ILPA SUBMISSION TO THE REVIEW OF THE OVERSEAS DOMESTIC WORKERS VISA

Introduction

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.

The principle that shapes ILPA's answers to the questions that follow is that the way better to protect overseas domestic workers and domestic servants in diplomatic households is to give them more choices; not fewer. Safeguards should be judged on whether they empower the worker. The creation of monitoring and compliance mechanisms will increase bureaucracy but is unlikely to increase protection unless it empowers the worker.

1. ISSUING

1.1 Evidence of current arrangements

Kalayaan, whose figures Ministers accept,[1] 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.[2]

At a meeting convened by Baroness Cox in parliament at Lords' Committee stage of the Modern Slavery Bill, at which ILPA was represented, 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.

On 26 February 2015 Statement of Changes in Immigration Rules HC 1025 was published. The four changes it made were:

- 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;

[1] See HC Report 4 Nov 2014: Column 764. Alison Havey, ILPA Legal Director, is a trustee of Kalayaan.
[2] *Ibid.*

- 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;
- To use the same template contract for overseas domestic workers in private households and in diplomatic households.

With the exception of the last, these measures are not new. We append a copy of the letters to workers in use in 2013. The Home Office Entry Clearance Guidance and Instructions in force immediately prior to the changes already made 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.*[3]

The guidance also made 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.*[4]

Prior to the issuing of the current Modernised Guidance, the old Immigration Directorate Instructions used to say

> *3.3.* ***The National Minimum Wage***
> *In order to defend any criticism that the Home Office encourages exploitation of workers the employer should be asked to provide a brief statement to the effect that he/she would comply with UK legislation on the National Minimum Wage once here. However a refusal cannot be maintained on the basis that the employer does not comply with this request.*[5]

Signed statements, albeit in a different format, were required prior to February 2015:

> ***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.*

[3] https://www.gov.uk/government/publications/overseas-domestic-workers-in-private-households-wrk21/overseas-domestic-workers-in-private-households-wrk21--2#wrk218-interviews (accessed 5 June 2014).
[4] *Ibid.*
[5] Immigration Directorate Instructions, Part 5, Section 12, text as at November 2007.

Historically, the vast majority of domestic workers came in temporarily, with employers who have come in as visitors, and left with their employers. Prior to the 6 April 2012 changes, those coming to work for an employer coming to the UK for settlement, returning after a period abroad, or for long-term work or business under Tier 1 or Tier 2 were given visas for a year at a time. The ratio of the two types of visa granted was around 10:1; 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 settle. Most domestic workers did not apply to extend their leave in the UK: 5275 applications were granted in 2006, 6425 in 2007, 5845 in 2008 and 6425 in 2009. The increases may well be related to the increased numbers of overseas workers coming to the UK in those years.

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.[6] In 2010 15,350 visas as domestic workers were issued and 1060 domestic workers were granted settlement.[7] The latter figure was a third higher than the figure for 2009 but this was in ILPA's view associated with to the change in the immigration rules on settlement, permitting settlement after five years rather than four, rather than an increase in overall numbers. As to applications, there were general spikes in applications for settlement and citizenship in 2009/2010, associated with anticipation of the coming into force of the "earned citizenship" provisions of the Borders, Citizenship and Immigration Act 2009.

Baroness Gardner of Frognal said during debates on the Modern Slavery Bill

> *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.*[8]

This is poorly reasoned, as the Minister acknowledged:

> ***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,…*[9]

---

[6] *Control of Immigration, op cit.,* paragraph 7.13.
[7] Consultation paper: *Employment Related Settlement Tier 5 and Overseas Domestic workers*, available at https://www.gov.uk/government/publications/changes-affecting-employment-related-settlement-tier-5-and-overseas-domestic-workers (Accessed 4 June 2015), paragraphs 7.3 and 7.13, and *Control of immigration: Quarterly statistical summary*, UK Quarter 4 2010, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116074/control-immigration-q4-2010.pdf (accessed 5 June 2014).
[8] HL Report 19 December 2014 Col 1868.
[9] *Ibid.*

- 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.

For additional information on the current situation see

- 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* ;
- Centre for Social Justice, *It Happens Here*;
- Andrew Boff, *Shadow City*;
- Home Affairs Select Committee, *The Trade in Human Beings: Human Trafficking in the UK*, Sixth Report of Session 2008-2009, HC 23
- Briefings for the Modern Slavery Bill.

1.1.a (Supplementary) In relation to pre-existing abusive relationships, is it your understanding that, if detected in the context of an application under rr159A-E, the existence of abuse would preclude the granting of an ODW visa? If so, could you explain how?

It is not easy to tell what happens now because the relevant part of the Home Office Modernised guidance says very little and the link in the guidance is to the Home Office intranet.[10] **The review should ask for sight of internal guidance but should also attempt to establish whether such guidance as exists is followed in practice.**
It is anticipated that, as far as the specific provisions of HC 395 paragraphs 159A to E are concerned, evidence of abuse would in most cases go to the question of the Immigration Officer's being satisfied that the requirements of paragraph 159A(va) of the Immigration Rules are met.

[10] See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422047/ODW_v12_0.pdf page 33 and the note saying that the link to the intranet has been removed. (accessed 29 May 2015).

There is reference in the Home Office Guidance to the "General Grounds for Refusal." This is a reference to Part 9 of the Immigration Rules.[11] As to grounds for a mandatory refusal see paragraph 320(7A) of the Immigration Rules, false representations or false documents (whether or not material to the application and whether or to the applicant's knowledge) and material facts not disclosed.

As to discretionary refusal see paragraphs 320(8), (8A), 11(iv). There is room to debate materiality but, given that the requirements of the rule include seeing the employee treated in accordance with some standards pertaining to the employment and given the UK's international obligations, it is anticipated that an immigration officer minded to refuse could do so. The difficulty would be whether they were able to do so in a way that did not leave the worker vulnerable to reprisals from the employer (whether or not the worker him/herself had blown the whistle).

1.1.b (Supplementary): Are you clear that the employer in such an abusive relationship would not be refused a visitor visa on that ground?

No, but we are clear that they could be. See above re non-disclosure. In addition to the grounds mentioned above, see paragraph 320(19) m exclusion deemed conducive to the public good because of character, conduct, associations "or other reasons." ***We recommend that the review gather evidence of practice from Home Office staff at posts overseas.***

1.3 *Should the application process deny visas to those already in abusive relationships?*

We suggest that it would be contrary to the UK's international obligations, including under Article 4 of the European Convention on Human Rights, which imposes positive obligations upon States[12] to admit a person to the UK for the purpose (whether or not the main purpose) of subjecting another to slavery or servitude (see above re character grounds for refusal) without the admission being part of a strategy to thwart that purpose that purpose and it would be contrary to such obligations to admit a person to come to the UK to undertake forced labour without a plan to intervene.

The question of the extent of the extra-territorial application of the Convention,[13] including absolute obligations such as those imposed by Article 4, is contested.[14] We point out that the definition of a human rights claim in the immigration context in s 113(1) of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014 includes a claim that a decision to refuse a person entry to the UK would be unlawful under section 6 of the Human Rights Act 1998 (c 42). We consider that Article 4 obligations apply at the point of making the decision on the visa. In the case of a grant disputes are less practical moment as the

[11] See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422941/20150406_Immigration_Rules_-_Part_9_final_v4.pdf (accessed 29 May 2015).
[12] See See *Siliadin v France* [2005] ECHR 545; *Rantsev v Cyprus and Russia* C-25965 [2010] ECHR 22.
[13] See *Al-Skeini and others v Secretary of State for Defence* [2007] UKHL 26; *Smith v MOD* 2013] UKSC 41
[14] See Rt Hon David Cameron MP, Prime Minister, speech to the Conservative Party Conference 2014 "The suggestion that you've got to apply the human rights convention even on the battle-fields of Helmand." See http://press.conservatives.com/post/98882674910/david-cameron-speech-to-conservative-party (accessed 5 June 2015).

parties will arrive in the UK and we anticipate that there is no dispute that the obligations, along with a host of others, apply at that point. Disputes are relevant in the case of a refusal, especially, albeit not only, in circumstances where the refusal would create a fresh risk to the worker or increase existing risk. ILPA considers Article 4 may require the Government to take steps to mitigate the effects of any refusal.

As to domestic law, if the existing abuse means that the Entry Clearance Officer is not satisfied that the employment relationship would meet the requirements of the rules, then while s/he might have power to waive some requirements, such waivers cannot be to the extent of thwarting the purpose of a rule. The worker could be granted leave outside the rules, but this appears to us unlikely to happen in practice and, if it did, the worker would still be unable to travel if s/he could not meet, and did not have assistance with air fares etc.

There may be scope to refuse an employer applying for a visa at the same time as the worker s/he is abusing under the general grounds of refusal going to character. However, not all employers will be applying for a visa at the same time as the worker. Some will be British citizens. Some will have indefinite leave to remain; others pre-existing limited leave. Where the employer has leave it is open to the Home office consider whether there are grounds for cancellation or curtailment of that leave but such an exercise must take into account all circumstances, including rights under Article 8 of the European Convention on Human Rights, and the proportionality of a decision to cancel leave.

In all cases, regardless of the status of the employer, it is possible to consider whether action should be taken against the employer as a matter of criminal law, raising questions of jurisdiction, of *forum conveniens* and of the chances of securing a conviction.

As per our response above, it is necessary to consider whether any refusal can be managed to try to ensure that it does not create a risk for the worker while at the same time, as a matter of procedural fairness, ensuring that the employer knows why s/he is being refused, so that s/he is able to challenge this.

These matters are not addressed in the published Entry Clearance Guidance and Instructions on domestic workers, WRK2.1[15] or in the published modernised guidance.[16]

The Home Office faces similar problems in other areas, such as that of forced marriage. However, the Home Office guidance on "reluctant sponsors" in forced marriage cases[17] is dealing with sponsors who are British citizens or settled in the UK. The guidance does not deal with the situation where the foreign national is being forced into marriage. The guidance does give details of the Forced Marriage Unit in the Foreign and Commonwealth Office and **we recommend that the reviewer consult with the Forced Marriage Unit to understand their practice in forced marriage cases where the risk arises outside the jurisdiction of the UK to a non-citizen.**

[15] 14 April 2015. Available at https://www.gov.uk/government/publications/overseas-domestic-workers-in-private-households-wrk21/overseas-domestic-workers-in-private-households-wrk21--2#wrk218-interviews(accessed 5 June 2015).
[16] Domestic workers in private households: Modernised Guidance, Home Office 9 April 2015, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422047/ODW_v12_0.pdf (accessed 5 June 2015).
[17] See Annex 2A to the Guidance and Instructions on forced marriage, available at (accessed 5 June 2015). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274423/annexa2.pdf

1.2 Whether the current process is satisfactory?

No.

As set out in answer to 1.1, the evidence suggests that the current process is not followed, e.g. workers are not interviewed separately from the employer in all cases. It is unsatisfactory that a process exists on paper that is not followed in practice.

It is difficult to see how some aspects of the policy could be followed in practice. ***The review should ask Home Office staff in overseas posts how they satisfy themselves, as they are bound to do under the Immigration Rules, that the worker will be paid in accordance with the National Minimum Wage Regulation, to understand how the current process is working.***

Even if it were followed, the current process is unlikely to provide protection for the reasons discussed in response to questions 1.1 above and 1.5 below. However, as discussed in response to question 1.5 below, it is necessary to be realistic about what any process could be expected to do.

1.4 How could the issuing process be improved to protect potential victims?

See response to questions 1.5 to 1.7 below. Not all applicants at risk are "potential" victims, some are being exploited in the country of application.

1.5 What would an ideal application process look like?

There is no "ideal" application process. Risk cannot be mitigated in all cases to a level where no worker will be abused. Domestic workers and domestic servants in diplomatic households are the ones taking these risks. They are making choices, both in the UK and in countries far distant from the UK. Their choices may be between a range of difficult and dangerous jobs, not limited to domestic work, and the alternative of having no work, no income and no means of working to achieve their aspirations for themselves and for their families. [18]

It is too easy for an employer to present a contract of employment that makes promises for the purposes of immigration control, then pay the domestic worker nothing, force him or her to sleep on the floor and to 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 to demand that money back with menaces.

Templates and guarantees as to salary do not work.[19]

---

[18] 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 (both documents accessed 4 June 2015)

[19] HL Report, 10 December 2014, col 1861.

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*[20]

treat people who keep slaves as though they were employers with an interest in health and safety, employment and tax law. The Minister appeared to repudiate 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...*[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]

The removal of the exemption from the National Minimum Wage, as described in answer to 1.1 above, may assist some workers, those working for law-abiding employers, but does not change the reality for those subject to exploitation. In the words of Lord Hylton, who has many years of experience of this topic:

> *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*? [24]

What an application process, and indeed the visa as a whole must do, is give those who are taking the risk more choices not fewer; more rights, not fewer. The test should be: is the application process in any position to increase the choices open to worker in the country of application, including not to travel on the visa? If not, the utility of questions going to current abuse is open to question and, as Amnesty International points out in its submission, if refusal of a visa on this basis, implicitly or explicitly, heightens the risk to the worker, then the justification for making the enquiry is dubitable. See also our response to 1.3 above.

The worker may prefer the abusive situation to being unable to earn a living. Even where they do not, there may not be support, whether legal or practical, available in the country in which the worker is applying. It will not always be the case that there are organisations in the country of application which could support the worker and provide them with a place of safety in the country of application or even assist them to return to their country of nationality if they does not wish to go through with the application process, even if they could be assisted to reach them.

---

[20] *Ibid*. col 1871.
[21] HL Report 10 December 2014 col 1866.
[22] *Ibid*. Col 1869.
[23] *Ibid*.
[24] HL Report, 25 February 2015, col 1689.

What the application process may be in a position to do is to make the worker aware of choices open to him/her if s/he reaches the UK and things are, or go, wrong. At the level of the application process yes this means the provision of information, orally, in a language the worker understands, with a carefully chosen interpreter. Yes, it means a contract that sets out minimum standards of treatment, providing for the National Minimum Wage. But it also means ensuring that the options the worker has if things are, or do go, wrong are real, not illusory. It means ensuring that the promises of assistance in the UK are real not illusory: a right to change employer; a route to settlement; access to legal advice and representation for free if the worker cannot pay to address immigration status and reparations.

1.6 Should the granting of a visa be subject to a security bond or any other conditions?

We do not consider that the granting of a visa should be made subject to a security bond. The bond gives the worker no more power and gives the employer an additional reason to fear the worker's complaint and take steps to prevent such a complaint being made. There are also instances of fees etc. being passed onto the worker and we fear that the same could be done with a bond.

It is usually the case that any funds raised by the Home Office go into the consolidated fund. This must be born in mind when considering any suggestions that money raised through this route could be used by the Home Office to fund its work around migrant domestic workers. The Home Office has been unable to retain funds from highly lucrative routes such as premium service applications that could have been used to allow it to provide more of those services (and make more money).

1.7 Should the worker receive information about possible abuse and what to do, and if so in what form

Yes. Subject to all the reservations expressed above about how many workers it will help, it has the potential to help some.

Information should be provided orally in an interview at which the employer is not present. An interpreter should be present so that the worker has an opportunity to ask questions and careful consideration must be given to the choice of interpreter in posts overseas, where the worker may have concerns about confidentiality and thus be reluctant to speak. The information also should be given to the worker in writing at that interview in a language they understand.

The employer should be given information in a language that they understand, so that they are aware that the worker has been informed of his/her rights. However, we do not suggest giving the employer information about helplines etc. as this may encourage them to remove or police the employee's phone.

Information about organisations such as Kalayaan, Justice for Domestic Workers etc. should be given in the context of information about the help and support, English language teaching etc. that they provide, rather than in the sole context of abuse, so that neither good nor bad employers consider that getting in touch with a charity such as Kalayaan is necessarily to be

viewed as a complaint. It is always open to the employee to share information with their employer if they wish to do so.

An interview may be an opportunity for some persons to speak up, but for the reasons discussed, many workers will not speak up. And indeed the interview may give worker the confidence to go through with the visa application, feeling that if something went wrong s/he knows where to turn. It is important that all Home Office staff understand that they should not hold having said that all is fine in such an interview against a worker's truthfulness. The asylum process provides too many examples of in information given in extremely difficult conditions at screening being trawled to identify inconsistencies with what is said later and then being used to accuse an applicant of untruthfulness.

2. TERMS

2.1 Given the current immigration policy, which is not to allow unskilled workers into the UK save in exceptional cases (such as a domestic worker accompanying a visitor), is it right to make provision for overseas domestic workers as an exception?

Answered with

2.1.a (Supplementary) Could you summarise your 'coherence' argument being (as I understood it) that the place of ODWs is more closely aligned to family members and/or workers generally, rather than an exception for unskilled workers, both in terms of its overall place in immigration policy and particular in relation to a right to settlement.

The question is phrased in terms of an obligation ("is it right?"). There are legal obligations to afford protection to persons who are subject to forced labour and servitude under Article 4 of the European Convention on Human Rights. These entail positive obligations on States. Parties, including the UK.[25] The UK is not a party to the International Labour Organisation's *Convention concerning decent work for domestic workers* [26] but it is nonetheless a useful starting point for determining an international understanding of what is "right".

Such international obligations trump a domestic policy objective of coherence in work visa categories. We reject the suggestion that persons should be left in situations of exploitation or at risk of these to maintain the integrity of a model.

As to wider policy objectives, successive reports of the International Development and Treasury Select Committees have highlighted the importance of remittances in addressing global poverty.[27] In its 2006 report *Global Economic Prospects: Economic Implications of Remittances and*

[25] See *Siliadin v France; Rantsev v Cyprus and Russia op cit.*

[26] C-189, 2011, Entry into force: 05 Sep 2013.

[27] See e.g. International Development Select Committee, Fourth Report of Session 2005-06 (*Private Sector Development*), HC 921, paragraph 145; Treasury Committee, Thirteenth Report of Session 2005-06 (*'Banking the unbanked'*), HC 1717, paragraph 91; International Development Select Committee, Fourth Report of Session 2008-09 (*Aid Under Pressure*), HC 179, paragraph 14d); International Development Committee, Third Report of Session 2009-10 (*DfID's Programme in Bangladesh*), HC 95, paragraphs 1 & 41; International Development Committee, Fourth Report of Session 2009-10 (*DfID's Performance in 2008-09*), HC 48, paragraph 130; International Development Committee, Sixth Report of Session 2009-10 (*DfID's Programme in Nepal*), HC 168, paragraph 67 and

Migration, the World Bank found there to be 'a growing body of evidence... that remittances, in fact, do reduce poverty,'[28] highlighted evidence that remittances 'had more impact on reducing the depth of poverty than on reducing the poverty headcount; in other words, they were really helpful for the poorest of the poor' and that 'increased remittances not only reduced poverty in the migrant families, they also had spillover effects on nonmigrant families'[29]. The report continues, still in relation to impact at the micro-level of individual households, to highlight the value of remittances in providing insurance or mitigation against the impact of events such as natural disasters or more straightforward weather-related risks upon the poor, and particularly rural households[30] and to highlight the particularly positive effect among the poor of remittances in terms of 'work on human capital... leading to greater child schooling, reduced child labor, and increased educational expenditure in origin households.' On both these points, supporting research to which the reports points includes specific example of such positive outcomes in Filipino households.

We reject the suggestion that it is not coherent to treat a domestic worker differently from a Tier 2 worker. Tier 2 workers, and many Tier 5 workers, do not work in private households; they have skills for which there is a particular market other than with the particular employer; they have higher earnings, and they have a higher potential to be able to leave their employment. The position of migrant domestic workers is very different. The work with which we are familiar on this topic is that of Dr Bridget Anderson, including *Just Another Job? The Commodification of Domestic Labor*, [31]which is not specific to the overseas domestic labour context as well as her *A very private business: migration and domestic work, Compass working paper 28.*[32] Her discussion of the power relationship between domestic workers and employers and of the way in which employers deal with the consequences of their "desire to be served with affection" may be helpful in its entirety and we draw particular attention to the following conclusions:

> *There are features of domestic work in private households that make it very difficult and very expensive to regulate effectively and balancing the regulation of domestic work with fears of state intrusion into private lives is deeply problematic. Moreover the regulation of workers' protection has been focussed on the legal concept of the employment relationship based on a distinction between dependent workers and self-employed persons. The rise in the informal sector has brought to the fore a confusion with regard to this concept: the employment relationship may be disguised – as a relationship with a different legal nature (civil, commercial, family etc.) or as a short-term relationship when it is actually a stable and indefinite relationship (as in persistent renewal of short term contracts); or as a relationship with an intermediary/agent rather than an employer. With domestic work, the problem is exacerbated by the fact that domestic work is often not constructed as proper work at all. It is not subject to approved procedures, not subject to public criteria, not socially ratified.*
>
> …

International Development Committee, Eighth Report of Session 2009-10 (*DfID's Assistance to Zimbabwe*), HC 252, paragraph 9.

[28] *Op cit* page 118.

[29] *Op cit* page 121.

[30] *Op cit* page123

[31] Available at http://isites.harvard.edu/fs/docs/icb.topic1001965.files/Week%209%20Readings/Just%20Another%20Job_104-114_rev.pdf (accessed 4 June 2015).

[32] Compass Working Paper 28 of 2006, WP-06-28.

> *Even if a well-regulated formal sector were established, illegal or informal market segments would not automatically or necessarily disappear. In those states where there have been attempts to formalise and regulate domestic work, or certain aspects of it such as France, there is still a significant informal market for domestic services…*
>
> *…regulation of domestic work does nothing, in itself, to counteract racism, xenophobia and prejudice against migrants and minority ethnic groups. Indeed, the desire to apply and enforce labour standards can co-exist with the wish to drive migrant women out of these sectors.*
>
> *Unless governments do something to address the social devaluation of migrants, and their social, political and economic marginalisation, regulation may merely serve to reinforce existing racial, ethnic, and national hierarchies in domestic work.*

Our "coherence" argument is essentially an attack on argument that overseas domestic workers are an exception to a coherent the "skilled worker permanent" "low-skilled worker temporary" approach in current UK policy.[33] It is an attack mounted on a number of fronts. Coherence in the immigration rules is more apparent than real.

Baroness Garden of Frognal made the circular argument in the House of Lords during debates on the Modern Slavery Bill:

> *"Allowing them to change employer is not compatible with the purpose of this particular visa."*[34]

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."*[35]

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. The worker must have been working in the employer's household for a minimum of 12 months prior to entry to the UK. The employer is not asking to bring a person who can do a particular job; they are asking to bring a particular person to do that job.

Baroness Garden appeared to acknowledge this when 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."*

Although as a matter of law and policy the route is "economic" and although the domestic worker category is as official a route into work in the UK as any other category in the

---

[33] For the Government's position see the documents associated with the 2012 consultation: *Employment Related Settlement Tier 5 and Overseas Domestic workers*, available at https://www.gov.uk/government/publications/changes-affecting-employment-related-settlement-tier-5-and-overseas-domestic-workers (Accessed 4 June 2015).

[34] HL Report, 10 December 2014, col 1869.

[35] *Ibid.*

immigration rules in which employment is permitted, the markedly distinct categories of the route appear to have prompted the then Minister's mischaracterisation.

The 2011 Government consultation on employment-related stated[36] that the proposal to cap leave for migrant domestic workers in diplomatic households was made is made so as to be '*in line with the proposal on Tier 5 generally.*' There is simply no logic to that. Tier 5 (temporary workers) constitutes a mishmash of routes that concern workers who simply do not fit into the other tiers of the Points-Based System. There is no homogeneity among this group, and hence that certain proposals were made for others in Tier 5 was no basis in and of itself for extending such proposals for these private servants.

Another parallel with family immigration is with the policy on domestic violence. [37] See 3.2 below.

Workers who are long-term members of households, albeit employees, cannot, for the very reason of their long-term household membership, straightforwardly be replaced from within the resident labour market. This has nothing to do with relative skills, aptitude or interest within the resident labour market.

We do not comment on the overall dynamics of the relationship, which Dr Anderson has studied so closely, but we do record that the value placed on the domestic worker is such that it affects the decision of other family members as to whether they come to the UK (as investors, workers, returning residents etc.)

In one case the "domestic worker" was a medically qualified family member who had cared for the severely disabled child since birth. Her relative/employer gave her a million (such sum under her sole care and control) so that she could qualify as an investor.

Another case where the domestic worker was given a million also involved a severely disabled child. However, this route, always open only to the very wealthy, has now been closed. In both these cases it was explained to the parties that the application could only be made if the money was placed under the worker's sole control. The latest Tier 1 guidance on investors recognises that the route is being used in that it provides:

> *There are a number of different scenarios which may raise reasonable doubts as [t o whether the applicant is not in control and at liberty to freely invest the money specified in the application] explained above. The following examples are not an exhaustive list:*
> …
> - *The applicant is currently a domestic worker for a third party, the third party is intending to base themselves in the UK and the applicant will remain in the third party's employment if they are approved under the Tier 1 (Investor) category.*[38] .

A lawyer writes

---

[36] *Op cit.*, at paragraph 7.12.
[37] 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 May 2015)
[38] See (accessed 30 May 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421956/Tier_1__Investor__v5_0.pdf

> *"`I think there should be some provision for long-term visas in this category where the domestic worker is a member of the household and there are compelling and compassionate reasons/it is in the best interests of the children involved that the domestic worker should be allowed to remain with the family when they relocate to the UK. I have a case of a severely autistic British child whose family relocated to Britain after working abroad for the sole reason that there was no adequate educational provision for him where they were living. They came with the nanny who had been living with the family for ten years and to whom the severely disabled British child is very attached. We applied for further leave outside the rules, and the case has been pending for six months… There really ought to be some category for cases like this."*

We include, with permission, details of the case set out in the documents attached. The employer is a wealthy philanthropist whose connection to the UK dates from his schooldays. His family are now in the UK, as is one domestic worker (who entered prior to the changes in the rules). The other domestic worker has been with is family for 17 years. When, following his youngest child's grave illness, the employer decided to base himself in the UK, he wanted to bring the second staff member to the UK.

In this case the worker may have an alternative route to the UK if his wife can successfully assert a claim to the nationality of an EU member State and lawyers are instructed to address this. The worker is currently denied the right to visit the UK: the assumption appears to be that he would return to work or overstay.

There are a number of clients who do not have a home base in any country of the world. For example international polo players who travel with their entourage, because they do not want to be separated from their families. If they cannot bring domestic workers with them, their children will get a new nanny every six months or so.

Entry clearance posts overseas are not subject to the duty under s 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children, but Ministers have said and statutory guidance issued under that section provides that they must "adhere to the spirit of that duty." [39]. Cases such as these suggest that they are failing to do so.

A member relays her client's views:

> *"I understand from* [X] *that if he had known before coming that this issue would tear up his household, he would most likely have thought twice about coming at all"*

We have seen other cases where the question has been determinative of whether the UK is a family's preferred destination.

The "skilled: permanent" "low skilled: temporary/exceptional" distinction is not as clear cut as might be thought. Family members of British citizens and settled persons and the dependants of workers, some students, investors, entrepreneurs etc., can work in any job, at any skills level, but have a route to settlement.

---

[39] *Every Child Matters Change For Children Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children Issued under section 55 of the Borders, Citizenship and Immigration Act 2009*, November 2009 at paragraph 2.34 (accessed 2 June 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf

There are categories of skilled temporary workers: intra-company transferees[40] for example, and some of those in Tier 5 will be skilled. See answer to 2.1.b below.

Any person remaining lawfully for more than 10 years, highly skilled or not, may apply for settlement.[41] This derives from the UK's obligations under It is an entitlement because it derives from obligations under Article 3(3) of the European Convention on Establishment, which the UK ratified in 1969. The obligation is not to grant settlement, the obligation to refrain from expelling persons residing lawfully for 10 years or more provided save for reasons of national security or particularly serious reasons relating to public order, public health or morality. UK policy has been to provide for settlement in these circumstances, providing a durable solution to the person's status. The obligation under the Convention is to nationals of contracting parties, but UK has applied it to all.

The notion of highly skilled and low skilled is not straightforward either. Shortage Occupation lists under Tier 2 identify categories of worker permitted to enter under such a route because there is a shortage of their skills. For some the skills level is tested by an educational qualification, but not for all. Thus sheep shearers are not required to have degrees; they may have bronze, silver or gold medals. Ballet dancers are on the shortage occupation list, not because there is a shortage of ballet dancers in the UK but so that particular individual dancers can be brought in: there is a "shortage of Ms A", the famous principal dancer.

One member, who has been working for a very considerable period to secure the entry of a domestic worker for a family now based in the UK, expressed it in her representations to the Home Office as follows:

> *There is sometimes a perception that Domestic workers are performing low-skilled work that can be done "anyone" - but this is very far from the truth. Even as a successful businessman with numerous entrepreneurial successes and philanthropic projects, there will never be a more important role for Mr X to recruit for than the personnel who live in his home and work with his children. The bond of trust, friendship, mutual respect is built up over many years – and goes both ways.*

2.1.b (supplementary) Can you clarify what other classes of visa are 'tied' - e.g. Employment visas – and whether holders of such visas can apply 'in country' for a new visa in the event of a change of employment?

Under all tiers of the Points-Based System save for Tier 1, a worker comes to the UK to work for a particular employer (and a student to study in a particular university). The nature and extent of a tie varies from category to category. The following general principles are important:

i) There is a tie when the worker is not permitted to switch in-country and would have to leave the UK and seek fresh entry clearance to do anything but the job they are doing.

[40] HC 395, paragraphs 245G to 245GF, see (accessed 4 June 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370915/20141106_immigration_rules_part_6a_final.pdf

[41]

ii) There are many categories of the immigration rules where in-country applications are permitted, with a requirement that the person hold a grant of leave of more than six months. See for example, spouses and partners Appendix FM:

> *E-LTRP.2.1. The applicant must not be in the UK-*
> *(a) as a visitor; or*
> *(b) with valid leave granted for a period of 6 months or less, unless that leave is as a fiancé(e) or proposed civil partner, or was granted pending the outcome of family court or divorce proceedings*
>
> *E-LTRP.2.2. The applicant must not be in the UK –*
> *(a) on temporary admission or temporary release, unless paragraph EX.1. applies; or*
> *(b) in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less), unless paragraph EX.1. applies.*

iii) In some categories switching is permitted but only from particular other categories, thus some people have more freedom to switch than others.

In short, anyone with a grant of leave for more than six months has more opportunity to switch, is less tied, than an overseas domestic worker. The only other workers not granted more than six months are those in certain Tier 2 (Intra-company transferee) categories.

Many of those entering the UK in Tier 2 (Intra-company transferee) categories have considerable potential to find alternative employment if they lose their job. They do not work in private households; they have skills for which there is a particular market other than with the particular employer; they have higher earnings, and they have a higher potential to be able to leave their employment. There may be a delay before they can return to the UK: there are "cooling off" periods built into the Intra-company transferee category, to avoid visas being placed end to end. One reason for this is concern about the UK's obligations under the European Convention on Establishment, described above.

It is frequently the case that employers are keen that workers enter on a route that "ties" them to a greater or lesser extent, rather than entering under one of the Tier 1 highly skilled categories or under their own steam as, for example, the spouse of an EEA national as a means of retaining the employee. Legal representatives instructed in these cases have to consider carefully questions of dual obligation etc.

Against that backdrop, examples of those most tied in other categories are:

Those in Tier 2 (Intra-company transfer) Long Term Staff; Short Term Staff; Graduate Trainee; Skills Transfer categories, who must still be working for the same employer at the time when they apply to extend leave in the same category. [42]

---

[42] See HC 395 Part 6A paragraphs 245GD b(ii) c(ii) c(ii) d (ii) e(ii) of https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/423570/20150424_immigration_rules_part_6a_final.pdf . The policy guidance is easier to read for an overview https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421842/Tier_2_Guidance_04_2015.pdf . Websites accessed 4 June 2015.

In the Long Term staff and Short-Term staff categories the transferee must have being working for the company for at least 12 months immediately prior to the transfer.

Those Tier 2 Intra company transfer category who are eligible for settlement, at the time of applying for settlement, must still be working for the same employer: paragraph 245GF(e).

Rules on switching have been tightened, for example Tier 2 (Intra-Company Transfer) Long Term Staff granted entry clearance under the rules in place after 6 April 2011 cannot switch into Tier 2 (General).

The Tier 5 (Temporary worker) category is a category in which applications can only be made from overseas so there are no in-country extensions, with some very rare exceptions, for example a person who has already been granted leave under Tier 5 (Creative and Sport) for a job as a footballer may switch into Tier 2 (Sports people) provided they will still be employed as a footballer. Provisions as to work are complex and are set out in HXC 395 Part 6a paragraph 245ZP(f)(iii) as follows:

(iii) no employment except:

(1) unless paragraph (2) applies, working for the person who for the time being is the Sponsor in the employment that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do for that Sponsor,

(2) in the case of a migrant whom the Certificate of Sponsorship Checking Service records as being sponsored in the Government Authorised Exchange subcategory of Tier 5 (Temporary Workers), the work, volunteering or job shadowing authorised by the Sponsor and that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do,

(3) supplementary employment except in the case of a migrant whom the Certificate of Sponsorship Checking Service records as being sponsored in the international agreement sub-category, to work as a private servant in a diplomatic household or as a Contractual Service Supplier, or Independent Professional, and

(4) in the case of a migrant whom the Certificate of Sponsorship Checking Service records as being sponsored in the creative and sporting subcategory of Tier 5 (Temporary Workers), employment as a sportsperson for his national team while his national team is in the UK and Temporary Engagement as a Sports Broadcaster.

(iv) in the case of an applicant whom the Certificate of Sponsorship Checking Service records as being sponsored in the international agreement sub-category of Tier 5 (Temporary Workers), to work as a private servant in a diplomatic household, the employment in (iii)(1) above means working only in the household of the employer recorded by the Certificate of Sponsorship Checking Service.

2.2 What conditions should there be on an overseas domestic worker visa – such as terms of work, pay, hours, leave, allowances, accommodation etc.

Conditions on a visa are those with which the person on the visa must comply, rather than with which a third party must comply. Thus the immigration rules on overseas domestic workers are phrased in terms of provision of evidence rather than ongoing obligations. A worker cannot be obliged to be paid a certain amount, or to sleep in a bed, they can only be obliged to evidence that such arrangements are in place. Thus the rules are phrased in terms not of obligations but of conditions: of providing a written and signed statement from the employer; satisfying the entry clearance officer that the employer intends to pay them a certain amount etc. If the conditions are not met then the consequences fall on the worker.

The situation for diplomatic households is different. The employer is required to be a sponsor and hold a sponsor licence.[43] The sponsor licence is itself subject to conditions. The sponsor is at risk of sanctions (loss of the ability to sponsor other workers, penalties) if they fail to meet their obligations.

However, there is an additional reason for requiring a sponsor to hold a sponsor licence in these cases: to record the waiver of diplomatic immunity and privileges. Paragraph 5 of the sponsor guidance provides

> *4.33 An application for a sponsor licence amounts to consent to enter your premises and waiver from your Head of Mission, Head of your organisation, of diplomatic immunity and privileges for any matter relating to your application or validity of your sponsor licence.*

Sponsor licensing schemes in theory imposes a heavy burden. The proper operation of these schemes is resource-intensive and as a result implementation tends to be patchy, a matter the Home Affairs Committee has complained of frequently.[44] The schemes entail considerable bureaucracy, causing disproportionate problems for those sponsoring one or few workers; for those who are not repeat sponsors and for those whose employees are coming for short periods of time. In general, the principle of sponsorship scheme is that a UK-based employer, educational institution (Tier 4) or professional body or Government department (Tier 5) takes responsibility for a person under immigration control.

While we understand the special reasons for requiring diplomatic households to be sponsors, it may be worth considering whether this is the only, or the best, way of ensuring waiver of diplomatic immunity. We are unpersuaded that a case has been made for requiring those who bring overseas domestic workers to the UK to be sponsors. The employer in the UK temporarily does not have the same stake in compliance as a UK based sponsor relying on being able to bring in future workers, students etc. Numbers are small and the bureaucratic burden large. We consider that in these circumstances the risk of driving abuse underground is high.

---

[43] See Tier 5 Sponsor Guidance https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428196/Tier_2__5_Sponsor_Guidance__v_1_1.pdf (accessed 4 June 2015)

[44] See the reference to repeated calls in *The work of the Immigration Directorates (October - December 2013*- Home Affairs Committee, Cm 237 of session 2014-2015 t paragraph 53, available at (accessed 5 June 2014) **http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhaff/237/23706.htm**

As to the separate question of requirements for a visa, as described above, what is agreed on the application form will not necessarily reflect what happens in practice. We consider that it is not without utility in setting out expectations that will influence law-abiding employers, including those coming from countries where standards applicable to treatment of domestic workers are much lower. It may set standards for the expectations of the workers and thus be part of empowering them to know when it may be appropriate to seek help. It sets standards against which the employer's behaviour can be considered in subsequent actions taken against him/her.

Therefore the reference to the National Minimum Wage and the express reference to section 2(2) of the National Minimum Wage Act described above are useful. What the latter means should be spelt out.

We consider it helpful that provisions for breaks and leave etc. reflecting UK and EU employment law standards be included. It is possible to impose higher standards given that these are conditions for the issuing of a visa, for example limiting the extent to which the worker can opt out of the provisions of the Working Time Directive.[45]

It is normal that a person sponsoring, for example, a relative to come to the UK must demonstrate that there will be "adequate accommodation[46]" for them and standards should be no lower for overseas domestic workers and for domestic workers in diplomatic households.

Domestic workers and private servants in diplomatic households should be permitted to bring dependants with them. Some dependants of a domestic worker will be dependent on the employer and will have been living together in that employer's home before coming to the UK. The International Labour Organisation has stated:

> *It is ironic that women who contribute so much to the care of others and to the work and family equilibrium of their employers sacrifice their own family lives. They are separated from their husbands and children for extended periods of time causing deep emotional distress. The material benefits of migration cannot compensate for the affective loss that the workers' own partner and children suffer.*[47]

The UK should not impose further barriers to family unity for a particular group of workers. Permitting the domestic worker to remain together with his or her family in those cases where this is a possibility, may itself contribute to protection against exploitation by reason of the support provided by family members (particularly partners and any older children).

The UK Border Agency *Control of immigration: statistics 2010*, table 1.1 (cont)[48] states that the number of entry clearances granted to dependants of domestic workers in private households was 150 in 2007, 75 in 2008, 245 in 2009 and 335 in 2010; only 805 dependants over the course of four years. Statistics are not held separately for the very small number of dependants of domestic workers for diplomats. The numbers are thus very small.

---

[45] Directive 2003/88/EC, see the Working Time Regulations 1998 (SI 1998/2228) as amended.
[46] See e.g. HC 395 paragraph 6 and Annex F.
[47] ILO Working Paper 2/2010, *Moving towards decent work for domestic workers: an overview of the ILO's work, at* http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_142905.pdf (accessed 4 June 2015).
[48] Table at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q4-2010/?view=Standard&pubID=864988 (accessed 4 June 2015).

Permitting dependants to work provides additional protection against abuse and this should be retained. It provides protection against abuse in that (i) it may effectively allow the maintenance of family unity; (ii) it may allow the development of relations outside the household in which the domestic worker is employed and so provide greater opportunity of finding advice and support in the event of exploitation and may by that reason provide an incentive against exploitation; and (iii) It may provide an additional source of income for the family and as such reduces one aspect of the dependency upon the employer.

Dr Anderson advocates written contracts and special arrangements for monitoring and enforcement because the work takes place in a private household, while recognising the limitations of these. For any employment contract to protect the employee requires that the employee have access to the technical, financial, practical and emotional support required to seek redress. Redress imposed, as opposed to sought, increases rather than alleviates oppression: the worker can be threatened that if s/he does not maintain the façade of an appropriate relationship, the regulator will swoop and s/he will lose both job and immigration status.

2.2.a (Supplementary) ***You will no doubt have heard the PM and others speaking 21 May about illegal immigration. I am interested in your views as to whether it might be possible to create a system which helps workers to be in the UK with a safe and securely regulated oversight/assistance/support (and which would permit changes of employer and extensions of visas). Such a system could also provide the Home Office the clarity it wants/deserves as to who is legally here, where they are, and by implication (especially if exit checks become the norm) who has outstayed the terms of their visa. What benefits/problems do you see with such a system?***

Provision was made for exit checks in the Immigration Act 2014[49] and is being implemented although we wait to see how costly these will prove and whether budget cuts will affect them.

The Home Office already has an extremely powerful system of gathering information about foreign nationals and has established means to regulate not only their entry into the country but their ability to work, to open bank accounts, to acquire a driving licence, to rent property and to obtain health services. Provision is also made in the Immigration Act 2014 as to marriage and civil partnerships. Indeed, ILPA has described what is now in place as " a system of identity cards for foreign nationals."

There are many problems with such a system, some of these are described in ILPA responses such as ILPA's briefing for second reading in the House of Lords of the Immigration Act 2014[50] and ILPA's 20 August 2013 response to the Home Office consultation *Tackling illegal immigration in private rented accommodation*.[51] These problems are not specific to overseas domestic workers and domestic servants in diplomatic households.

On a person who has previously had a visa's coming to light, the chances are that the Home Office will be able to establish their identity with the person to whom the visa was granted.

[49] Section 67.
[50] Available at http://www.ilpa.org.uk/resources.php/25769/ilpa-briefing-for-house-of-lords-second-reading-of-the-immigration-bill-for-debate-10-february-2014 (accessed 5 June 2015).
[51] Available at http://www.ilpa.org.uk/resources.php/20798/ilpa-response-to-the-home-office-consultation-tackling-illegal-immigration-in-private-rented-accommo (accessed 5 June 2015).

As to " safe and securely regulated oversight/assistance/support;" this comes from a strong framework of workers' rights: recognised and enforced. Examples are:

- Fair contract terms including a fair wage
- Freedom to change job
- Health and safety at work
- Access to a tribunal for redress for unfair dismissal , non-payment of wages, breach of contract, oppressive conditions of work, discrimination and harassment etc.
- Freedom of association and the right to strike.
- A system of social support both for those in work and those of work
  Such systems depend upon a strong and well-resourced regulatory framework and workers supported and empowered to use them.
  They would allow persons to engage in productive work in safety and without fear.
  The problem with such a system is how to create it.

There are challenges in many settings, but domestic work is a particularly challenging context, even before one introduces an overseas element.

2.3 How, practically, can compliance with these conditions be monitored?

Abuse is exposed when workers seek help. If workers change employer and settle, and have effective access to tribunals and courts, one may subsequently find out about a particular employer's failure to comply. We consider that this is the most likely way in which failures to comply will come to light. If workers think that there is something to be gained by getting in touch with organisations such as Kalayaan and Justice for Domestic Workers, and if indeed those organisations are empowered to assist them by a strong framework of underlying rights and entitlements, then workers may seek their help, act and speak out.

We highlight the role that legal aid has to play. 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. Many overseas domestic workers and private servants in diplomatic householders are not well-paid and are not in a position to pay for legal advice and representation. Many are isolated with little knowledge of their rights and entitlements; they need assistance in having these explained to them. They require advice as to whether it is in their best interests to approach the Home Office in the first place – many domestic workers and private servants in diplomatic households re understandably intimidated from attending the public body responsible for immigration enforcement and with good reason: they could be liable to detention and immediate removal if the Home Office does not consider there are reasonable grounds to believe they may have been trafficked or enslaved.

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.[52] *Generalist help and advice cannot fill the gap.* A person may claim asylum if they fear persecution or a violation of their human rights on return to their country but not all domestic workers will have such fears. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, advice and

[52] Immigration and Asylum Act 1999, part V.

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.

.

Before presenting to the authorities, including the statutory services such as the police who are "first responders", domestic workers want to know what their options are. Will they be allowed to stay in the UK? Will they be safe? They have been in situations of powerlessness; they have been subject to abuse. A person does not walk of those situations feeling lucky. Domestic workers need immigration advice. Without it some opt to stay in situations of exploitation.

One exception to the general lack of legal aid is ostensibly for trafficked persons[53], and the Modern Slavery Act 2014 s 47 reproduces this for victims of slavery or forced and compulsory labour. However, like the current exception for trafficked persons, the provision of the Act only applies to those who have successfully navigated the National Referral Mechanism[54] and obtained a reasonable grounds decision with a conclusive grounds decision pending or in their favour.

At Lords Report of the Bill, Baroness Kennedy of the Shaws and others argued that a positive "reasonable grounds" decision under the National Referral Mechanism should not be the gateway to legal aid. The Lord Bates replied for the Government:

> *"… 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.* [55]

We recommend that the review 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

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

[54] 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 (accessed 31 May 2015).

[55] 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.*

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,…* [56]

This is confused. As identified in the final report of the review of the National Referral Mechanism[57] not everyone will want to enter the National Referral Mechanism. 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.

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, 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.

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.*

[56] *Ibid.*
[57] *Op.cit* at 4.2.9.

Trafficked and enslaved persons need legal aid for matters other than their employment matter. For example compensation claims brought against traffickers. [58]. These cases are eligible for legal aid to meet the UK's obligations under Article 15(2) of the Council of Europe Convention on Action against Trafficking in Human Beings. However, under the Legal Aid Agency's Standard Civil Contract[59] these cases can only be brought in the "Miscellaneous" category. Each organisation with a legal aid contract can bring no more than five cases of any type, not just trafficking cases. Thus it is very difficult for trafficked persons to find someone to represent them in such cases, let alone a specialist.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 made provision for a system of exceptional funding for cases that would otherwise be outside the scope of legal aid. This was held to be operating unlawfully in the case of *Gudanaviciene*.[60] . Examples of cases refused exceptional funding cited therein include cases of persons lacking capacity two pre-"reasonable grounds decision" trafficking cases.

At present, judicial review work in trafficking and slavery cases is still funded by legal aid. This would be altered if the residence test, currently the subject of a legal challenge, were brought into effect. The residence test would deny legal aid to anyone who cannot satisfy the terms of the test, which are that: (a) the person is currently lawfully resident in the UK; and (b) at some point previously the person was lawfully in the UK for a period of 12 months. Although the immigration matters of trafficked persons (defined by reference to successful identification by the National Referral Mechanism) would be exempt from this new barrier to legal aid, judicial reviews are not. The position of enslaved persons is not known because the provisions of the Modern Slavery Act 2015 granting them legal aid postdate the legal challenge to the scheme. Those given leave would also be affected. Ms OOO in *OOO v Commissioner of Police of the Metropolis*, [2011] EWHC 1246 (QB); [2011] HRLR 29; [2011] UKHRR 767, which concerned the failure of the Metropolitan Police to investigate allegations of ill treatment by victims of slavery/servitude, by the time she applied for public funding, been granted leave to remain. Under the proposed residence test, OOO would have had to wait to accrue 12 months' lawful residence before being eligible for legal aid. She would have fallen outside the one year time limit for bringing claims under the Human Rights Act 1998, and the police would have avoided scrutiny for their unlawful actions.

These cases are highly specialist and demanding; lawyers who are not specialists are for good reason reluctant to "dabble" in this area.[61]

There may be instances when other regulators, from environmental health authorities to Her Majesty's Revenue and Customs, obtain information suggesting that all is not well in a household in which domestic workers are employed. The UK's approach to identification of trafficked persons has been one of centralised authorities separating sheep from goats, a far cry from the Office for Security and Cooperation in Europe's original concept of "competent authorities", each public authority skilled up and doing its utmost to combat human trafficking in its field of

[58] These claims were left in scope by the Legal Aid, Sentencing and Punishment of Offenders Act 2012: s. 32(3) of Schedule 1.
[59] See *Category Definitions* therein.
[60] Op.cit.
[61] See the article by Paul Yates, head of London pro bono at Freshfields Bruckhaus Derringer on this topic, published on the Legal Voice website, 18 November 2013 http://www.legalvoice.org.uk/2013/11/19/pro-bono-filling-the-gap/ (accessed 31 May 2015).

competence.[62] ILPA has long been critical of this approach[63] which, it considers, reduces the levels of protection which could be achieved by each authority taking responsibility for matters within its competence.

It is trite that monitoring is difficult to establish effectively and that it is difficult to strike a balance between making best use of limited resources and work that is ineffectual. There are particular sensitivities where the locus of the activity monitored is the private home and where, in Dr Anderson's words, employers have a desire to be served "with affection." There are plenty of models to study in the immigration context. There are licensing regimes ranging from sponsor licensing (employers, universities, professional bodies etc.) to the Gangmasters' Licensing Authority. There are registration schemes such as the Workers Registration Scheme currently operating for Croatian nationals[64] and its predecessors for other accession states.[65]

It is difficult for monitoring to get at the substance of a relationship. This is demonstrated by schemes such as that which exists for private fostering which provides an example of attempts to monitor relationships within the home.[66] Powers to supervise private fostering are backed by a panoply of child protection powers and yet it has proved difficult to use them to monitor arrangements by which children from overseas live with families in the UK. The arrangement may never come to the attention of the local authority. Where a child lives with a relative, as defined in the Children Act 1989,[67] this is not defined as private fostering. Relatives under the Act include aunts and uncles and it can be difficult to establish the relationship between a child from overseas and an adult. Victoria Climbié was privately fostered and private fostering is associated with the exploitation of children as domestic workers.

According to a report by Child Exploitation and Online Protection on the nature of trafficking and exploitation of children within the home, child abuse through domestic servitude can occur in tandem with the commercial and economic exploitation of that child, including forced labour, begging and pretty crime, and sexual exploitation. The Children's Society's research '*Hidden Children*' in 2009 described a lack of awareness about these young people among professionals and within the community, and how those exploiting them deliberately act to keep them and their treatment hidden. The research described how, once a child reached the age of 16 (or 18 if the young person was disabled), private fostering monitoring ended. The research found that young people also stay in the abusive situation because they often do not know their treatment is illegal, they risk being homeless if they run away, they fear that they will be deported or they do not know anyone they can trust to disclose that they have been abused.

---

[62] See further Office for Security and Cooperation in Europe 13 May 2004 *National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* available at http://www.osce.org/odihr/13967 (accessed 5 June 2015).

[63] See, for example ILPA's Trafficking and National Referral Mechanisms: ILPA paper following the UK Border Agency workshop of 12 May 2008 http://www.ilpa.org.uk/resource/13090/uk-border-agency-trafficking-and-national-referral-mechanisms-ilpa-paper-following-the-uk-border-age and ILPA's submission to the Home Office Review of the National Referral Mechanism, endorsed by the Anti-Trafficking Legal Project, 31 July 2014, available at http://www.ilpa.org.uk/resources.php/29120/ilpa-submission-to-the-review-of-the-national-referral-mechanism-endorsed-by-the-anti-trafficking-le (both accessed 5 June 2015).

[64] See the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (SI 2013/ No. 1460) as amended.

[65] See the Accession (Immigration and Worker Authorisation) Regulations 2006 (SI 2006/3317) as amended.

[66] See 2005 Children Act 1989 *Every Child Matters Replacement guidance on Private Fostering* https://www.gov.uk/government/publications/children-act-1989-private-fostering (accessed 5 June 2015).

[67] Section 105(1) as amended.

2.4 What should be the maximum length of stay for an overseas domestic worker?

Domestic workers should be permitted to extend their limited leave, in line with others under immigration control, and to settle after no more than five years, the current maximum for persons given leave as workers. Should that figure fall, it should fall for domestic workers also.

2.4.a (Supplementary) Would you advocate for have a maximum number of extensions/total period stay?

We advocate for overseas domestic workers and domestic servants in diplomatic households to have a route to settlement after a maximum of five years.

If domestic workers did not have a route to settlement, we should not advocate for a maximum total stay.

As to extensions, we are concerned that fees for extensions may be passed on to the worker, which is a reason for keeping them to minimum. If the extension stage were to provide a meaningful opportunity for an overseas domestic worker/domestic servant in a diplomatic household, to quit the employer then this would be a reason to have an extension stage. We consider that it is only likely to provide a meaningful opportunity to learn that terms and conditions are not as they should be if it provides a meaningful opportunity for the worker safely to disclose this, and we consider that to be unlikely for all the reasons set out herein.

2.4.b (Supplementary) If so, how long?

N/A.

See 2.4.d below.

2.4.c (Supplementary) If not, how would that interact with the 10 year lawful residence test?

Answered with

2.4.d (Supplementary) Can you clarify the position in relation to student visas: does a student who renews for a total of 10 years have an automatic right to settlement; or is the ability to accrue time on account of" lawful residence" for settlement purposes excluded from a student visa?

See answer to 2.1 and 2.1.a above. If persons can stay continuously and lawfully for 10 years they will be able to make an application on the basis of long residence. This would, and should, be true of an overseas domestic worker/a private servant in a diplomatic household. It is true of students, a category in which extensions of stay are possible but there is no route to settlement.

The right to settlement is not automatic, but it is an entitlement if the conditions are met. See paragraphs 276A to 276D of the Immigration Rules.[68] It is an entitlement because it derives from obligations under Article 3(3) of the European Convention on Establishment, which the UK ratified in 1969.

2.5 Should an overseas domestic worker be permitted to work for other employers and, if so, on what conditions?

The worker should be permitted to change employers. See further 2.5.a below. The ability to change employers requires that the worker

As to whether the worker should be permitted to work for more than one employer at the same time; we consider that they should have this option while recognising that this opens up possibilities of exploitation by different persons, some of whom could be entirely unknown to the authorities. Without knowing more about what a scheme might look like we are not able to comment further at this stage.

2.5.a (Supplementary) Could you comment further on the idea, if a change of employment were permitted, of registering a change of employer with the Home Office, which registration would include a mandatory or voluntary submission as to the reason for the change?

The argument put forward in Lord Bates' letter at the dying stages of the Modern Slavery Bill was that if the worker could simply run away with the employer knowing nothing, there would be no opportunity to take action against the abusive employer. It was put in the mouths of two policemen who did not appear to have been asked to comment on the situation where the change is notified.

The Government appended two notes from those 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 was 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." 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.

It could be made a condition of the visa that the domestic worker notify the Home Office of the change of employer. Many of those permitted to change employer already do so: organisations working with them, such as Kalayaan, recommend that this be done.

[68] Immigration Rules Part 7 (Accessed 4 June 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/423572/20150424_immigration_rules_part_7_final.pdf

The 1961 Vienna Convention on Diplomatic Relations[69] requires notification to the relevant ministry in the receiving State (. for these purposes the UK) of '*the arrival and final departure of private servants in the employ of* [members of the diplomatic mission].'[70]

We do not consider that it should be mandatory to submit a reason for leaving. Nor do we favour an express invitation to do, where inferences might be drawn from its being left blank, as opposed to a box saying "any further information" The temptation, as with "reason for leaving" on a job application, might be to find a bland "cover" reason.

A notification of the change of employer is a flag. The Home Office can check it against their records of the employer; they currently perform extensive checks on persons under immigration control and government policy is to extend the powers legal and technical to do this. If others have left that employer; if they have a criminal record, it may be an indication that the police should investigate further to find out from the worker why they left. The Home Office could, if it wished, check in every case. Or it could take a "risk/intelligence-led" approach.

2.6 Should the overseas domestic worker visa lead to a right to indefinite leave to remain?

Answered with 2.6.a (Supplementary) … you have not advocated (I think) for a right to settlement as a necessity. Can you help me to understand how that would work and what it would look like in practice?

Yes, an overseas domestic worker visa, and a private servant in a diplomatic household visa should lead both to a right to indefinite leave to remain.

ILPA advocates for a right to settlement as a necessity if domestic workers are to be protected. We have had sight of the submission of Amnesty International UK and agree with Amnesty International that "The opportunity to apply for settlement…constitutes the most comprehensive means of breaking [the dependency of worker upon employer] because it provides a means to remove it altogether."

Domestic workers do not have an unrestricted right to change employment; they can only find other work as domestic workers in private households, a very serious restriction and one that ILPA considers should be lifted. Ideally this would be done at an earlier stage but, if not, then settlement equates to the lifting of the restriction.

The 2009 Home Affairs Select Committee report on trafficking stated:

> *to retain the migrant domestic worker visa and the protection it offers to workers is the single most important issue in preventing the forced labor and trafficking of such workers … we consider it likely that migrant domestic workers will need the special status afforded by the current visa regime for much longer than two years.* [71]

[69] United Nations, *Treaty Series*, vol. 500, p. 95.
[70] Article 10.1(d).
[71] *The trade in human beings: human trafficking in the UK*, 6th report, session 2008-9, May 2009, HC 26-i, paragraph 59

We are aware, as set out in response to 1.1 above, that many domestic workers and private servants in diplomatic households did not, prior to the rule changes, remain in the UK long enough to apply for settlement. We have taken the position that the ability to change employers is an improvement on the current situation even where it is not accompanied by a right to settlement and hence supported amendments tabled to the Modern Slavery Bill to this effect.

The obvious precedent for a visa not leading to settlement is the student visa. There a student has a right to apply for extensions of stay (in the student case normally linked to periods of study: school, a bachelors' degree, a Masters' degree etc.). After 10 years continuous lawful leave the student will be able to apply for settlement, but is not obliged to do and could instead seek further extensions of limited leave. If the student runs out of leave and does not get an extension/a further extension leaves before 10 years lawful residence has been accrued, time spent in the UK is not aggregated. While s/he has limited leave, the student has the power to switch into some categories (such as spouse or civil partner) but not others. As to the period for which an extension of leave is granted there are various precedents in the immigration rules: two years, thirty months, three years etc. It is necessary to consider the chances of a worker looking for a new employer securing employment. The shorter the period of leave, the less likely that the person will find a new employer.

3. IDENTIFICATION AND SUPPORT OF PERSONS TRAFFICKED AND ENSLAVED

3.1 How do victims of abuse currently come to the attention of the UK authorities?

They present to the authorities.

3.2 What processes or procedures should there be to make identification of victims easier – what would an ideal system look like?

See response to 1.5 above. The possibility of changing employer and a route to settlement give the worker has a potential route out of abuse and exploitation, while still having a job, and retaining a legal immigration status. In these circumstances, the National Referral Mechanism is simply a poor substitute for the possibility of changing employer when it comes to persuading people to leave exploitative employment.

The Lord Bates said during debates on the Modern Slavery Bill

> *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*

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.[72]

But Kalayaan had given 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.* [73]

The major disincentive to coming forward may be the prospect of having to leave the UK. An analogy can be drawn with policy toward survivors of domestic violence.[74] Rule 289A of the Immigration Rules makes provision for a person with limited leave as a spouse or partner, whose relationship breaks down because of domestic violence, to be able to apply for indefinite leave to remain on this basis. If the person remained with their abusive spouse or partner they would be eligible to apply for settlement as a spouse/partner. It is public policy to seek to discourage persons from making the choice to remain with an abuser for their sake of their immigration status by offering them a route to settlement if they leave. Thus the desire to influence people's choices so that they do not remain with abusers is accepted as a reason to provide an exception to the rule that if a relationship breaks down, a foreign national is normally expected to leave the UK.

The protections abolished: the right to change employer and a route to settlement create conditions under which some of those abused are likely to come forward and thus to be identified. They are ingredients of the best system possible.

3.2.a (Supplementary) You suggested, the context of 'orientation' session upon arrival, that you would want to give more thought to the role of embassies and consulates shaping and reinforcing the idea of what is normal – can you share your thoughts on this?

---

[72] HL Report, 25 February 2015, cols 1702-3.
[73] See MS 18 9 September 12014 http://www.publications.parliament.uk/pa/cm201415/cmpublic/modernslavery/memo/ms18.htm . (Accessed 31 May 2015).
[74] 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 31 May 2015).

And

***3.2.b Was your concern solely in relation to employer orientation, or to employee orientation as** well?*

This was a general comment, inspired by the discussion of the orientation session on arrival but not about any such session; it is a longer-term, underlying project.

Many domestic workers are not of the same nationality as their employers and some nationalities are represented very heavily among domestic workers (Filipinos, Sri Lankans). ILPA, like the Home Office, has addressed the Consular Corps and various groups of diplomatic staff. There are in many cases familial, linguistic and cultural ties to the country of origin, and a consulate is one place where nationals turn when in trouble overseas. It is a place to which nationals must go to renew passports etc. It therefore seems possible that information about employment rights and sources of help could usefully be disseminated through embassies and consulates.

Similarly, information about employment rights and legal obligations could be disseminated to employers through embassies and consulates.

It might well make very little difference but, as with doctors' surgeries etc., it seems sensible to try. Consular officials in London have met with the Anti-Slavery Commissioner, Mr Hyland, since his appointment so channels of communication are open.

3.3 Should workers who are based in private homes be monitored for possible abuse and if so how?

See comments on 2.3 above. We are unpersuaded that there can be effective monitoring and suggest efforts are better targeted at creating the conditions in which workers will come forward.

3.4 Should overseas domestic workers be required to 'register' in the UK, attend regular meetings during their stay, or have any other such requirement of official contact outside their place of work?

Effectively the workers are registered: the Home Office has the details of persons applying for a visa on databases and also shares data with other government agencies

We consider that creating the conditions in which domestic workers are able to approach organisations such as Kalayaan and Justice for Domestic Workers and ensuring that these have something to offer when they do, including that legal aid is available, provides better protection than any compulsory scheme.

We recommend that before any monitoring schemes are proposed that these are costed.

See response to 3.2 above.

3.5 How would any additional identification arrangements be funded - increased fees? A worker bond etc.

If this is done there is a risk that the burden of paying falls on the worker. The review should ask to see figures in relation to the sponsor management scheme for employers and universities to understand the costs of an inspection and audit regime. It is important to look at what is purchased for the expenditure made.

3.6 What arrangements should be made (practically and in terms of the visa) for a worker who claims abuse?

We recommend discussions with Kalayaan etc. as to practical arrangements that can (and cannot) be made now and do not address these in a public response.

As to visas, one useful safeguard is not to cancel or curtail leave until such time as the worker has had an adequate opportunity to find another job, which may be a more lengthy period if s/he is recovering from physical or mental abuse. There are precedents in what happens to students who are the victims of the college at which they are studying's being closed down. They are given 60 days from curtailment of their visa to find new employers. By dint of not curtailing leave at the earliest possible opportunity, the Home Office can extend the period.

A period in which to find alternative employment is of little use to a person who is unable to support him/herself. A domestic worker who leaves his/her job leaves his/her home. The Home Office's Destitute Domestic Violence concession provides a model for funding access to benefits in the period immediately following leaving the employer until the person can regularise his/her status, which in these case would include by finding a new employer. The provisions on landlords and landladies checking the residential status of tenants under Part 3 of the Immigration Act 2014 presents further barriers to overseas domestic workers and private servants in diplomatic households being able to flee.

3.7. What process/mechanism should be in place to determine whether there has in fact been abuse?

The two main mechanisms are the criminal law and employment law.

The 2009 Children's Society report on private fostering, *Hidden children*, described above, found that many of the children were not 'hidden' at all and came into contact with professionals in schools, churches or GP clinics. But when children did disclose, it was to find that frontline workers were unwilling to help, disbelieved the seriousness of their situation and were unaware of where to refer them to for help.

The Home Office review of the National Referral Mechanism records

> *7.2.10 Victims who escape and present themselves may not know where they have been held or the names of those holding them and the only evidence they have is the story of their experience. Research has shown that those who are severely traumatised have difficulty in providing a coherent story. These factors together can create a perception that decision-making*

is heavily (and wrongly) based on credibility whereas the decision-maker may feel constrained by the lack of evidence of a crime.

3.8. What arrangements should be made for a worker who has been found to be abused?

See above.

Legal aid should be available. .

4.1 What arrangements should be made to assist workers to support prosecutions?

Witness protection schemes may be required.

In the case of private servants in diplomatic households, efforts should be made to persuade States to waive immunity where it applies, where it applies being a matter currently the subject of legal challenges.[75]

The 2011 US State Department international survey report[76] on trafficking, while recognising that 'the UK government generally complied with the minimum standards for the elimination of trafficking' at that time and keeping the UK in its Tier 1 category, also stated:

> *Some domestic workers reportedly are subjected to forced labor by diplomats in the UK; there are concerns that these diplomatic employers are often immune from prosecution.*

Adrian Berry
Chair
ILPA
5 June 2015.

[75] *Janah v Libya, Benkharbouche v Sudan* **[**2015] EWCA Civ 33**;** *Reyes and Suryadi v Al Malki and Al Malki* **[**2015] EWCA Civ 32.
[76] US State Department, *Trafficking in persons report 2011*, at http://www.state.gov/g/tip/rls/tiprpt/2011/ (accessed 5 June 2014).