Modern Slavery Bill
Ping Pong – House of Commons

16 March 2015

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations. ILPA is a member of the Refugee Children's Consortium.

This briefing covers:

- **Lords' Amendment 45: Legal Aid for Victims of Slavery, Servitude and Forced labour**
- **Lords' Amendments 46 to 57 Child Trafficking Advocates in particular Lords amendment 47, to which ILPA is opposed**
- **Lords' Amendment 72: Overseas domestic workers and the Home Secretary's motion to disagree and proposed amendments in lieu**

The Bill has been strengthened in the Lords although many provisions still do not go far enough for it to be the "flagship" bill that was promised. We consider it vital, if efforts to tackle slavery are to have credibility, that **Lords Amendment 72**, which was passed with support from all parts of the House, remain part of the Bill. We do not support the government's proposed amendments in lieu .

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LORD AMENDMENT 45: LEGAL AID FOR VICTIMS OF SLAVERY, SERVITUDE AND FORCED LABOUR

Purpose of amendment

To make provision for legal aid for victims of slavery or forced and compulsory labour who have a positive "reasonable grounds" decision and in whose cases a "conclusive grounds" decision is positive or is pending.

Briefing

With the coming into force of the Legal Aid Sentencing and Punishment of Offenders Act 2012 in April 2013, legal aid was removed from all immigration cases, with only narrow exceptions. One of those exceptions is ostensibly for trafficked persons[1], and **Lords Amendment 45**

[1] Section 32 of Schedule 1 to the Legal Aid Sentencing and Punishment of Offenders Act 2012.

reproduces this for victims of slavery or forced and compulsory labour. Thus the amendment represents progress.

However, like the current exception for trafficked persons, the amendment only applies to those who have successfully navigated the National Referral Mechanism[2] and obtained a reasonable grounds decision with a conclusive grounds decision pending or in their favour.

At Lords Report, Baroness Kennedy of the Shaws and others argued powerfully that a positive "reasonable grounds" decision under the National Referral Mechanism should not be the gateway to legal aid. Firstly, not everyone approaches the National Referral Mechanism[3], for a variety of reasons. Secondly, without the assistance of legal representatives, a person is less likely to identify themselves as trafficked or to be identified correctly by the decision-maker. Even if a person does manage to navigate the National Referral Mechanism successfully, alone, by the time the reasonable grounds decision has been made they may have missed important deadlines for their immigration case.

Baroness Kennedy received some good news. The Lord Bates told her:

> *"… we are open to changes from the existing system. We have committed to piloting a range of changes to the N[*ational] *R[*eferral*] M[*echanism*] in light of recommendations made by the recent review, which will include incorporating the "reasonable grounds" decision into the initial referral. In practice, this would have the effect of providing earlier access to legal aid because "reasonable grounds" is the trigger by which that would happen. Any changes to the N[*ational] *R[*eferral*] M[*echanism*] would be reflected in the provision of legal aid and could be made through secondary legislation.*
>
> *I hope that the House will be reassured that, through the N[*ational] *R[*eferral*] M[*echanism*] pilots, we will be testing moving access to legal aid for victims of modern slavery to the point of referral, as was being suggested.* [4]

It is correct that legal aid can be extended through secondary legislation and therefore assurances and undertakings given during the debates can be pursued after the Modern Slavery Bill has been passed. **We ask MPs to urge the Government to pilot the provision of legal aid from a stage earlier than the point of referral. The benefits of this should be tested during the pilot phase, to inform subsequent decision-making on provision of legal aid.**

Entitlement to legal aid could be triggered by an assessment that the standardised indicators of trafficking or enslavement as per the National Referral Mechanism referral form are met. Such an assessment could be evidenced by a referral into the National Referral Mechanism or, where the person was receiving advice prior to a referral being made (for example the advice that persuades him/her to present to the authorities), by the legal aid –funded lawyer making an assessment that the indicators have been met. The check on the assessment made by the lawyer would be the merits test for legal aid, for it is ultimately the Legal Aid Agency that

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[2] See ILPA's evidence to the National Referral Mechanism Review: http://www.ilpa.org.uk/resource/29120/ilpa-submission-to-the-review-of-the-national-referral-mechanism-endorsed-by-the-anti-trafficking-le

[3] Under-reporting is a huge problem. In 2012, around two-thirds of trafficking victims identified by the Serious Organised Crime Agency (SOCA) had not been referred to the National Referral Mechanism: see SOCA, *A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012*, August 2013, p6 (paragraph 8) available at: http://www.nationalcrimeagency.gov.uk/publications/15-ukhtc-strategic-assesssment-on-human-trafficking-in-2012/file

[4] HL Report 23 Feb 2015, col 1526.

assesses that a lawyer was correct to identify that a person is eligible for legal aid. If the Legal Aid Agency concluded that the representative's belief that the standardised indicators of trafficking or enslavement as per the National Referral Mechanism referral form were met was not reasonable, payment would not be made.

Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, advice and assistance can be given about making a claim for asylum but the Immigration Specification in the Legal Aid contract limits the costs that can be claimed to £100 if an asylum claim is never actually made. The same approach could be taken in these cases, if the person does not make an application for leave to enter or remain a limit could be placed on the legal aid paid.

The reason given by the Lord Bates for resisting such a pilot was

> *"I am concerned that providing access to legal aid without any link to the* N[ational] R[eferral] M[echanism] *may encourage some victims to not opt for the support available to them. Opening up legal aid to those not in the process would not only risk incorrect use of the system but would mean that individuals could bypass the safeguarding system in place for them, and risks individuals remaining in situations of exploitation. the N[*ational] *R[*eferral*] M[*echanism*] pilots… will test the provision of legal aid at the point that a case enters the N[*ational] *R[*eferral*] M[*echanism*]. The N[*ational] *R[*eferral*] M[*echanism*] review did not recommend access to legal aid prior to this point. We do not currently intend to test this proposal…this amendment could inadvertently discourage victims from leaving a situation of slavery,…* [5]

This is confused. As identified in the final report of the review of the National Referral Mechanism[6] not everyone will want to enter the National Referral Mechanism. A person who fears being forced to leave the UK may consider that their current situation of exploitation is the least bad option open to them and want to stay as far away from the authorities as possible. Some of them will not come forward, whether they get legal advice or not. But with advice on their immigration position and a realistic assessment of their chances of regularising the stay in the UK, some trafficked and enslaved persons may conclude that engaging with both the immigration authorities and with the National Referral Mechanism is rational and appropriate. This advice cannot be given by a person who is not a solicitor, barrister, legal executive or regulated by the Office of the Immigration Services Commissioner because for other persons to give legal advice on immigration in the course of a business whether or not for profit is a criminal offence.[7] Generalist help and advice cannot fill the gap.

These issues were discussed by the Court of Appeal in its judgment on exceptional funding for legal aid in *Gudanaviciene et ors v SSHD* [2014] EWCA 1622. At paragraph 123 the court said

> *There is force in the argument that without legal advice some (perhaps many) potential V*[ictims] *O*[f] *T*[rafficking] *will keep away from the N*[ational] *R*[eferral] *M*[echanism] *process when they would otherwise have entered it.*

By the same token, we suggest, they are likely to keep away from making immigration applications to regularise their stay.

Not everyone will come forward if legal advice is given. But some may. Provision of legal

[5] *Ibid*.
[6] *Op.cit* at 4.2.9.
[7] Immigration and Asylum Act 1999, part V.

advice at an earlier stage can only make the situation better, not, as the Lord Bates appeared to fear, worse.

The Government's review of the National Referral Mechanism said

> *6.3.11 The proposed changes to the National Referral Mechanism require consideration of provision of legal advice on referral rather than at reasonable grounds decision. Access to legal aid is available for asylum seekers on application for asylum and as a result human trafficking victims may claim asylum as a way of obtaining early legal aid. There is unlikely to be a huge increase in the cost of legal aid because a large majority of non-EEA victims are already claiming it through the asylum process.*

Numbers are small. British and Irish trafficked and enslaved persons will not need immigration advice. As identified in the passage quoted above, in very many cases of trafficked and enslaved persons from overseas it will be proper to identify whether they have a claim for asylum and to make such a claim, and legal aid is already available for this.

It is important that the opportunity be taken to pilot provision of legal advice and representation not only on referral into the National Referral Mechanism but before it, so that the pilot can assess whether this assists persons to come forward.

LORDS AMENDMENTS 46 TO 57 CHILD TRAFFICKING ADVOCATES

Purpose of amendments
To amend the provisions on child trafficking advocates.

Lords Amendment 46, 50, 52, 53 and 55 insert the word "independent" into the name of the advocates
Lords Amendment 47, which ILPA opposes, changes the duty on the Secretary of State to make such arrangements as the Secretary of State considers reasonable to enable persons be available to represent and support children from a duty to support those whom there is who there is "reason to believe" may be victims of human trafficking to a duty to support those whom there are "reasonable grounds to believe" may be victims of human trafficking.
Lords Amendment 48 ensures that advocates have the legal authority to act for the child in cases where they lack the legal capacity to do so. This would enable them to instruct solicitors on their behalf and represent the child's best interests. The amendment puts advocates under a duty to promote the child's well-being and act in the child's best interests. **Lord Amendment 57** is consequential open this.
Lords Amendments 49 and 51 replace the power to make regulations about advocates with a duty, to the extent that if there are advocates, regulations must be made and that regulations made must address the circumstances in which a person can act as a child trafficking advocate and the purposes and functions of such advocates.
Lords Amendment 54 requires a child trafficking advocate to be appointed as soon as possible where there are reasonable grounds to believe that the child may be a victim of human trafficking.
Lords Amendment 56 give advocates the powers to ensure public authorities must recognise, and pay due regard to, the functions of the advocate.

ILPA said in evidence to the Joint Committee on Human Rights for its enquiry[8] in 2006

> A *legal representative acts on instructions. Where a client is not able to give instructions because s/he is a child or under a disability the legal representative is placed in an impossible position and the client may not receive the protection s/he needs. The problem is raised in all its acuity in the case of trafficked children, who may be giving instructions on the instructions of their trafficker."*

After years and years of submitting evidence, with fellow members of the Refugee Children's Consortium, we have a promise, if only of a pilot, if only for trafficked children, of guardians/advocates with legal powers to give instructions to a legal representative.

ILPA **opposes Lords Amendment 47** which amends

> 47(1)The Secretary of State must make such arrangements as the Secretary of State considers reasonable to enable persons ("child trafficking advocates") to be available to represent and support children who there is reason to believe may be victims of human trafficking.

It replaces "reason to believe" with "reasonable grounds to believe". In response to expressions of concern,[9] the Lord Bates was at pains to insist that this that this would not mean that guardians would be provided only from the moment of a "reasonable grounds" decision:

> *…the reference here to "reasonable grounds" does not tie the appointment of a child trafficking advocate to a reasonable grounds decision or the national referral mechanism. The wording of the clause as it stands seeks to ensure that all children who are suspected of being victims of human trafficking are appointed a child trafficking advocate in a timely manner, regardless of whether they have entered the national referral mechanism system.* [10]

However, regard can be had to statements made in parliament only where a statute is ambiguous[11] and in any event a differently constituted Government could take a different approach. **We urge MPs to reject Lord Amendment 47.**

It is a matter of regret that the amendment does not make provision for guardians for all separated children. Only if separated children can be supported, will those among them who are trafficked be identified. We and others have been fighting this one for over a decade; we shall fight on. Today marks progress but there is much more to do.

LORDS AMENDMENT 72 OVERSEAS DOMESTIC WORKERS AND GOVERNMENT PROPOSED AMENDMENTS IN LIEU

> *I do not say this lightly, but if I were not to support this amendment [*Lords Amendment 72)*, I would feel complicit in slavery and servitude.* Baroness Hamwee, 25 February 2015 (Lords Report) col 1698

[8] Joint Committee on Human Rights, Human Trafficking, Twenty-sixth report of session 2005-6, HL Paper 225, HC 1127.
[9] 25 Feb 2015 : Cols 1659 (Lord McColl of Dulwich), 1664 (Baroness Hamwee).
[10] HL Report 25 February 2015, col 1666.
[11] *Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3.

Purpose of Lords Amendment 72

Lords Amendment 72 reintroduces some but not all of the protections against exploitation for migrant domestic workers removed on 6 April 2012 for those applying for leave to enter the UK on or after that date. It provides for domestic workers to change employer and extend their leave. Where they have left a situation of slavery they are given a three-month breathing space in which to find a new position, a provision that resembles the breathing space given to international students to find a new course when they are the unwitting victims of the closure of educational institution.

This amendment, which was tabled by Lord Hylton, Baroness Royall of Blaisdon, the Lord Bishop of Carlise and Lady Hanham at Lords Report, and, following a powerful and distressing debate,[12] garnered support from all parts of the House.

Purpose of Government amendments in lieu

These would provide for the immigration rules to make provision for leave to remain in the UK to be granted to an overseas domestic worker who has been determined to be a victim of slavery or trafficking. Such persons would be allowed to work only as domestic workers. They would have no resource to public funds. They would be allowed to stay for six months minimum. They would be able to change employer. No enforcement action can be taken while they are in the National Referral Mechanism.

BRIEFING

The Government amendments in lieu will protect overseas domestic workers. FALSE

Current	**Proposed in Govt amendment in lieu**
No removal while within National Referral Mechanism	No removal while within National Referral Mechanism
One years' discretionary leave following positive "conclusive grounds" decision, founded in obligations under EU Trafficking Directive	Minimum six months leave following positive "conclusive grounds" decision ["provided there are no public policy grounds for refusing leave and subject to any safeguards needed specifically to avoid victims falling into another abusive employment relationship"]
Recourse to public funds	No resource to public funds
Entitled to work in any job (including but not limited to as an overseas domestic worker)	Only entitled to work as an overseas domestic worker

The table compares the position under the government amendments with the current positon for a person in the National Referral Mechanism (which is intended to be adapted to cover enslaved persons as well as trafficked persons after the Bill becomes law).

Why then, would an overseas domestic worker opt for the new leave rather than the existing discretionary leave which the Government indicates in its letter to peers would be used in any event for those needing to stay more than six months?

[12] 25 February 2015 col 1689 http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/150225-0002.htm . For the debates at Lords' Committee see http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141210-0001.htm.

- Why would an overseas domestic worker who is not persuaded to leave his/her employer by the existing protection on offer be persuaded to do so by what is offered through the Government amendment in lieu?

The Government says in its letter to peers about the amendments in lieu

> *"This will mean that victims can come forward to the authorities secure in the knowledge that they will be supported and without fear of being removed or deported"*

- But the existing leave for trafficked persons does not always have that effect now, so why should the lesser, shorter, leave?

- What are the chances of getting work if you can only stay in the UK for a maximum of xi months? And without work, how will you live without falling back into exploitation and abuse, when you have no recourse to public funds?

The Government has appended two notes from police officers to its letter to peers, one from Chief Constable Shaun Sawyer, National Policing Lead for Modern Slavery and one from Ian Cruxton, Director of the National Crime Command at the National Crime Agency. Both men's objection to Lords Amendment 72 is that, in the words of Mr Cruxton:

> *If victims of abuse from their employer can simply change employers without reporting the appropriate authorities then the abuse may not be identified*

With the result, in the words of Mr Sawyer, that "perpetrators will remain free to recycle their abuse." But perpetrators are free to perpetuate abuse now, because workers do not come forward, and they will not come forward with the offer only of six months limited protection. Only when they feel safe are workers likely to have the confidence to tell the authorities about what they have suffered. In any event, if the worker notifies the authorities of the change of address and new employer then the reporting Mr Sawyer identifies as necessary will happen.

We can persuade workers in the current system or what is proposed in the Government amendments to come forward to seek help. FALSE

> *"…that is a relationship of power to powerlessness. When it comes from that kind of relationship, particularly if there is a prospect of a family being left behind—say, in India—who will get a regular monthly pittance, what would a signature on a piece of paper really be worth?"* Lord Harris of Pentregarth [13]

The Lord Bates said

> *. If someone is on an overseas domestic worker visa and they feel their treatment by their employer is something amounting to servitude or abuse, they are able to come themselves to an organisation like Kalayaan or the police or the national referral mechanism.*
>
> *…Overseas domestic workers generally have the protection of UK employment law. Anyone who believes they are mistreated by their employers has access to a number of organisations who*

[13] *Ibid.*

can help, including the police, ACAS, the pay and work rights helpline as well as the employment tribunals where the tribunal or the court has jurisdiction in their circumstances.[14]

But Kalayaan gave evidence to the Public Bill Committee that fewer overseas domestic workers on the tied visa are seeking it out than did under the old visa. It said

> ***Driven Underground: Reports of abuse have increased yet fewer victims are coming forward for help***
>
> *1. The numbers of workers on the tied visa coming to us for support and advice have dropped in comparison with those on the original visa in spite of the numbers of visas being issued remaining consistent (there was a slight increase in 2013). However, of the workers on the tied visa who registered at Kalayaan in the year since the tied visa was introduced, the reports of control and deprivation of autonomy or freedom have increased. It appears clear that the reason fewer domestic workers are coming to Kalayaan is either because they are physically prevented from leaving, or they are too scared to leave as they have no money, documents and have been told by their employers that they are prohibited by the immigration rules from leaving them. Otherwise they have escaped and are too scared to approach Kalayaan for advice or have been told that the help we can give them in practise under the new rules is now extremely limited and of little practical use to them.* [15]

The major disincentive to coming forward may be the prospect of having to leave the UK. An analogy can be drawn with survivors of domestic violence. The Government provides a route for settlement to those who suffer domestic violence while in the UK on a spouse visa,[16] in the hope that this will be an incentive to people to leave the abusive relationship, not to stay in it because of fears about their immigration status.

It places heavy demands upon a person in a situation of exploitation, enslavement and extreme poverty to reach any of these sources of help, let alone where they do not speak English and are isolated and alone; let alone when they are undocumented, fear removal and are reluctant to jeopardise such income as they do receive and such status as they have. Cuts to legal aid affect cases before the employment tribunals; having to remain with the employer a person wishes to sue affects the case even more. The barriers are so high that any suggestion that these courses of help are available in practice must be viewed with scepticism.

And if workers do come forward, what help do they get? Under the government amendments in lieu, six months leave, no recourse to public funds, scant options to find a job for such a short time.

It is easy to feel uncomfortable that people should be allowed to bring domestic workers with them to the UK and to reach for a paternalistic response, given the documented cases of abuse and exploitation. But such a response does little or nothing to change the dependency of

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[14] HL Report, 25 February 2015, cols 1702-3.

[15] See MS 18 9 September 12014 http://www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/memo/ms18.htm . Alison Harvey, ILPA's legal director, is a trustee of Kalayaan.

[16] HC 395, paragraphs 289A to 289C, see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370924/20141106_immigration_rules_part_8_final.pdf (accessed 20 February 2015)

migrant domestic workers and the imbalance of power which their exploitation can take place, both of which are likely to follow them around the world. Overseas domestic workers are vulnerable to exploitation because they are responding to a multiplicity of imperatives. Their own poverty and the need to provide for children and elderly and sick relatives, whether or not combined with fear of a powerful and abusive employer, may lead them to regard their situation of exploitation and slavery as the least bad alternative.[17] Even when they decide that it is the least bad alternative, some do not have the money to leave the UK as a means of leaving their situation, including if part of the abuse involves underpayment or the withholding of wages and they may not have control of their passports.

The way to protect people against exploitation is to give them more choices, not fewer. The UK response to the exploitation of migrant domestic workers should take account of global realities and contribute to ensuring that exploitation and slavery is not the least bad alternative for these workers worldwide.

Changes in Statement of Changes in immigration rules HC 1025 and procedural changes will protect domestic workers FALSE

> *The noble Lord also wrote about the new visa-linked contract and the cards to be given to both employer and worker. These may help slightly, perhaps most of all with the majority of decent employers. However, the caseworkers at the point of departure overseas have to be satisfied that the national minimum wage will be paid. How, in practice, can they do that when the employer is bound to say yes to their questions*? Lord Hylton[18]

On 26 February 205 Statement of Changes in Immigration Rules HC 1025 was published. It contains amendments in respect of overseas domestic workers which we anticipate will be prayed in support of arguments against Amendment 72. The changes in no way obviate the need for amendment 72. The four changes are:

- To make it a requirement of the rules that the caseworker be satisfied that the worker will be paid in accordance with the National Minimum Wage Regulations in leave to enter and leave to remain applications.
- To add a requirement to prevent employers using an exemption in the National Minimum Wage Regulations that was designed for au pairs. This allowed employers to decline to pay the Minimum Wage to those living as part of the family.
- To provide a more detailed template contract [this has not yet been published.]
- To use the same template contract for overseas domestic workers in private households and in diplomatic households.

Baroness Garden of Frognal heralded these changes at Committee stage in the Lords. She also described existing "safeguards" and process changes [19]

- *All individuals applying to come to the UK on an overseas domestic worker visa must also provide evidence with their application that they have agreed in writing the core terms and conditions of their employment in the UK…*

[17] See *Still enslaved: The migrant domestic workers who are trapped by the immigration rules* Kalayaan, (April 2014) http://www.kalayaan.org.uk/documents/tied%20visa%202014.pdf See also Kalayaan's *Response to Draft Modern Slavery Bill*, December 2013 available at http://www.kalayaan.org.uk/documents/Draft%20Modern%20Slavery%20Bill%20Response.pdf
[18] HL Report, 25 February 2015, col 1689.
[19] Baroness Garden of Frognal, 10 December 2014, col 1866-1867.

- *….the Home Office has started a trial, through the Border Force, of handing personally to workers as they come in the form that tells them what their entitlements are. These forms are not just in English… ".*[20]

Baroness Garden of Frognal was unconvinced by her own arguments

> *…. of course, I hear from around the Committee the concerns that these documents will not be adequately and legally kept to…*[21]
>
> *I agree that it is possible that they* [forms handed out at port] *are snatched away by the employers and put in a passport...I*[22]
>
> *… The power of the employer and the fact that people support family links back home make it extraordinarily difficult for people to complain about their employment….*[23]

Small wonder that a "boiling" Baroness Royall of Blaisdon declared "I cannot believe the guff that the Minister has had to read out."[24]

The Lord Bates at Lords Report returned to the theme:

> *We have introduced a new template contract. The contract must stipulate the sleeping arrangements, the minimum wage, the holiday pay and that the employer cannot withhold an individual's passport. The clearance officer must be satisfied under a test of credibility that the employer will pay the national minimum wage. The person will now be interviewed by an officer directly and individually . … We also have the information card which is going to be made available to people who come to the UK advising them where to go for help.*[25]

Reading this it might be thought that all these protections are new. They are not. The Home Office Entry Clearance Guidance and Instructions already makes provision for interviews:

> ***WRK2.1.8 Interviews***
> *Where an interview is appropriate, applicants should be interviewed on their own, at least on their first application, to establish that they understand the terms and conditions of the employment and are willing to go to the UK.*[26]

The guidance also makes provision about the minimum wage

> ***WRK2.1.9 The National Minimum Wage***
> *Domestic workers must be paid at least the NMW unless they are subject to an exemption.*[27]

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[20] Baroness Garden of Frognal, 10 December 2014, col 1866-1867.
[21] HL Report 10 December 2014 col1866.
[22] *Ibid.* Col 1869.
[23] *Ibid.*
[24] 10 December 2014, col 1870.
[25] HL Report 25 February 2015 col 1702.
[26] https://www.gov.uk/government/publications/overseas-domestic-workers-in-private-households-wrk21/overseas-domestic-workers-in-private-households-wrk21--2#wrk218-interviews
[27] *Ibid*.

Signed statements, albeit in a different format, are already required:

> ***WRK2.1.7 Statement of terms and conditions of employment***
> *The employer must provide a signed statement including:*
> - *Maintenance and accommodation*
> - *Confirmation that the domestic worker can maintain and accommodate themselves adequately without recourse to public funds.*
> - *Confirmation that the domestic worker will have their own separate bedroom if living in the employer's house. This is a requirement and must be provided.*
> - *Specific terms and condition of employment*
>
> *Employers should complete the 'statement of terms and conditions of employment' found at appendix 7 of the Immigration Rules and the O[*verseas*] D[*omestic*] W[*orkers*] should sign it to confirm acceptance of the conditions.*

It is too easy for an employer to present a contract of employment that promises the earth for the purposes of immigration control, then pay the domestic work nothing, force him or her to sleep on the floor and work long hours and subject him/her to beatings. Evidential requirements do not remove the risks of exploitation. It is possible to produce evidence that money has been paid to a domestic worker but demand that money back with menaces. The specialist charity Kalayaan, whose figures Ministers accept,[28] reports that 65% of the 120 domestic workers on the new visa that they saw between 6 April 2012 and 6 April 2014 did not have their own rooms but shared children's rooms or slept on the floor of communal areas, while 53% worked more than 16 hours a day. Sixty per cent were paid less than £50 a week.[29]

Those who attended the meeting convened by Baroness Cox in parliament at Lords' Committee stage, at which ILPA was represented, will have heard overseas domestic workers describe how they did not get documents supposed to tell them their rights or how, when they did and told the employer that the employer had promised to pay them or to give them a day off, they were laughed at by employers who pointed out that there was nothing the worker could do about it. Many had no phone. Those accounts reflect the experiences recounted to ILPA members working with those trying to escape domestic servitude.

Templates and guarantees as to salary do not work. [30] Either the requirement of the rules that the caseworker be satisfied that the worker will be paid in accordance with the National Minimum Wage Regulations is going to result in wholesale refusal of overseas domestic worker visas or it is going to provide no protection additional to that currently in place. The removal of the exemption in the second amendment may assist some workers, those working for law abiding, employers, bas highlighted by the Lord Hylton, but the rest of that amendment and the other amendments repeat existing so-called safeguards and place on record good intentions but do not change the reality for migrant domestic workers. Statements such as the Baroness Garden of Frognal's

> *We are also seeking to make sure that all employers who come to work in this country are fully aware of the compliance which they should make for the people that they employ*

[28] See HC Report 4 Nov 2014 : Column 764.
[29] *Ibid.*
[30] HL Report, 10 December 2014, col 1861.

treats people who keep slaves as though they were employers with an interest in health and safety, employment and tax law.

The problem has not been proven to be other than tiny = the problem is tiny. FALSE

Baroness Gardner of Frognal said

> " *Home Office internal management information suggests that between May 2009 and July 2014 there were 213 confirmed cases of trafficking for domestic servitude involving non-EU nationals. Of these, only 41 were linked to domestic worker visas…an average of 8 per year…before we made the changes to the visa rules and added new protections, there were 16 confirmed domestic servitude cases linked to these visas. So, far from a rise in servitude linked to overseas domestic worker visas, the numbers fell after 2011 and have been stable since.*[31]

At the risk of dignifying this with a detailed response:

- Statistics on small numbers of coming forward/being discovered is compatible with a small problem or a large one. They prove nothing about the scale of the problem. All the qualitative evidence points to reasons why persons being exploited might not come forward and might not be identified.
- Figures on "confirmed cases" give no indication of the scale of the problem.
- No inference can be drawn from the relative proportions of those with a domestic worker visa and those with none. The Minister claimed that: *"The numbers that are coming forward appear to be stabilising"* but numbers are too small to be able to make assertions about trends. The Minister's assertion that numbers were stabilising "*because we are taking measures to try to ensure that the employers and the workers have a full view of their rights when they come here"* appears to be speculation with no evidential basis.

The Minister's figures tell us that:

- some migrant domestic workers are exploited.
- some migrant domestic workers are exploited outside the visa system and some within.

Again , the Minister did not convince herself:

> ***Lord Alton of Liverpool****. …the figures that she has just given to the Committee are very dubious? …By definition, many of these will be people who are frightened out of their minds about going to any of the authorities. … Is this not just the tip of an iceberg? By ignoring it we are not going to help the situation at all…."*
>
> ***Baroness Garden of Frognal*** *I entirely accept what the noble Lord says; it may well be the tip of an iceberg…."I entirely accept the difficulty of identifying the people who are abused,…*[32]

The backdrop to the statistics game is that prior to 6 April 2012, the vast majority of domestic workers came in temporarily, with employers who had entered as visitors, and left with their employers. In 2009, for example, 13,175 domestic worker visas were granted for six months, and 1600 for 12 months. That ratio of just over eight to one reflects the overall c. 10 to 1 ratio during the period. Few domestic workers remained long enough to qualify to settle. In 2010 15,350 visas as domestic workers were issued and 1060 domestic workers were granted

[31] HL Report 19 December 2014 Col 1868.
[32] *Ibid.*

settlement.[33] Three hundred and ninety six domestic workers were granted settlement in 2006, 434 in 2007, 784 in 2008 and 845 in 2009, rising to 1060 in 2010.[34] The increase is in line with general spikes in applications for settlement and citizenship at the time, associated with anticipation of the coming into force of the "earned citizenship" provisions of the Borders, Citizenship and Immigration Act 2009.

To change would create an anomaly in the system FALSE

Baroness Garden of Frognal made the circular argument

> *"Allowing them to change employer is not compatible with the purpose of this particular visa."*

She then argued

> *It would create an anomaly in the system if non-skilled, non-European Economic Area domestic workers could come to the UK with an employer and then change employer and stay here in a way that is denied to other non-skilled, non-EEA workers."*

The suggestion that persons should be left in situations of exploitation or at risk of these to maintain the integrity of a model is offensive. But it also posits a "high skilled permanent; low-skilled temporary" model that is a huge oversimplification of the current rules. In the high skilled category one finds the temporary intra-company transferees.[35] Private servants in diplomatic households may apply for settlement after five years;[36] this is not going to change as it is part of the UK's obligations under the Vienna Convention on Diplomatic Relations of 18 April 1961. Any person remaining lawfully for more than 10 years, highly skilled or not, may apply for settlement, this arises from the UK's obligations under Directive 2003/109/EC of 25 November 2003. The requirement for the domestic worker to have been with the employer for 12 months prior to entering the UK brings into play parallels with the family immigration rules where skills levels are not relevant.

While Baroness Garden cited figures that "Between 2009 and 2013, on average 5,600 overseas domestic workers in private households extended their visas annually, " she said nothing about how many extensions were made. The figures above on settlement are relevant; it is possible to settle after five years. The latest tables show that in 2012 a total of 1,256 people in all forms of "permit free employment" (of which domestic workers are a subset) settled. Given the points that the Minister was prepared to argue in the debate it comes as little surprise that she stated:

> "It is arguable that this temporary, non-economic route should not have preference over those who choose to follow the official routes into employment in this country."

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[33] *Employment-related settlement, Tier 5 and overseas domestic workers*, Home Office June 2010 paragraphs 7.3 and 7.13, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269012/employment-related-consultation.pdf and *Control of immigration: Quarterly statistical summary, UK Quarter 4 2010, see* https://www.gov.uk/government/statistics/control-of-immigration-quarterly-statistical-summary-fourth-quarter-2010

[34] *Control of Immigration, op cit.,* paragraph 7.13.

[35] HC 395, paragraphs 245G to 245GF, see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370915/20141106_immigration_rules_part_6a_final.pdf .

[36] HC 395 paragraph 154 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370911/20141106_immigration_rules_art_5v2.pdf and paragraph 245ZS https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370915/20141106_immigration_rules_part_6a_final.pdf (both accessed 20 February 2014).

Albeit that the description of the route as "non-economic" sits ill with her earlier arguments. But the domestic worker category is every bit as official as other worker categories under the rules and the work the workers at the very least as hard.

The change would offer no greater protection. FALSE.

The fallacy on which this argument is based was exposed in the debates:

> ***Baroness Lister of Burtersett:*** *Could the Minister explain how it would make abuse more, rather than less, likely if they have the power to make that choice? I did not quite follow the argument.*
>
> ***Baroness Garden of Frognal:*** *If they had power to extend their visas indefinitely then the employer could keep them in the country indefinitely.*
>
> ***Baroness Lister of Burtersett:*** *I thought the argument was that they had the power to change their employer. How does that make them more likely to be abused….*[37]

There is evidence enough. Numerous reports have made the case against the current laws[38]. In the words of the Joint Committee on the Draft Modern Slavery Bill:

> *In the case of the domestic worker's visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of slavery. The moral case for revisiting this issue is urgent and overwhelming. Protecting these victims does not require primary legislation and we call on the Government to take immediate action*' [39]

Making a change now in no way prevents the Government from coming up with a better solution and implementing that in future. But it does provide domestic workers with protection against slavery and servitude in the meantime. We echo Sir John Randall MP's response to the Minister Karen Bradley MP's offer of an enquiry, that he had

> *"…met too many victims to be able to say that it is a matter for another day".*

[37] 10 December 2014, cols 1869-1870.

[38] Report of the Joint Committee on the Draft Modern Slavery Bill, Session 2013-2014,HL Paper 166, HC 1019; Joint Committee on Human Rights, *Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill*, Third Report of Session 2014-15, HL Paper 62, HC 779; Kalayaan *Still Enslaved: The Migrant Domestic Workers who are Trapped by the Immigration Rules* (Alison Harvey, Legal Director of ILPA, is a trustee of Kalayaan); Centre for Social Justice, *It Happens Here*; Andrew Boff, Conservative leader of the GLA, *Shadow City*. See also the Home Affairs Select Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008-2009, HC 23.

[39] Paragraph 5, Introduction, *Report of the Joint Committee on the Draft Modern Slavery Bill*, Session 2013-2014,HL Paper 166, HC 1019.