

THE WORKFORCE COHESION TOOLKIT

Uncovering Hidden Migrant Worker Maltreatment

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INTRODUCTION

This Toolkit provides guidance of relevance to both labour providers and labour users covering the circumstances in which migrant worker forced labour, bondage and related maltreatment can come to exist. It provides a series of methods by which such activity can be prevented and recognised, together with actions to take where such activity is identified.

The Coroners and Justice Act 2009 (http://www.oqps.gov.uk/legislation/acts/acts2010/pdf/asp_20100013_en.pdf) which came into force in England and Wales and Northern Ireland in April 2010 and the *Criminal Justice and Licensing (Scotland) Act 2010* (http://www.oqps.gov.uk/legislation/acts/acts2010/pdf/asp_20100013_en.pdf) which came into force in August 2010 have introduced a new criminal offence of holding someone in slavery or servitude, or requiring them to perform forced or compulsory labour. The Ministry of Justice indicators of forced labour have clear parallels to the Gangmasters' Licensing Authority's (GLA) licensing standards which apply to suppliers of labour to the food, agriculture, forestry and shellfish gathering sectors.

Uncovering cases of serious maltreatment of migrant workers is difficult. It occurs in circumstances where one person is in a position of power over another and abuses that position for some form of personal gain. Victims may be inhibited from coming forward by fear, a lack of knowledge of their rights, a belief that no-one can or will do anything about it or due to acceptance of the situation as the norm or an unfortunate necessity.

Appendix 1 provides a template questionnaire which may be used by labour providers or labour users in uncovering such exploitation.

Appendix 2 contains an overview of Section 71 of the Coroners and Justice Act 2009 and Section 47 of the Criminal Justice and Licensing (Scotland) Act 2010.



1. Uncovering Hidden Migrant Worker Maltreatment

CASESTUDY 1

Gang are guilty of plot against group of Polish workers - 2008

A RUTHLESS gang led by a thug nicknamed “Little Frog” have been convicted of plotting a terrifying extortion racket against Polish workers in Hereford. A jury at Worcester Crown Court convicted four men of conspiring to commit blackmail at the end of a six-week trial.

Cash demands of up to £400 were made to victims in return for fixing up jobs at the Sun Valley poultry firm and other companies. Threats were issued to enforce payment of the so-called “tax” and violence dished out to some of those who refused. Two men who upset the gang ended up in hospital with a broken jaw and a fractured eye socket.

Others fled from their Hereford homes in panic, some returning to Poland early and ditching five-year plans to work in England. Many of the vulnerable people targeted kept silent about the scam through fear of retribution and a lack of confidence in police in a strange country. But Operation Tropical, launched by West Mercia Constabulary, painstakingly built a climate for a change of attitude and gave protection to witnesses. Convicted of the conspiracy between March and December 2007 were: Krzysztof Wojcik, aged 29, of Marlowe Drive; Jaroslaw Wysiecki, 23, of Grenfell Road; Michal Zubrzycki, 20, of Ledbury Road; Kamil Siegien, 30, of Coningsby Street. Wojcik, the gang’s 21-stone ringleader called Zaba in Polish – or “Little Frog” – had served sentences totalling nine-and-a-half years in Poland for robbery and fraud.

Background: The Operation

Up to 25,000 Polish people live in Herefordshire and police interviewed over 200 of them in the complex investigation. Det Sgt Martin Barnes, of Hereford Police, made trips to Poland and has been in touch with police in Merseyside, Kent and Scotland. “They all have similar problems with the underlying black economy run by criminal enterprises,” he said.

Back home, the 20 brave witnesses who gave evidence at the trial were only the tip of the iceberg as the gang’s tentacles spread. Officers identified 40 victims who handed over money for employment, housing or other services. But they reckon about 100 Polish people were forced to dig into their wages due to blackmail in the two-year scam. “There existed a cultural mistrust of the police, a hangover from the old Communist days”.

“Sun Valley were extremely helpful in assisting us by allowing us to address their Polish workers. Leaflets were put into their wage slips.” Many workers were targeted right outside the factory gates by the gang. Some were punched and pushed into cars. “Up to 300 people would leave work and literally run home and lock their doors,” Sgt Barnes said. “The vast majority of Poles are loyal, hard working and law-abiding. “They were embarrassed that Polish people were committing crimes in England. They didn’t want English people to think of Poles like that.”

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IN WHAT SITUATIONS CAN WORKER MALTREATMENT ARISE?

Such situations may arise through persons employed within a labour user or provider, through persons connected to individuals within these organisations or outside of both, particularly within migrant groups but not exclusively so.

It may involve one individual operating alone or a number working together. It can involve organised criminal activity. The payment required may be linked to debt bondage, threats of, and actual, violence.

Many native language speakers working for labour providers and users provide invaluable assistance to workers with poor English language skills. However, there is a particularly increased potential for exploitation and mistreatment when there is a single person acting as a 'language gateway' either for the labour user or provider. For example, where all Polish workers are placed by one Polish speaking recruitment consultant or selected by one Polish speaking production supervisor and workers do not have access to information or services from any other person (or the opportunity to complain about their treatment to any other person).

The following table provides examples of where migrant worker maltreatment may arise or where individuals in certain roles could potentially commit the new forced labour offences:

It may involve one individual operating alone or a number working together.



Perpetrator	Circumstance
Labour User Supervisor	<p>Has power to dictate which agency workers get work; get overtime or get transferred from temp to perm status.</p> <p>Requires backhander per shift; lump sum; sexual or other favours.</p> <p>Perpetrated without the knowledge of labour user management and can be with or without knowledge and/or complicity of labour provider representative and / or manager.</p>
Labour Provider Supervisor	<p>Has power to dictate which agency workers get work or overtime.</p> <p>Requires backhander per shift; lump sum; sexual or other favours.</p> <p>Perpetrated without knowledge of labour user or provider management.</p>
Labour Provider and/or Labour User Supervisor	<p>Workers are forced to work on days off or overtime against their wishes under threat of losing their current job and any further work from the labour provider.</p> <p>This may be at the insistence of a labour user supervisor, with or without the complicit tolerance of management and/or the labour provider with or without the knowledge or consent of the labour user or an individual recruitment consultant operating without the knowledge of their managers.</p> <p>Workers are forced to work on days off or overtime against their wishes under threat of losing their current job and any further work from the labour provider.</p> <p>This may be at the insistence of a labour user supervisor, with or without the complicit tolerance of management and/or the labour provider with or without the knowledge or consent of the labour user) or an individual recruitment consultant operating without the knowledge of their managers.</p>
Labour Provider or Labour User Supervisor	<p>Forces out other nationals and replaces with worker of own nationality.</p> <p>May take a fee or receive other favours.</p> <p>Perpetrated without knowledge of labour user or provider management.</p>
Labour Provider or Labour User Worker	<p>Acts as unofficial organiser; claims special connection with managers; acts as a translator. Claims to have authority to organise work at agency for contacts in home country.</p> <p>Requires payment or other favours. Takes fee for organising work/transport etc either directly or through third party contact.</p> <p>Perpetrated without knowledge of labour user or provider management</p>
Labour Provider	<p>Workers sourced directly from their home countries with misleading promises or false contracts / terms and conditions. May involve another agent.</p> <p>Workers may be required to pay another agent for introducing them to the labour provider, owe an agent money for arranging their trip over and are more likely to be in tied accommodation.</p> <p>May make access to work contingent on using the labour providers, or a connected company's, accommodation.</p> <p>May eject the worker from the accommodation if they sack the worker</p> <p>May continue to require the worker to pay for the accommodation, even if they leave, under threat of losing employment if they do not do so</p> <p>May charge for accommodation at levels higher than the amount earned, and reduce the workers hours as part of this process, to create a debt relationship</p> <p>Perpetrated with or without knowledge of labour provider management.</p>

Perpetrator	Circumstance
Labour Provider Driver	Can choose who gets on the bus to work and who doesn't. Requires a payment per shift or other favour. Perpetrated without knowledge of labour user or provider management
Accommodation Provider	Allows tenants to get behind with rent. Through intimidation and force applies prohibitive interest rates. Effectively debt bonds workers by taking control of their bank cards and removing the bulk of their weekly pay. May be with complicity of labour provider and or labour user but more likely completely unconnected and without their knowledge.
Other Service Provider	Sets themselves up informally as the "migrant workers friend". May offer a translation / accommodation finding / work finding and application / bank account / transport to work service. Requires payment and may be relatively benign through to violent. Perpetrated without knowledge of labour user or provider.
Traffickers	Through intimidation and force controls a group of workers. May organise them for benefit fraud purposes. May control their bank cards removing the bulk of their weekly pay. May be with complicity of labour provider and or labour user but more likely completely unconnected and without their knowledge.

The International Labour Organisation (ILO) has produced a fuller table of indicators for labour exploitation in recruitment and at work in general.

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CASESTUDY 2

Before coming to the UK, workers apply for a warehouse picker or factory production job in the North of England advertised by a GLA licensed agency via Polish or Slovakian job sites.

Applicants are asked by the agency to provide copies of documents, and charged £85 approx for translation. Applicants fly to the UK at their own cost and are picked up from the airport and taken to accommodation where they are told they will have to pay another £350 to be found accommodation and work. Accommodation is provided at £50 week for a room shared with two others.

Interviews are arranged with an unconnected agency and workers are taken to the site or Branch where the interview takes place. The unconnected agency and labour user has no knowledge that money has changed hands.

CASESTUDY 3

Company Director guilty of “modern form of slavery”

THREE crooks convicted of helping traffic illegal immigrants into the UK have been sentenced to a total of eleven-and-a-half years in prison. Amjad Iqbal, a former director of Chesterfield Poultry chicken processing factory at Clay Cross, was found guilty of conspiring to break immigration rules. The 41-year-old was involved in the creation of false ID documents – which were used to get work permits from the Home Office – for at least nine illegal workers employed by his firm. Yesterday he was sentenced to four years in jail. His two co-accused, Patrick McCrudden, 44, and Catherine Anderson, 54, admitted the same charge and were sentenced to four years and three-and-a-half years respectively.

Judge John Burgess, who passed the sentences at Derby Crown Court, said: “This was a sophisticated operation designed to bypass immigration rules.” The court heard how Iqbal, of Parkfield, Chorleywood, and McCrudden, of Marland Way, Manchester, had visited Eastern Europe to recruit illegal workers. Anderson, of Lime Close, Salford, provided forged documents – sold for up to £1,000 each – as part of the scam. McCrudden also admitted three charges of possessing false identity documents.

The judge ordered that both McCrudden and Iqbal should be disqualified from acting as directors of companies for seven years. Dozens of workers at the poultry factory had forged documents when officers from the UK Border Agency raided the premises in July 2008 and arrested Iqbal, McCrudden and Anderson. Computers seized during the operation, which also involved Derbyshire police and the UK Human Trafficking Centre, contained 5,000 copies of counterfeit Romanian ID cards.

It is believed these were provided as part of a package to workers from outside the EU to “legitimise” their employment – but at a cost to the employee. They were then expected to work off the cost at the Clay Cross chicken factory as a “debt bond”. Inspector Sam Bullimore, from the UK Border Agency East Midlands, said the three had “cruelly exploited” migrants. He added: “Make no mistake, the business these three dealt in was a modern form of slavery.”

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WHAT ARE THE ETHICAL AND GLA LICENSING REQUIREMENTS?

The guidance from the Ministry of Justice identifies indicators of forced labour, which have clear parallels to the GLA licensing standards.

Four of the GLA standards may principally apply to matters regarding such maltreatment of workers:


1.1 Critical: Fit and Proper The licence holder, Principal Authority and any person named or otherwise specified in the licence must at all times act in a fit and proper manner.

The GLA treats each case individually, taking account of the seriousness of, and circumstances surrounding the matter in question. The GLA will consider the explanation offered by the person to whom it relates, the relevance of any conviction, rehabilitation and evidence that the matter will not reoccur.

3.1 Physical and Mental Mistreatment - A worker must not be subjected to physical or mental mistreatment and threats must not be made to the worker or others.

3.2 Restricting a Worker's Movement, Debt bondage and Retaining ID Documents - A licence holder must not:

- Restrict a worker's movement. There should be no debts between a licence holder and worker that prevent the worker freely seeking other employment. Workers must be free to work elsewhere without incurring, or fear of incurring, any other detriment,
- Subject, or threaten to subject, a worker to any detriment because the worker has terminated or given notice to terminate any contract between the worker and the licence holder or the worker has taken up or proposes to take up employment elsewhere,
- Retain identity papers, except when it is necessary to check a worker's entitlement to work in the UK, and then only until the check is complete, or
- Force or coerce a worker to work against their will.



A licence holder must not withhold or threaten to withhold the whole or part of any payment due to the worker.

- If a worker is loaned money directly or indirectly by the licence holder to meet their travel or other expenses to take up a position, the worker cannot be required to repay a sum greater than the sum loaned, and must be provided in writing with full details of the repayment terms of any loan.

3.3 A licence holder must not withhold or threaten to withhold the whole or part of any payment due to the worker in respect of any work they have done on the basis that:

- The licence holder has not received payment from the labour user
- The worker has failed to prove that they have worked during a particular period of time (but this does not prevent the licence holder from satisfying itself by other means that the worker worked for the particular period in question)
- The worker has not worked during any period other than that to which the payment relates, or
- Any matter within the control of the licence holder.

Other factors in the Ministry of Justice guidance that may indicate forced labour are also covered within GLA licensing standards:

2.2 Minimum wage
(regarding unwarranted/unexplained deductions from wages)

4.1 Quality of the accommodation

4.2 Licensing of accommodation

5.2 Working hours

6.3 Safety at work


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“FLAGS” THAT CAN BE MONITORED AS A POTENTIAL INDICATOR OF WORKER MALTREATMENT

The following list is a range of monitoring measures and flags that can be used to identify situations where the potential for worker maltreatment may exist:

Workplace Monitoring

- A number of workers are introduced to the labour provider by a particular individual, usually of the same nationality, with good English language skills. This individual may claim he is a friend, relative – uncle/cousin etc., or just helping out.
- Workers arrive in minibuses and people movers, particularly where such transport is not licensed and/or the driver is not part of the permanent or agency work force.
- One worker supplies food in the workplace for a number of the agency workers.
- Workers display facial bruises or other injuries, appear frightened, agitated or secretive.
- A rise in the number of non-English speaking workers of a certain nationality where they are organised by a particular labour provider consultant or labour user supervisor of the same nationality.
- A pattern where migrant workers of the labour providers or labour users workforce stop working suddenly for no particular reason.



Checking mobile phone numbers shows a number of unrelated workers contactable through one number.

Worker Records Monitoring

- Checking addresses shows high occupancy of particular houses of agency workers.
- Checking addresses shows shared high occupancy of particular houses between permanent and agency workers.
- Workers say they rent from a landlord who works for the labour provider or labour user.
- Checking bank accounts shows a number of unrelated workers paid into one account.
- Checking mobile phone numbers shows a number of unrelated workers contactable through one number.
- Checking emergency contact numbers shows a number of unrelated workers contactable through one number.

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GOOD PRACTICE TO PREVENT AND UNCOVER WORKER MALTREATMENT

The following list provides a number of operational and management processes that may be implemented by the labour provider and the labour user to prevent maltreatment and/or address a perception of unfairness and discrimination.

Labour Provider

- The labour provider should issue its consultants and managers with written notification that accepting inducements or other forms of worker maltreatment, coercion or harassment will be regarded as a gross misconduct offence.
- If the labour provider uses another agency to source workers then checking that:
 - The agency is GLA licensed, ideally using the Active Check facility.
 - There is a written contract in place specifying that workers will not be charged work finding fees or for compulsory goods or services related to work finding.
 - Workers are interviewed to confirm that arrangements have been satisfactory.
- The labour provider does not allow individuals, however seemingly well intentioned, to introduce significant numbers of workers for work (accepting that word of mouth introductions to close friends and family are likely to be harmless).
- The labour provider does not use an individual worker as a single contact with responsibility for organising a group of workers to attend at any one time.
- During worker selection process the labour provider asks and records:
 - Whether the worker has paid anyone, or will have to pay anyone to obtain the work in question
 - Whether the worker has paid anyone to get to the UK if a newly arrived migrant.
 - How the worker found out about the work.
 - The worker's address, landlord, mobile no. and Emergency Contact.

- Labour provider supervisors should regularly talk informally to their workers to gently uncover whether there are any workers experiencing issues.
- Workers should be issued with clear comprehensible written guidance at the start of their engagement of their rights and how to report complaints or serious issues. This should be a process by which issues can be raised confidentially and multilingually by phone, email or in writing to a Senior Manager within the labour provider who is separate to the direct supervision of the worker.
- The responsibility for the selection and allocation of which workers can work should only be undertaken by trained and well supervised consultants. It should not be delegated to a temporary worker, working with the team, who operates with little control or supervision.
- Labour providers should ensure that a situation does not develop where total control of workers from particular nationalities is placed in the hands of one consultant of the same nationality.
- Labour providers should issue occasional confidential questionnaires to a sample of workers to identify potential worker maltreatment (see template attached).

Labour User

- Labour users should issue supervisors and managers with written notification that accepting inducements or other forms of worker maltreatment, coercion or harassment will be regarded as a gross misconduct offence.
- Labour users may direct CCTV cameras and Security Officers to areas where workers disembark from transport to work and congregate during breaks.
- Security officers should monitor and report on the MPV's, vans and buses used to deliver and pick up workers to identify controlled or managed transport operations.
- The labour user should define its agency labour selection and ordering process. This should ensure that only nominated and suitably trained individuals have the authority to book agency workers; that the selection of workers to work on a particular shift / overtime is fair, transparent and non-discriminatory. It should avoid situations for example, where workers congregate in the hope of work and supervisors pick from a crowd.
- Labour user supervisors should regularly talk informally to their workers to gently uncover whether there are any workers experiencing issues. They should look at situations such as where one worker is regularly distributing food to others or where individuals have no money to buy food or drink.

- The labour user may consider appointing trusted “Worker Welfare Officers” or “Integration Officers” who speak representative languages to gain the trust of fellow workers and come forward with information of workers experiencing difficulties.
- Labour users should consider implementing and publicising a multi lingual Confidential Helpline run internally by HR or by external providers such as “In Touch” (www.labourproviders.org.uk/confidential_worker_helpline.aspx). This should allow issues to be raised confidentially in the worker’s first language by phone, email or in writing. Alternatively, they should publicise the contact details for the GLA (www.gla.gov.uk), and the Pay and Rights helpline (<http://payandworkrightscampaign.direct.gov.uk/index.html>), to which workers can confidentially complain.
- A programme of worker satisfaction surveys, interviews and questionnaires (see template attached).
- Conduct formal re-checking of bank accounts; addresses; personal details etc when agency workers move from temporary to permanent status.

Labour Provider and Labour User working in partnership

There should be in place written agreements which detail:

- A fair and non-discriminatory agency worker selection process.
- An agency worker ordering process which relies on the labour user specifying number of skills/roles required and not named individuals.
- An agreed, transparent and non-discriminatory agency worker temp to perm selection process which is effectively communicated to workers.
- The nominated labour provider and labour senior management and arrangements through which harassment and/or unreasonable, suspicious or discriminatory requests by labour user supervisors can be reported and dealt with confidentially.

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ACTIONS TO TAKE IN THE EVENT OF DISCOVERING WORKER MALTREATMENT

What action to take will depend very much on the nature of the maltreatment uncovered and most issues will be dealt with internally by the labour provider, labour user or both parties working in partnership.

However, there may be a real and serious danger to workers and their families if organised criminal exploitation is detected using the above indicators. Such situations must not be dealt with internally or informally otherwise the problem may flourish but be hidden to prevent future identification, increasing the control and threats to workers. This should be considered first.

If you think forced labour may be occurring you should contact the Gangmasters Licensing Authority on 0845 602 5020 or the Police as appropriate. If you are uncertain whether a situation represents forced labour you should seek advice, and contact the GLA or police. You should provide as much information as can be collected without alerting anyone to the fact that there is an investigation. Alternatively you can call Crimestoppers anonymously on 0800 555 111.



Gangmasters
Licensing Authority
0845 602 5020

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APPENDIX 1

WORKER QUESTIONNAIRE

LP wants you to have a positive experience working with us.

We do not want you to feel harassed, discriminated against, bullied or coerced. At no time should you be asked for gifts or money for work with us.

This confidential questionnaire will help us to monitor your experience and take action where necessary. You may complete the questionnaire anonymously or you can enter your personal details, this is your choice. You should return the questionnaire in the stamp addressed envelope provided. Any matters raised will be dealt with confidentially.

Your Name (Optional):	Your place of work (Optional):
Your telephone no. (Optional):	Your email (Optional):

RECRUITMENT

Do you have to pay anyone in LP to get regular work?	YES / NO	Comment
Do you have to pay anyone at our clients to get regular work?	YES / NO	Comment
Do you have to pay anyone else to get regular work?	YES / NO	Comment
Are you required to occupy, or pay for, specific accommodation, in order to get regular work	YES / NO	Comment
Are you required to pay for any other services or provide favours in order to get work or access to particular shifts?	YES / NO	Comment
Have your original ID papers been withheld by anyone in LP.	YES / NO	Comment
Do you feel that you can leave LP of your own free will without suffering any penalty or detriment?	YES / NO	Comment

TREATMENT AT WORK

Have you been subject to verbal or physical abuse by anyone in LP? By this we mean things like being shouted or sworn at, being pushed, kicked or having things thrown at you?	YES / NO	Comment
Have you been bullied or harassed by anyone in LP?	YES / NO	Comment
Have you been subject to verbal or physical abuse, threats, sexual or other harassment by anyone at our clients?	YES / NO	Comment
Have you been treated unfairly because of your race, colour, religion, nationality, sex, pregnancy, disability or age?	YES / NO	Comment
Have you been bullied by anyone at our clients?	YES / NO	Comment
Has anyone in LP threatened you? For example to limit the amount of work they give you or not to offer you any more work?	YES / NO	Comment
Have you ever been forced to work long hours, overtime or on any days when you didn't want to by anyone in LP?	YES / NO	Comment
Have you ever been forced to work long hours, overtime or on any days when you didn't want to by our clients?	YES / NO	Comment
Have you ever been forced to work when you didn't want to by anyone in LP?	YES / NO	Comment
Do you feel free to refuse overtime?	YES / NO	Comment

Are you able to take the legal minimum rest between shifts if you wish to?	YES / NO	Comment
Are you able to take the legal minimum rest days if you wish to?	YES / NO	Comment
Are you able to book and take holidays in accordance with any reasonable rules in place?	YES / NO	Comment
Have you been asked to undertake hazardous work, or other work without appropriate safety training or equipment	YES / NO	Comment
Have you been prevented from joining a trade union or been penalised for doing so?	YES / NO	Comment
PAY		
Do you owe money to anyone in LP such that you feel you cannot leave of your own free will?	YES / NO	Comment
Has anyone in LP loaned you money that you have to repay?	YES / NO	Comment
Has anyone in our client loaned you money that you have to repay?	YES / NO	Comment
Have you been withheld pay for work you have performed?	YES / NO	Comment
Are you paid correctly for the hours you work?	YES / NO	Comment
Are you paid correctly for your holidays?	YES / NO	Comment
Have you had any money unfairly deducted from your wages?	YES / NO	Comment
Are you free to open and be paid into the bank account of your choice?	YES / NO	Comment
Are you in control of your own bank account and able to deposit and take out money as you wish?	YES / NO	Comment
ACCOMMODATION AND TRAVEL		
Do you rent your accommodation from anyone who works for or who is linked to LP?	YES / NO	Comment
Do you rent your accommodation from anyone who works for or who is linked to our client?	YES / NO	Comment
Are you threatened by your landlord for unpaid rent?	YES / NO	Comment
Is your accommodation safe and well maintained?	YES / NO	Comment
Are you or have you been threatened with immediate eviction?	YES / NO	Comment
Can you leave your accommodation if you wish with reasonable notice and no financial penalty?	YES / NO	Comment
Are you free and able to return home to your country of origin when you wish?	YES / NO	Comment
Are you free to buy and prepare food of your choice?	YES / NO	Comment
Are you free to travel to and from work using the transport method of your choice?	YES / NO	Comment
RAISING PROBLEMS		
Would you raise a complaint to LP? If not, why?	YES / NO	Comment
Do you feel your complaints are dealt with properly?	YES / NO	Comment
Do you know how to raise a confidential complaint?	YES / NO	Comment

Most complaints can be resolved verbally with your LP Representative. If your complaint has not been resolved to your satisfaction then put it in writing to your Contract Manager. If you are still not satisfied or your matter is sensitive or confidential then contact the LP Helpline on:

by emailing:

or by writing to LP Helpline at:

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APPENDIX 2

SLAVERY, SERVITUDE AND FORCED OR COMPULSORY LABOUR

The UK has a positive obligation under Article 4 of the European Convention on Human Rights to protect those within its jurisdiction from slavery, servitude and forced or compulsory labour.

Section 71 of the *Coroners and Justice Act 2009* (“the 2009 Act”) introduces a new offence (“the section 71 offence”) of holding someone in slavery or servitude, or requiring them to perform forced or compulsory labour. It applies in England and Wales and in Northern Ireland and comes into force on 6 April 2010.

Section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 created a similar offence in Scotland, and came into force on 06 August 2010.

This Appendix provides key extracts from the *Ministry of Justice Circular 2010/07* (MoJ). A Ministry of Justice leaflet entitled “*Slavery, Servitude and Forced or Compulsory Labour*” providing an overview of the new offence is also available for download.

Trading in slaves is already an offence under the Slave Trade Acts 1824-1873. However, section 71 makes clear that holding a person in slavery is also an offence. (MoJ para 14).

The offence applies to legal persons (e.g. companies) as it applies to natural persons. (MoJ para 4).

The section 71 offence will apply to all workers, although migrant workers are particularly vulnerable to coercion and deception for a number of reasons. They may not speak the language, they may be uncertain of their legal status in the UK, they may be distrustful of authority and they may be used to living and working conditions which are unpleasant and hazardous. They may fear being sent back to their country of origin. They may be unwilling for all these reasons to complain of their treatment, and may be even more unwilling to make a formal complaint and bear witness against their exploiters. They may have unwittingly become the victims of criminal gangs, who are threatening their safety and the safety of their families abroad. (MoJ para 17).

If labour is subcontracted to another company and the employees of that other company who do the work are held in slavery or servitude or are required to perform forced or compulsory labour, then the subcontractor is the principal offender. However, if the contractor knows that the subcontractor’s workers are being so held or required to perform such labour, then depending on the circumstances, they may be liable for aiding or abetting the subcontractor’s offence, or for encouraging or assisting the commission of the offence or for encouraging or assisting the commission of the offence under the

provisions of the Serious Crime Act 2007 or for conspiring to commit the offence. (MoJ para 5).

The section 71 offence will apply irrespective of whether the victim has been trafficked and irrespective of the immigration status of the victim(s). (MoJ para 6).

In establishing forced or compulsory labour, the section 71 offence will require an element of coercion or deception between the defendant and the victim, and the circumstances will need to be such that the defendant knew that the arrangement was oppressive and not truly voluntary, or had been wilfully blind to that fact. (MoJ para 9).

There are a number of factors which may, depending on the circumstances, indicate that an individual is being held in servitude or subjected to forced or compulsory labour. The essential elements are those of coercion or deception, which may be demonstrated in a number of ways. The kind of behaviour that would normally, of itself, be evidence of coercion includes (but is not limited to):-

- Violence or threats of violence by the employer or the employer's representative;
- Threats against the worker's family;
- Threats to expose the worker to the authorities (e.g. because of the worker's immigration status or offences they may have committed in the past);
- The person's documents, such as a passport or other identification, being withheld by the employer;
- Restriction of movement;
- Debt bondage;
- Withholding of wages.

Other factors that may be indicators of forced labour include (but are not limited to):

- The worker being given false information about the law and their employment rights;
- Excessive working hours being imposed by the employer;
- Hazardous working conditions being imposed by the employer;
- Not being provided with safety equipment and clothing, and/or being charged for the provision of such equipment that is essential to perform the work;
- Unwarranted and perhaps unexplained deductions from wages;
- The employer intentionally not paying the full tax or national insurance contributions for the worker;
- Poor accommodation provided by the employer (e.g. accommodation that is overcrowded, not licensed as a "House of Multiple Occupation" by Local Authorities, or does not have any necessary gas and electricity safety certificates);
- Intentionally poor or misleading information having been given about the nature of the employment (e.g. about the location or nature of the work);
- The person being isolated from contact with others;
- Money having been exchanged with other employers/traffickers etc for the person's services in an arrangement which has not been agreed with the person concerned or which is not reflected in his remuneration. (MOJ paras 10-11)

The maximum sentence on conviction on indictment for the offence is 14 years' imprisonment. However, the maximum sentence on summary conviction for the offence is 12 months imprisonment (six months' in Ireland though this may rise). Where the victim is particularly vulnerable, there is deliberate targeting of vulnerable victims, or the offence is committed by a group or gang, this will be an aggravating factor in sentencing. Fines, alone, or coupled with imprisonment may be applied for either conviction. (MoJ para 12)

England and Wales and Northern Ireland. Section 71 of the Coroners and Justice Act 2009. Slavery, servitude and forced or compulsory labour

(1) A person (D) commits an offence if—

- (a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or
- (b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.

(4) In this section—

“Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950;

“the relevant period” means—

- (a) in relation to England and Wales, 12 months;
- (b) in relation to Northern Ireland, 6 months.

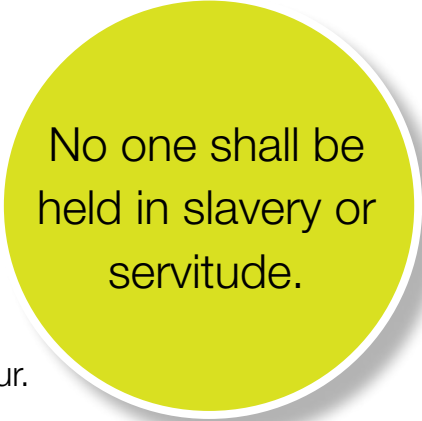
Scotland

Section 47 of the Criminal Justice and Licensing (Scotland) Act 2010. Slavery, servitude and forced or compulsory labour

- (1) A person (“A”) commits an offence if—
 - (a) A holds another person in slavery or servitude and the circumstances are such that A knows or ought to know that the person is so held, or
 - (b) A requires another person to perform forced or compulsory labour and the circumstances are such that A knows or ought to know that the person is being required to perform such labour.
- (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).
- (3) A person guilty of an offence under this section is liable
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, or to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (4) In this section “Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.

European Convention on Human Rights. Article 4 – Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term force or compulsory labour shall not include:
 - (a) any work done in the ordinary course of detention imposed according to Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.



No one shall be held in slavery or servitude.

The Workforce Cohesion Toolkit series provides employers and providers of multicultural, migrant and multi-language workers with good practice and guidance to achieve an inclusive workplace.