and Justice Act 2009 came into force, there have been six prosecutions for holding someone in slavery, servitude or forcing someone to perform compulsory labour in Britain.²

Migrant domestic workers, who are foreign nationals brought to the UK by their employers for the purpose of working in an employment relationship in a private household,³ are particularly vulnerable to such abuse. Indeed, 290 people in the UK were referred to the National Referral Mechanism as potential victims of trafficking for domestic servitude between April 2009 and July 2011;⁴ the actual number of trafficked domestic workers is certainly higher. Domestic workers who are not trafficked also continue to be enslaved and exploited. The UK can act effectively against such crimes but only when it accepts they are a present day reality as well as an historical crime.

Decent, safe working conditions and fair pay should be rights to which everyone in modern Britain is entitled – and in law they are. Domestic workers, however, are frequently denied these rights in practice. The hidden nature of their work, their migrant status if they are from overseas, ongoing gender discrimination and their exclusion from health and safety regulations mean domestic workers are vulnerable to mistreatment. Abuse in the sector exists on a spectrum; there are cases of terrible physical and psychological harm at one extreme, but abuse is more commonly found when domestic workers do not receive holiday pay or have no work contract.

¹ Adrian Roberts, Head of CPS Thames and Chiltern Complex Casework Unit, <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-14892891>

² Hansard, 15 Sep 2011: Column 1260W, Fiona Mactaggart Written Question, Attorney General, Coroners and Justice Act 2009: Prosecutions.

³ ILO Convention, Decent Work for Domestic Workers, Article 1.

⁴ Hansard, 18 July 2011: Column 662W, Fiona Mactaggart, Written Question, Home Office, Human Trafficking: Domestic Service.

Too often this government has condemned in words what it condones by its actions. At the Liberal Democrat Conference in September 2011 Vince Cable declared: "What I will not do is provide cover for ideological descendants of those who sent children up chimneys."⁵ He knows, or should know, that children have been used as domestic slaves in Britain but the Department of Business, Innovation and Skills which he leads did not back international labour standards for domestic workers at the International Labour Organisation (ILO) and it has failed to develop effective enforcement measures to protect the rights of people who work in other people's homes. The government is making the most vulnerable bear the brunt of the economic crisis, with planned cuts estimated to equal a loss of 20.3% of the household income of the poorest tenth of households, compared with just 1.5% for the richest tenth.⁶ For example, 100,000 disabled children face a cut of up to £1,400 per year (£27 per week) in their current welfare entitlements with the universal credit.⁷ The latest vulnerable group likely to suffer are domestic workers as the government is proposing to abolish the Overseas Domestic Worker (ODW) visa that offers vital protection to them.

Tackling modern day slavery should be the property of neither Left nor Right. There is an alternative but only by acting together as a society can we honour Britain's fight against slavery in the past and end domestic servitude and the exploitation of vulnerable workers in the present.

"I was so thin I would faint with hunger"

Divia, 33, came to the UK with her Malaysian employer as a domestic worker. She was abused, held prisoner, starved and beaten, before she finally escaped.

Photo source

Photographed in London, May 2009. Photograph: Robin Hammond, <http://www.guardian.co.uk/world/2009/may/24/domestic-workers-abuse-violence>



The ILO Convention:

On 16 June 2011 the ILO voted overwhelmingly to adopt the Convention Concerning Decent Work for Domestic Workers. The UK has long been integral to

⁵ "Liberal Democrats Party Conference 2011, Vince Cable's speech to conference in full," <http://www.telegraph.co.uk/news/politics/liberaldemocrats/8773712/Liberal-Democrats-Party-Conference-2011-Vince-Cables-speech-to-conference-in-full.html>

⁶ The Fabian Society, *Where the Money Goes*, September 2010.

⁷ Hansard: 8 June 2011: Citation, Margaret Curran, Written Question, Department of Work and Pension, Disability Living Allowance.

the ILO's successful history of defining international labour standards that brought about improved labour practices.⁸ The new Convention recognised a simple fact: domestic workers are entitled to the same protections and rights as all other workers. For the estimated 50-100 million employed in the sector worldwide it was an historic breakthrough. Formally recognising that domestic workers are workers and granting them the rights they deserve is an important step towards better protection.

<p><u>Key rights guaranteed by the Convention:</u></p> <ul style="list-style-type: none"> • Fair terms of employment as well as decent working conditions • A minimum age and a minimum wage • A written job offer or contract of employment • Freedom of association and organisation <p>Source: Convention text, Decent Work for Domestic Workers</p>	<p><u>The ILO: what it is:</u></p> <ul style="list-style-type: none"> • The ILO is a specialized UN Agency which seeks the promotion of internationally recognised human and labour rights. • Conventions are legal instruments drawn up by the ILO's tripartite constituents (governments, employers and workers) that set out basic principles and rights at work. • Once a set number of governments have ratified the adopted convention it becomes a treaty in international law. However, ILO conventions are considered international labour standards even prior to treaty status.
---	--

173 of 182 governments voted in favour of the Convention, recognising, as is stated in the introduction:

domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights.⁹

⁸ International Labour Review, 1996, *The ILO: A retrospective and future view*. ILO, 2011, *The Role of ILO in the development of minimum wages*. UN, 2010, *Compliance and Regime Effectiveness: The ILO and Core Labour Standards*.

⁹ ILO Convention, Decent Work for Domestic Workers, introductory text.

The UK's long international record on defending human rights was abandoned as we joined Sudan, Panama, El Salvador, Malaysia, Singapore, the Czech Republic and Thailand in abstention thus undermining international labour standards.

“My first job in the UK was working as a cook for my employer from Dubai. It was exhausting and difficult – I was expected to work nineteen hours a day, with no holiday or day off. I was constantly at the whim of the employer who would shout at me and order me to go out and get things for him at any hour of the day or night. Sometimes, I would be in the middle of cooking something and would have to start all over again when I returned. I had no privacy because I was forced to share a room with another domestic worker and would return to it each night completely exhausted.”

**Unnamed, Case study 4,
Kalayaan testimonial briefing.**

The United Kingdom is, or was until recently, different from these nations which on human rights or the treatment of domestic workers have a far worse record than the UK. The previous Labour government made progress internationally to oppose trafficking and domestic servitude, ratifying the Council of Europe Convention on Action against Trafficking in Human Beings and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as introducing the National Referral Mechanism and the Overseas Domestic Worker visa.

In opposition the Conservative Party had a good record on the issue. As founder and first chair of the APPG on Human Trafficking, Anthony Steen MP kept the issue on the mainstream political agenda, whilst Conservative members of the Home Affairs Committee backed a unanimous report, “The

Trade in Human Beings: Human Trafficking in the UK,” (2008-09) and David Cameron, as Leader of the Opposition, persistently called for ratification of the Convention on Human Trafficking. In power, the government must match words with action and sign the ILO Convention.

Why the UK abstained:

The UK government said it did not intend to ratify the Convention. Ed Davey, Minister for Employment Relations, argued in Parliament on 29 June 2011 that ratification would have little impact as domestic workers were already covered by basic employment law in the UK¹⁰ but, as this pamphlet shows, there is little opportunity for most domestic workers to exercise those rights in practice. The government raised fears about both the implications for working time regulations if extended to domestic workers and the extension of health and safety laws into the private household. These fears are misguided and cannot justify abstention.

Working time regulation:

Domestic workers are currently not covered by working-time legislation. The government objected to Article 10 (see table below), arguing that working time regulations would be difficult to apply to domestic workers and therefore should not

¹⁰ Hansard, 29 Jun 2011: Column 288WH, Westminster Hall debate, Convention on Domestic Workers.

be extended to them. Similar concerns were raised by the CBI who claimed that Article 10 would conflict with the EU Working Time Directive, despite the entire EU delegation, bar the Czech Republic, voting in favour of the Convention.

Article 10, Convention on Decent Work for Domestic Workers

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.

2. Weekly rest shall be at least 24 consecutive hours.

3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

The evidence, however, suggests there is a clear need to extend working time regulation to domestic workers. A survey of domestic workers by Kalayaan (a Guardian Charity Award winner in 2010 which works with migrant domestic workers) found that 67% of those asked (287) worked seven days a week with no time off, 58% (239) had to be “on call” for 24 hours a day and 48% (252) worked 16 hours a day or more.¹¹ Such long hours, very often for less than the minimum wage, should not be acceptable. Article 10 guarantees flexibility in implementing working time rights alongside existing national laws; the government should bring domestic workers into line with existing legislation for the rest of the working population.



“I was held prisoner for two years and I wasn’t paid a penny for my last year’s work.”

Photo Source: 36-year-old Gita, who was abused by a family in Hampstead: Robin Hammond, May 2009, The Guardian.

¹¹ Kalayaan, *Ending the Abuse: Policies that Protect Domestic Workers*, May 2011, p. 11.

Health and safety concerns:

The government claims that it takes ‘the protection of all vulnerable workers as a matter of the utmost importance,’¹² yet domestic workers continue to have less protection than other workers. The Health and Safety Executive, for example, cannot ‘enforce the provisions of HSWA (Health and Safety, etc. Act 1974) against an employer insofar as those provisions relate to the employment of a domestic servant, nor against the domestic servant him/herself.’¹³ The Department for Business, Innovation and Skills used concerns over extending health and safety as reasons to abstain. It stated:

“The United Kingdom already provides comprehensive employment and social protection to domestic workers; however, the strength of our general provisions means that it is occasionally inappropriate to treat domestic workers identically and, sadly, the Convention does not recognise this. For example, we do not consider it appropriate or practical to extend criminal, health and safety laws, including inspections, to private households employing domestic workers. It would be difficult, for instance, to hold elderly individuals employing carers to the same standards as large companies. Accordingly, the United Kingdom will be unable to ratify this Convention in the foreseeable future.”¹⁴

There are two problems with this argument. Firstly, this ‘for example’ of burdensome health and safety regulations is the only example regularly offered in opposition to signing the Convention so it appears not to be an example but an excuse. The impact of health and safety regulations on small employers, such as those employing domestic servants, was cited as a reason for abstaining in a House of Commons debate on 29 June 2011 in Westminster Hall. When later pressed to reveal the scale of health and safety prosecutions against small employers, equivalent to employers of domestic workers, when there were no incidences of death or serious injury, Ed Davey responded in a House of Commons written answer:

“The health and safety executive has prosecuted small businesses recently where there was no report of any related injury. Such prosecutions are, however, relatively rare.

¹² Explanation given in written answer to Grahame Morris MP. Hansard, 28 June 2011: Column 726W, International Labour Organisation on Domestic Workers. Mr Davey in response to Grahame Morris MP: To ask the Secretary of State for Business, Innovation and Skills whether any UK legislation contravenes the provisions of the International Labour Organisation Convention on Domestic Workers. [62696]

¹³ The Health and Safety Executive offer the following guideline on whether Section 51 of the Health and Safety Act 1974 applies to domestic workers:

34. HSE cannot therefore enforce the provisions of HSWA (Health and Safety, etc. Act 1974) against an employer insofar as those provisions relate to the employment of a domestic servant, nor against the domestic servant him/herself.

¹⁴ Quoted in Hansard, 29 Jun 2011: Column 270WH, Westminster Hall debate, Convention on Domestic Workers.

Examples of prosecutions of small businesses in 2011 include where:

- An inspector observed employees working unsafely on a fragile roof during an inspection.
- A construction firm puts its staff at risk when working at height.”¹⁵

These cases represented clear breaches of health and safety legislation - with a lack of basic workplace safety in those two examples - but offer no support to the idea that inspectors would criminally prosecute employers of domestic workers for minor breaches of employment law. The Convention reflects this and should be ratified unless further, more substantive ‘examples’ can be offered.

Secondly, Article 13 (which relates to health and safety regulation) states clearly each signatory member takes appropriate action ‘with due regard for the specific characteristics of domestic work.’ The Convention specifically offers flexibility in implementation in its wording which the government has chosen to ignore.

Article 13, Convention on Decent Work for Domestic Workers

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

In Britain the approach of inspectors to small enterprises which are not in high risk sectors and do not serve the public directly has traditionally been one of providing advice and support to bring unsafe practices to an end, rather than to turn straight to prosecution. This is a further reason why domestic workers should be included in UK health and safety legislation. A recent survey of UK domestic workers by London Metropolitan University, *Turning a Blind Eye*, shows over a third of surveyed (37%) had suffered injuries at work (cuts, burns, slips or trips), over two thirds (69%) had experienced work-related stress symptoms (headaches, sleeplessness and anxiety) and nearly three quarters (72%) reported suffering from regular aches and pains (such as back or shoulder problems).¹⁶ If employers were subject to legislation it is probable that there would be better mechanisms to prevent minor incidents developing into more serious injuries.

¹⁵ Letter from Ed Davey to Fiona Mactaggart, 14 July 2011, regarding examples where Health and Safety Executive (HSE) had prosecuted small businesses in circumstances where there had not been a death or serious injury.

¹⁶ Working Lives Research Institute, London Metropolitan University, *Turning a Blind Eye: The British state and migrant domestic workers' employment rights*, August 2011, p.5.

Better health and safety protection for domestic workers need not require a massive bureaucracy but domestic workers are workers too and should not forfeit their rights and protections because of the kind of work they do.

“Domestic workers are workers and need the recognition and respect they deserve.”¹⁷

The Overseas Domestic Worker visa: a background

The UK is now also considering reducing the protection available to the domestic workers who have historically been most vulnerable to extreme forms of exploitation and abuse - migrant domestic workers, by reforming the immigration rules.

Migrant domestic workers (MDW) – a vulnerable workforce:

Migrant domestic workers who are already employed in a household can come to the UK with an employer from overseas. Their immigration status in this country used to be entirely dependent on that employer. If they were abused or exploited and sought to leave a particular job to take another, they breached their permission to stay - this effectively deprived them of rights and facilitated trafficking and servitude. The Overseas Domestic Worker visa (ODW), introduced in 1998 with cross-party support, gave the right to legally exit employment contracts and be a domestic worker for another employer. This helped to guard against exploitative employment relationships by giving workers the power to leave an unfair employer and thus escape servitude if they were being exploited. Maintaining a legal channel of migration is vital to stop a return to mass trafficking and illegal migration into domestic work and, all too frequently, servitude.

The Overseas Domestic Worker visa

Labour introduced two different ODW visas in 1998: one for domestic workers in private households and one for diplomatic households. Migrant domestic workers were able to enter the UK with their employers on a domestic worker visa if they had been continually employed for a year or more outside the UK with their employer. They are currently able to change employer so long as they remain within domestic work, they can work legally in the UK on a 12-month renewable visa and can apply for settlement after five years.¹⁸ The portability aspect of the visa – the ability to legally change employer – is a fundamental safeguard against a return to bonded labour, rebalancing employer/employee relationships. It means that labour can be withheld, granting the migrant domestic worker an element of power and control.

¹⁷ Marissa Begonia, UK domestic workers' representative at the ILO conference, <http://www.politics.co.uk/opinion-formers/unite-the-union-t-g-section/article/unite-calls-for-humane-protections-for-domestic-workers-uk-m>

¹⁸ UK Border Agency, Domestic workers Guidelines, <http://www.ukba.homeoffice.gov.uk/workingintheuk/othercategories/domesticworkers/>

“The worst part was the abuse I received from my employer’s wife. She was constantly abusive and would scream at me and beat me. The beatings got worse as time went by and I started to have nightmares of her beating me in my sleep.”

Case Study 2 - Lucy (not her real name)

Formal recognition as workers has entitled domestic workers to rights granted by UK employment law. For example, the visa ensures that the employer cannot legally change the conditions of employment unless the domestic worker agrees. With it, workers are legally entitled to:

- Be paid the agreed rate, which must be at least the National Minimum Wage;
- not be forced to work excessive hours;
- be given agreed holiday pay;
- be given the notice they are entitled to if their employment ends; and
- can take legal action through an employment tribunal or the civil courts.

More than that, it has better protected migrant domestic workers, as the declining levels of abuse recorded by Kalayaan suggest:

Comparison of the levels of abuse and exploitation experienced by MDWs in 1996 and 2010 (Kalayaan, ‘Ending the Abuse’, p. 13)

Type of abuse/exploitation	1996	2010
Denied time off	89%	67%
Psychological abuse	87%	54%
Physical abuse	39%	18%
Sexual abuse	12%	3%
Passport withheld by employer	62%	65%
Were given insufficient food	38%	26%
Worked an average of 17 hours a day	100%	48% (worked 16 hours a day or more)

Although abuses of domestic workers unfortunately continue, the visa has been cited as best practice by the ILO and the UN Special Rapporteur on the Human Rights of Migrants in terms of offering protection and legal security to migrant domestic workers.¹⁹ Domestically, its success was given cross-party recognition by

¹⁹ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Addendum : Mission to the United Kingdom of Great Britain and Northern Ireland*, 16 March 2010, A/HRC/14/30/Add.3, available at: <http://www.unhcr.org/refworld/docid/4c0623e92.html> pp.15-16, 19-20. ILO, *ILO Multilateral Framework on Labour Migration Non binding principles and guidelines for a rights- based approach to labour migration*, 2006, p.82.

the Home Affairs Committee in its 2008-09 inquiry, "The Trade in Human Beings: Human Trafficking in the UK," which stated that:

'to retain the migrant Domestic Worker visa and the protection it offers to workers "is the single most important issue in preventing the forced labour and trafficking of such workers.'"²⁰

The continuing scale of abuse makes keeping the visa more important than ever as it offers a safeguard to people only wanting to work legally, safely and without fear.

Proposed changes:

On 9 June 2011 the Immigration Minister Damien Green MP launched a three-month public consultation by the UK Border Agency's "Employment-related settlement, Tier 5 and overseas domestic workers: a consultation." The government's proposals included plans to:

"Abolish the route for overseas domestic workers in private households or consider restricting leave to a 6 month period as a visitor only, or 12 months where accompanying a Tier 1 or Tier 2 migrant, with no possibility of extension, no right to change employer, no ability to sponsor dependants or alternatively no right for dependants to work in the UK, and no right to settlement."²¹

It should be noted that the previous government proposed a similar reform to the current proposals, yet decided against it. In recognising the important protections the ODW visa provided, the then Immigration Minister Liam Byrne MP said:

"We are proud of the protection we afford Overseas Domestic Workers."²²

If the visa is abolished or the right to change employer rescinded, the government risks increasing the market's informal and unregulated qualities; disempowered workers would be driven into illegal employment, no PAYE contributions would be made, trafficking gangs would be given a green light to proceed and domestic workers would be exposed without protection to exploitation, abuse and, in all likelihood, a return to conditions of servitude in our society.

The visa provides a safe, legal labour supply to the domestic work sector. Despite this, the government is seeking to change the current system. Combined with its failure to ratify the Convention, the government is taking the country backwards on protecting vulnerable workers.

²⁰ Home Affairs Committee, *The trade in Human Beings: Human Trafficking in the UK. Sixth report of session 2008-09*, Volume I. House of Commons. p26

²¹ Home Office Border Agency, *Employment related settlement, Tier 5 and Overseas Domestic Workers*, 9 June 2011, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/employment-related-settlement/employment-related-consultation?view=Binary>, p.12.

²² Hansard, 25 Jun 2008: Column 24WS, Liam Byrne MP, Consultation on Visitors (Government Report).

'If we were unable to change employer, we will suffer abuse and we will not be treated like any other employee in the UK. We have this right, we are safe now, why change something which helps people?'

Source: Anonymous domestic worker, Public meeting at Unite the Union to discuss proposed changes, 10th July 2011, text available on Kalayaan website.

The consultation makes clear that reducing net migration is an overriding priority. In the case of the ODW visa this means the basic rights and securities it establishes will be sacrificed to reduce official figures of entry. Keeping the ODW, however, is a question of securing human rights, separate to the broader immigration debate; human rights are not disposable.

Moreover, the impact of the ODW visa upon immigration figures is negligible. In 2009 there were only 795 grants of settlement for workers who had stayed for five years or more - only 0.5% of the 176,470 settlement grants issued in 2009.²³ If the government is seeking to reduce the number of people coming into the UK, it can find other ways that do not sacrifice human rights. Only 6% of migrant domestic workers renew their ODW visas each year.²⁴ The vast majority remain in the UK for a finite period of time and return to their home country with their employers. The visa works as intended - it offers protection to migrant domestic workers and allows families coming from overseas to Britain to bring with them nannies and other domestic workers who provide an element of continuity and stability to a travelling or migrating family.

Domestic workers are net contributors to the UK economy:

The Recruitment and Employment Confederation (REC), the only professional body dedicated to representing the whole of the recruitment industry and representing over 8,000 recruitment company branches, made clear the importance of domestic workers as an economic source both for their members and to the Treasury: In the last two years domestic workers registered to Enable Ltd (one of the payroll companies who manage PAYE for domestic workers) made a net contribution of £1.8 million to the UK economy. Enable is one of many PAYE payroll companies. The true likely figure is therefore estimated by REC to be much closer to **£8 million per annum** (this data has only been collected for domestic workers coming to the UK in the last two years).²⁵ Domestic workers are not an economic burden on the Treasury or society at large; they contribute not only through their work but in taxes too.

The assumption of the consultation²⁶ is that if the route for overseas domestic workers to enter the UK was abolished significant opportunities for participants in

²³ Figures cited in Kalayaan, *Ending the Abuse*, p. 24.

²⁴ *Ibid.*, p. 24.

²⁵ Recruitment and Employment Confederation, *The Domestic workers visa consultation. A response from the Recruitment and Employment Confederation (REC)*, July 2011, Question 3, p. 5.

²⁶ Home Office Border Agency, *Employment related settlement, Tier 5 and Overseas Domestic Workers*, 9 June 2011, Section 7.6.

the British resident labour market would be created. There is little evidence or analysis, however, as to why migrants who bring their domestic workers to the UK would substitute their current employees for workers resident in the UK or that the EU labour market would compensate for the loss of non-EU domestic workers. For example, REC conducted a survey in 2011 of its members and typical responses to the question “If you were no longer able to hire staff via the Domestic Workers Visa, what action would you take?” included “We can't find an EU resident”²⁷ and “I would not easily be able to find someone to replace my employee.”²⁸ In 2008, the last time a government considered scrapping the ODW, the Childcare Recruitment Company conducted a survey with other major domestic service recruitment agencies including the question, “Do you believe that candidates from the EU will be able to fill all the domestic positions you have available?” Amongst agencies who provided for the market there was the overwhelming belief that:

‘there are not enough suitable and willing candidates from the EU who will be able and willing to fill the all the domestic positions on offer and so we will be left with a huge labour market shortage.’²⁹

This belief has not changed and is backed by the experience of other countries. Italy, for example, restricted the supply of non-EU domestic workers in 2005 in the expectation that the new EU countries would make up the labour supply but in 2007 had to introduce new national collective agreement regarding domestic workers as the market remained overwhelmingly supplied by non-EU nationals.³⁰

The proposals also ignore the human relationships that lie at the heart of why foreign nationals like to bring their domestic workers from home rather than employing from the UK labour market. This was summarised by a comment in the REC survey:

“I have brought my nanny housekeeper with me. She has been in my employ for over 12 years, How do you replace someone who is a second mother to your children?”³¹

Ineffectiveness of safety provisions:

The consultation emphasises the National Referral Mechanism (NRM) as a means to protect migrant domestic workers from abuse. This body is designed to assist domestic workers who have been trafficked yet is inadequate for the task; for example, during Operation Tolerance (May–Sept. 2008 and April 2009–Dec. 2010),

²⁷ Recruitment and Employment Confederation, *Domestic Survey response*, response from kenjasmit@aol.com.

²⁸ Recruitment and Employment Confederation, *Domestic Survey response*, response from lulu.bowen@gmail.com.

²⁹ For survey findings contact as “The Housekeeper Company, a Division of The Childcare Recruitment Company Ltd” for 2008 report.

³⁰ <http://www.eurofound.europa.eu/eiro/2007/02/articles/it0702079i.htm>
http://www.gla.ac.uk/media/media_194307_en.pdf

³¹ Recruitment and Employment Confederation, *Domestic Survey response*, response from farina.melwani@yahoo.co.uk

102 out of the 157 MDWs who were identified as trafficked chose not to be referred to the NRM.³²

More importantly, the NRM offers absolutely no protection to workers who are in the UK legally but are subject to forms of abuse or servitude, the scale of which was revealed by Damien Green MP in response to a written question on 15 September 2011:

“Fiona Mactaggart: To ask the Secretary of State for the Home Department how many cases were accepted for consideration as victims of trafficking by the National Referral Mechanism but were subsequently not pursued because the person was the victim of abusive practices but was not trafficked in the latest period for which figures are available. [71993]

Damian Green: During the first 24 months of the National Referral Mechanism's operation to 31 March 2011, competent authority decision makers found reasonable grounds for believing trafficking had occurred in 895 cases. This is 67% of the cases referred where there has been a decision made. **A further 450 cases (33%) did not meet the reasonable grounds threshold.**”³³

There were 450 reported cases where forms of severe abuse were occurring that did not include instances of trafficking; maintaining the visa is a far more effective, cheaper way of offering basic protections to all overseas domestic workers in the UK, not just those who are victims of trafficking.

Diplomatic employees:

Without the right to change employers, domestic workers who work for diplomats have virtually no negotiating power with their employers and are, as a result, even more vulnerable to exploitation. Kalayaan, for example, has estimated that approximately 3.8% of diplomatic domestic workers are trafficked compared to 0.2% of domestic workers in private households.³⁴ In the UK between 2009 and 2010 at least nine cases of domestic servitude involving diplomats were referred to the government.³⁵ The UK must not continue to turn a blind eye. Domestic workers in diplomatic households need the same protection as other domestic workers to end abuse and the right to change employer should be extended to them.

³² Kalayaan, *Ending the Abuse*, p. 6.

³³ Hansard, 15 September 2011: Column 1278W, Human Trafficking.

³⁴ Kalayaan, *Ending the Abuse*, p. 6.

³⁵ Statistic used with consent from Museum of London, *Freedom From: Modern Slavery in the Capital*, August 2011.

“I moved to London with the diplomat a couple of weeks before his wife and child arrived. I quickly realized I had made a terrible mistake in taking the job. From the very first day I was treated like a slave, and it immediately became clear that the diplomat wanted more from me than just to look after his son. He sexually molested me and would become angry when I refused his advances.”

Source: Kalayaan testimonial, Catherine (not her real name)

Recommendations to prevent abuse and improve working conditions:

On 29 June 2011, in the Westminster Hall debate on the ILO Convention for Domestic Workers, Ed Davey, Minister for Employment Relations, argued that to protect domestic workers ‘the key question is enforcement.’³⁶ We agree - but the government is failing to enforce or even to promote rights for domestic workers.

Though better mechanisms to ensure enforcement are needed, greater public awareness and action is also critical to stop abuse; government, trade unions, social groups and placement agencies can all do more to make decent working conditions for all domestic workers not just an ILO slogan but a practical reality in the UK.

Employers & the Employment Sector:

Education of relevant organisations:

Public awareness of the rights of domestic workers helps to end abuse. Organisations and groups who regularly encounter domestic workers outside the home must be made better aware of how to spot abuse, trafficking and other forms of exploitation. Community institutions such as churches, mosques, hospitals, GP surgeries and schools, as well as places of employment likely to come into contact with domestic workers such as hotels, must be better informed.

It is in everyone’s interests to help end exploitation – a card informing people about signs of abuse and how to respond would be a practical tool to achieve this and could help ensure that relevant community groups have at least a working knowledge of the issue. Companies that regularly have access to private homes from satellite TV installers to plumbers should be given these cards free of charge and their employees should be trained to spot signs of exploitation and what to do if they suspect abuse. A Kalayaan-Unite leaflet available to hotel workers informing them of how to notice and report abuse, for example, is an effective template. Similarly, the annual UK Anti-Slavery Day (October 18th) is a chance to raise greater awareness of ongoing servitude in our society; the situation of domestic workers should be included in discussions of present-day slavery.

³⁶ Hansard, 29 Jun 2011 : Column 288WH, Westminster Hall debate, Convention on Domestic Workers.

A sector Code of Practice:

Most employers want to treat domestic workers as the law requires but many are simply unaware of their responsibilities, particularly when culturally it is often not considered 'normal' work akin to non-household based work. A code of best practice made available by agencies to employers of domestic workers would help those willing to comply with the requirements of employment law to know their responsibilities and treat their employees accordingly.

A clear, accessible Code of Practice that sets out standards of behaviour expected of agencies, employers and employees would bring greater clarity and make employers better aware of their duties. It should be written by the government in collaboration with agencies, domestic worker organisations and trade unions. Ireland's "Code of Practice for Protecting Persons Employed in Other People's Homes" (2007) is an existing example of this sort of document.

The Code of Practice should accompany any contract between agency, employer and worker and should also be attached to job adverts. It should also be disseminated through social services that provide direct payments or on relevant sites. For example, MumsNet is an effective site for spreading information and already has a section on how to treat nannies fairly and many forums discussing the issue. Engaging with similar sites is a way to make sure knowledge of how to properly treat domestic workers is widespread.

Make migrant domestic workers better aware of their rights:

When workers do not know their rights it exposes them to exploitation. British diplomatic posts should offer a mandatory training session instructing migrant domestic workers on their rights for every ODW visa they issue to ensure that those who receive visas are fully aware of their rights in the UK. Similarly, an information card stating the rights domestic workers are entitled to should be attached to the visa and should be presented on arrival in the UK and then returned to the worker. The card would need to be available in an appropriate language with a hotline number for reporting abuse on it.

A Help Line for Reporting Domestic Servitude and Abuse – a Case study:

- On 1 June 2011, a new free phone line for victims of human trafficking was launched on **0800 783 2589**. The phone line should however be expanded to include people suspected of suffering conditions of domestic servitude or exploitation and be available in appropriate languages. Domestic workers should be able to feel secure in reporting abuse, gaining legal advice and knowing where to turn in a crisis, including voluntary organisations like Kalayaan.
- An example is the Swedish national help line for victims of violence and sexual abuse, including trafficking and domestic servitude, funded by the Swedish government. The help line is open around the clock, every day of the year. Calls are free of charge, the caller can be anonymous and staff observe full confidentiality. A call to the help line does not show up on the caller's telephone bill.

- The phone service is available in a number of languages, including languages spoken in the countries that are most commonly countries of origin for victims of trafficking in Sweden. It is a service the UK should incorporate into its human trafficking hotline.

Certain communications can reach domestic workers in ways that others cannot. Broadcasts on minority language radio stations and posters in languages common in the domestic worker sector in areas such as playgrounds or supermarkets can reiterate the rights that ODWs possess. The hotline number for reporting abuse should accompany any broadcast.

Stop the Traffick recently produced an excellent poster alerting possible victims of trafficking to danger signs.³⁷ It would serve as a template for a poster tailored specifically to incoming overseas domestic workers at ports of entry and places they are likely to frequent alerting them on how to stay safe, who to contact what their rights are. Education remains an essential safeguard against abuse.

TRAVEL SAFE

DON'T



Don't let someone take your passport or travel documents.



Don't believe everything your employer tells you.



Don't let someone control your money.

DO



Be concerned if someone takes away your choices and makes you feel scared.



Be concerned if something you thought was good is turning into something bad.



Take this helpline. Just in case.

Human trafficking is a crime: trafficking is to be deceived or taken against your will and forced to work in places like the sex industry, private houses, farms, factories, sweat shops, restaurants and on the streets.

If you need it, help is available.

+44 (0)800 555 111

STOP THE TRAFFIK.
PEOPLE SHOULDN'T BE BOUGHT & SOLD

www.stophetraffik.org/travelalert

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

Police in an emergency: 999

Call CrimeStoppers anonymously: +44 (0)800 555 111

³⁷ <http://www.stophetraffik.org/resources/>

Trade unions and NGOs:

Trade unions have helped drive the issue of domestic worker rights up the political agenda, working in tandem with domestic workers themselves. The role of unions in protecting workers and their rights, particularly in our squeezed economic climate, remains a vital one, not only in this sector. UK unions have already succeeded in achieving unionisation rates of domestic workers exceeding those in many European countries, despite the difficulty in organising the sector. They must continue to lead on the issue. An inspiring example is Justice4Domestic Workers (J4DW), led superbly by Marissa Begonia, an organisation of over 300 migrant domestic workers closely linked to Unite. The group empowers migrants through education, co-operation and campaigning, as well as helping workers act on their legal claims. Since it was founded in 2009 J4DW, along with Kalayaan and North Kensington Law Centre, has brought 53 employment tribunal cases against employers with all but three having been successful.³⁸



39

More still could be done by unions, such as targeting recruitment campaigns at areas where domestic workers congregate. Kalayaan produce a small booklet in 22 languages (mainly South and South-East Asian, and African languages) offering legal advice that is distributed where communities containing domestic workers are known to gather; unions can do something similar to promote themselves and encourage organisation. Building international links between unions specifically regarding domestic workers is another way of both aiding unionisation and ensuring workers know their rights before they enter the UK. Speaking to unions abroad will better prepare unions in the UK to organise ODWs here; Unite and J4DW already successfully co-ordinate with unions across the world on the issue, for example campaigning together for the ILO Convention. Such work must be encouraged and build upon existing work.

³⁸ Justice for Domestic Workers, *Who We Are*, 2011, p.2.

³⁹ Justice for Domestic Workers, *Who We Are*, photo.

Nepal Independent Domestic Workers Union

- Unions already lead the way in campaigning for better protection for migrant domestic workers but inspiration from abroad, such as the Nepal Independent Domestic Workers Union (NIDWU) established on 1 February 2007 with the signature of 533 worker, should encourage renewed efforts.
- NIDWU has 15 local committees, in which more than 150 workers have been organised, conducting regular meetings and awareness-raising activities to strengthen its capacity. If domestic workers in Nepal can organise for their rights it should act as a further spur to action in the UK.
- Information from Nepal Independent Domestic Workers Union, <http://domesticworkerrights.org/?q=node/11>

Expand voluntary sector capacity:

Organisations such as Kalayaan, Anti-Slavery International, Eaves and ECPAT UK work directly with victims. Trust for London's report *A Chance to Be Free* argues: 'this means that [they] are in a better position to... have influence over policies and mechanisms that respond to trafficked persons in the UK.'⁴⁰ The government must ensure that the expertise of these organisations does not go to waste; they must continue to help shape informed policy making. Recent examples of their expertise being employed include:

- Kalayaan joined the UK Border Agency's steering group on overseas domestic workers. Their expertise was respected in the previous government review of the ODW visa and the important protections for domestic workers were retained.
- Kalayaan's work ensured the possibility of changing employers was part of the original ODW visa reform in 1998. They remain crucial in the current ODW campaign.
- Anti-Slavery International's Trafficking Programme Co-ordinator being appointed to the European Commission's Experts Group on Trafficking in Human Beings.

Government action:

National Minimum Wage enforcement: Different government bodies give differing advice about domestic workers' entitlements. Some have suggested, wrongly, that the exclusion of "family workers" from entitlement to the National Minimum Wage (NMW) extends to domestic workers.⁴¹ At present, roughly 95% of domestic workers do not receive the NMW when the number of hours worked is divided

⁴⁰ Trust for London, *A Chance to Be Free: Tackling Modern Day Slavery final report*, November 2010, p.8.

⁴¹ Working Lives Research Institute, *Turning a Blind Eye*, p.4.

against total pay.⁴² Ensuring that all relevant bodies inform domestic workers, when asked, that they are entitled to the NMW will reduce that figure in future.

Legislation

Domestic servitude is part of the broader international problem of slavery and human trafficking. Employers of domestic servants, consumers and businesses may inadvertently reward these crimes by using workers who have been exploited. A Bill requiring employment placement agencies, retail sellers and manufacturers doing business in the UK to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale would create greater public awareness and a mechanism for accountability.

The Transparency in Supply Chains Act of 2010 requires larger retailers and manufacturers with over \$100 million in worldwide gross receipts “to eradicate slavery from their supply chains” – by posting on their websites what policies they have in place to ensure that their supply chains are free of slavery and human trafficking.

An Act is one way of ensuring greater transparency and public awareness of trafficking and servitude, and motivates businesses and employers to ensure humane practices. It can be scaled down to smaller sectors such as domestic work.

California’s Transparency in Supply Chains Act of 2010 is an example. Large agencies, manufacturers and retailers are required to provide consumers with information about how they work to eradicate domestic servitude and human trafficking from their supply chains

Legislation could also be considered in future to establish better protections

for domestic workers in the UK. An example is provided by the New York State Legislature, which passed the Domestic Workers Bill of Rights in 2010, coming into effect on 29 November the same year. It established key rights that included the eight hour day, the right to a rest day each week, overtime at time and a half after 40 hours (for live out workers) or 44 hours’ work, paid leave and protections against harassment and discrimination.

Make it easier for overseas domestic workers to contribute:

At present the desire of domestic workers to contribute to society is too often ignored by their employers when it comes to tax and National Insurance (NI) payments:

“I want to pay tax, because I want to be legal, don’t want to be here illegal. I work here, everyone is paying tax, I should pay the same. That’s why I applied my self-employed. If employer don’t want to pay, I will pay.”
[Filipina, Female, age: 50-59, unnamed]⁴³

⁴² Justice for Domestic Workers, Unite LE/1647 Branch, Survey on Pay and Working Condition For Domestic Workers in Private Households.

⁴³ Working Lives Research Institute, *Turning a Blind Eye*, p. 24.

The UK Border Agency should make information on employment rights, tax and National Insurance available to domestic workers newly issued with visas at points of entry. Those who want to contribute to society should be able to.

Impose recruitment requirements on diplomats

Diplomats are the only employers allowed to recruit directly from overseas without the domestic worker having worked for them for a year previously. Diplomats who use agencies should be encouraged to use those that are registered with and approved by British embassies overseas as being committed to a Code of Practice, including the obligation to inform domestic workers of their rights in the UK. Alternatively, the UK could look at bilateral relationships with particular countries that tend to supply domestic workers to diplomats and monitor agency standards that way.

Government (legislation):

Licensing of agencies:

Employment agencies provide a valuable service and many are critical to safeguarding and protecting the rights of workers they place. Those who follow good practice and spend money and time on ensuring proper working conditions have to compete with those who are abusing domestic workers for profit. It is in the interests of all legal and ethical operating agencies to ensure that basic standards in their sector are met. One possible solution is to strengthen the regulatory framework for the operation of these agencies by requiring them to be properly licensed, such as in Ireland's 2009 Employment Agencies Regulation Bill.

Publishing a list of licensed agencies would allow employers and employees to know basic standards were maintained in the sector, particularly if compliance to the Code of Practice was a condition for granting licences to agencies. It is in the interests of agencies as much as employers and employees to end bad practice; licensing ensures common standards and better protects domestic workers.

Extend supervision by labour inspection authorities to the domestic work sector:

Labour inspections in the workplaces of domestic workers should be considered in order to ensure safe and decent working conditions.

Fears that 'the imposition of criminal health and safety law into people's private homes could mean that some of our frail and elderly constituents could be forced out of their homes and into residential care'⁴⁴ show a lack of understanding of how inspections work. A question to the Secretary of State for Health in September 2011 reveals that 52 one bed care homes have been inspected or reviewed by the Care Quality Commission (CQC) and its predecessor the Commission for Social Care Inspection (CSCI) over the last three years, with eight occurring in the last

⁴⁴ Hansard, 29 June 2011: Column 277WH, Andrew Selous MP, Convention on Domestic Workers, Westminster Hall debate.

eleven months alone.⁴⁵ Government inspectorates have developed procedures in these cases to ensure basic rights and services are provided, while respecting the privacy and dignity of the people inspected.

Inspection schemes of private households, furthermore, already exist in local authorities which currently inspect private residences to advise, support, and in some cases, take direct action where the health and safety standards of a living environment are unacceptable.⁴⁶ To continue to claim enforcement of basic working conditions for domestic workers could only be achieved only with an imaginary heavy-handedness coming from the Health and Safety Executive is unsustainable. A false dichotomy between the privacy of residents and the security of workers in the home should not stop the government protecting workers who are already vulnerable.

There are existing examples of ways to combine inspection with education allowing employers to be made better aware of their obligation to treat their workers in accordance with existing labour law standard:

- A pilot scheme of a voluntary inspection system carried out by the National Employment Rights Authority (**NERA**) in Ireland⁴⁷ aimed at achieving compliance through a consensual model of inspection based on education and co-operation: Breaches of employment legislation such as records of working time, maximum working time and minimum wage enforcement were identified and corrected where necessary in a non-invasive manner. Again, the issue was of education; 18 of the 19 cases had not kept a record of working time while three of the employers did not issue payslips⁴⁸ out of ignorance.
- A similar model is Finland's 2006 Occupational Safety and Health Enforcement Act, which permits inspections 'as is necessary for effective enforcement'⁴⁹ if working conditions are suspected to endanger employees' lives or cause obvious harm.

The government has argued that the key issue for protecting domestic workers is enforcement of existing legislation. If this is the case, there are models to enforce the law more effectively which we should adopt because, without enforcement, the law is just ink on paper. We fear that the issue is not a lack of effective mechanisms to enforce rights, which exist in theory but are too often ignored in practice, but a lack of will on the part of the government to tackle exploitation and abuse.

⁴⁵ Hansard, 15 September 2011: Column 1262W, Fiona Mactaggart, Written Question, Care Homes: Inspections.

⁴⁶ <http://www.westminster.gov.uk/services/housing/private/>

⁴⁷ National Employment Rights Authority, Ireland, "NERA Domestic Workers Campaign - Update 2nd August 2011", p. 1.

⁴⁸ National Employment Rights Authority, Ireland, "NERA Domestic Workers Campaign - Update 2nd August 2011", p. 1.

⁴⁹ Finnish Occupational Safety and Health Enforcement Act 2006, Section 5.1.