



KALAYAAN

justice for migrant domestic workers

17 May 2017

Kalayaan's submission to the independent review on Employment Practices in the Modern Economy

Kalayaan was established in 1987 and is the leading UK charity offering advice, advocacy and support services to migrant domestic workers (MDWs) in the UK. We work directly with MDWs to improve and help them access their rights as workers in the UK. MDWs are predominantly women who come to the UK with a named employer on a specific visa to work in a private household. Domestic workers include cleaners, chauffeurs, nannies, cooks and those providing personal care to their employer or a member of their employer's family. Employers include wealthy professionals on business trips, visiting families and British expatriates returning from abroad. They are often viewed as valuable contributors to the UK economy, whose entry and stay the government wants to facilitate.

Approximately 17,000 UK visas are issued to domestic workers each year. Some MDWs work for good employers who treat them with respect, pay them properly and comply with UK labour laws. Unfortunately Kalayaan continues to meet with MDWs who describe being subject to exploitative working practices and serious labour abuses at the hands of their employers. Workers report having their wages and identity documents withheld, forced to work excessive hours and restrictions placed on their freedom of movement.

The hidden, informal and unregulated nature of working in a private household, coupled with dependency on their employer for their work, accommodation, food and other basic necessities makes MDWs especially vulnerable to abuse. Immigration procedures and policies also serve to exacerbate the vulnerable position of MDWs. Unscrupulous employers use the unequal bargaining power they have over their employees as means to control and exploit them. This can then trap MDWs in ongoing cycles of abuse.

Specific vulnerabilities of MDWs

The current government accepts that MDWs are a vulnerable group of workers who are in need of strong effective protections against abusive employers¹. They are, by their very definition, from overseas, and working in a foreign country whose systems, laws and customs they are not familiar with. For many MDWs, their primary motivation for seeking work abroad is to send remittances home to dependent family members. Their wages pay for basic necessities such as food, healthcare, bills and outstanding debts.

After MDWs arrive in the UK, they are often isolated in their employer's household and hidden from any regulatory mechanisms or frameworks that other workers might benefit from. They work in an informal economy, where wages, if paid at all, are not through bank accounts. Restrictions are placed on their movement and they have limited social contact. Some are not given food or a place to sleep. Many do not speak English and are reliant on their employers for information about their rights in the UK. Some disclose to Kalayaan how they were deceived as to their pay and working conditions but feel trapped working for their employer as they need to

¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2016-03-07/HLWS568/>

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send money home to their families. MDWs who do flee abusive employers have no recourse to public funds and are at risk of becoming homeless and destitute.

MDWs regularly report to Kalayaan how their employers retain possession of their passport, sometimes only handing it to them when passing through immigration control. Many MDWs do not know the terms of the visa they came to the UK on, when their visa expires or any of their rights under UK employment legislation, including the right to be paid the National Minimum Wage. MDWs brought to the UK to work for diplomats also work under the belief any poor treatment cannot be challenged due to their employer's immunity.

These factors create a power imbalance which unscrupulous employers use to manipulate and exploit MDWs. Some will use intimidation tactics and threats to control their employees. Examples include threats of arrest, detention and deportation as well as physical and mental abuse.

Impact of visa changes on MDWs vulnerability to abuse

From 1998 – 2012 MDWs coming to the UK were able to apply for annual extensions of their visa, so long as they were in full time employment as a domestic worker. Crucially, they had the right to withdraw their labour and change employer. Significant changes were made to the domestic worker visa in April 2012². The changes meant that domestic workers coming to the UK were tied to their employer for a maximum of six months, with no right to renewal or extension beyond this time. It prohibited workers from changing employers in the UK and effectively prevented them from challenging any abusive treatment they received from their employer. If a domestic worker did leave their employer, they were in breach of the terms of their visa and at risk of deportation. Data collected by Kalayaan showed that these changes led to greater levels of abuse³. The 'tied visa' was widely criticised by politicians, academics, domestic worker organisations, NGOs, and trade unions.

The introduction of the draft Modern Slavery Bill provided an opportunity to reinstate the protections of the original domestic worker visa. The Joint Committee on the Draft Modern Slavery Bill called for an urgent reversal of the 2012 visa changes which had 'unintentionally strengthened the hand of the slave master over the victim'. The government defeated amendments introduced to the bill, maintained the visa tie and provided instead for 6 months leave to remain for a MDW identified as a victim of trafficking through the National Referral Mechanism (NRM).⁴ This concession however is of no use to workers who have been abused but who do not meet the legal definition of having been trafficked for the purposes of exploitation.⁶ This approach also did nothing to prevent abuse.

Parliamentary debates during the Modern Slavery Act 2015 prompted the government to commission an independent review of the domestic worker visa to assess how far the then existing arrangements for MDWs were effective in protecting them from abuse.⁷ The review, authored by James Ewins QC, looked at the full spectrum of abuse suffered by MDWs, from minor breaches of employment and health and safety law, to abuses and exploitation legally

² <https://www.gov.uk/government/speeches/immigration-employment-related-settlement-overseas-domestic-workers-tier-5-of-the-points-based-system-and-visitors-wms>

³ <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-2nd-Reading-Modern-Slavery-Bill.pdf>

⁴ The National Referral Mechanism was established in 2009 to meet the UK's obligations under the Council of Europe Convention on Action Against Human Trafficking. It is the framework used in the UK to identify and provide support to victims of trafficking and modern day slavery.

⁵ Section 53 Modern Slavery Act: <http://www.legislation.gov.uk/ukpga/2015/30/section/53/enacted>

⁶ Not all forms of abuse meet the definition of trafficking:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_Final_Report_6_11_15.pdf

defined as human trafficking and modern slavery. The review found 'the existence of the visa tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK.'⁸

The review recommended that MDWs be granted the right to change employer *and* apply for annual extensions as a domestic worker for up to two years. This right was not contingent on claiming or proving any form of abuse but was deemed the minimum required to give effective protection to those workers who are victims of abuse. In making this conjoined recommendation, the review found that 'victims need the freedom to change employment, which in turn requires that they stay for long enough to be able to find safe alternative employment.'⁹ The review later goes on to explain 'the underlying rationale of a right to change employer is to give the overseas domestic worker a safe way out of an abusive situation, of which safe re-employment is an essential part. In order to make the right to change employer effective in practice, the duration of any extensions must be of sufficient length to give the overseas domestic worker both sufficient incentive and reasonable prospects of finding such alternative employment.'¹⁰

The review also recommended that any change of employer be registered with UK Visas and Immigration who could pass the information to the police to consider commencing an investigation. This would alleviate the evidential burden placed on victims by entering into the NRM – a system which is of no use to MDWs who are abused but not trafficked by their employers.

Ewins conclusion on the visa application process identified procedural failings in providing MDWs with information on their employment and immigration rights before arriving in the UK. He therefore recommended that MDWs be given an opportunity to receive information, advice and support concerning their rights while at work in the UK. The review recommended the introduction of group information meetings for MDWs who remain in the UK for more than 42 days. This would then ensure that MDWs were aware of their right to withdraw their labour and change employer if they were in an abusive working relationship. The review recommended attendance at these meetings be a mandatory condition of both the employer and MDW's visa and set out why a voluntary system would be wholly inadequate.

The right to work means the right to decent work

In March 2016, the government responded to the review and accepted that workers should be given an immediate escape route from abuse and permitted to change employers but only during the term of their six month visa. In practice, workers who leave their employer will have just a few months or weeks remaining on their visa in which to find alternative work, and will be doing so without references. It will be extremely difficult, if not impossible, for domestic workers to find decent work and change employer in this short time frame. They will be left with the choice to remain in an exploitative situation, risk entering into new, potentially precarious employment, or be unemployed without recourse to public funds. Kalayaan remains of the view that a right to change employer in the first six months will not lead to workers having greater confidence in reporting their employers to the authorities and will not enable them to safely enter into a new working relationship. It will strengthen the hand of the exploitative employer who will know it is unlikely domestic workers will change employers given the difficulties in finding work in such a short period.

⁸ Ibid, paragraph 10

⁹ Ibid, paragraph 11

¹⁰ Ibid, paragraph 101

The government argues that the NRM, the framework used for identifying victims of human trafficking, is the vehicle to report abuse and for victims to access support. They expressed concern that if victims do not enter the NRM, abusive employers may go undetected and able to recycle the abuse onto the next worker. As was noted by Ewins, this approach fails to recognise that rights, such as the option to withdraw labour, allows MDWs to challenge mistreatment and so prevent this escalating into abuse including domestic servitude, as well as to escape such abuse when it does happen.

The government has proffered that victims who are identified as having been trafficked or as a victim of modern slavery will be allowed to apply for a (up to) 2 year visa, up from the 6 months provided for by the Modern Slavery Act 2015. As noted above, this provision is of no use to abused MDWs.

The government has agreed to implement the review's second key recommendation of information meetings for MDWs, however Kalayaan has since been told by UK Visas and Immigration that they cannot make meetings compulsory as there is no provision in law to make it a condition of the visa.¹¹ The effect of this means that those who have no or severe restrictions placed on their freedom, those who need this information most, will not be in a position to attend. This undermines the reason behind introducing information meetings.

The government also stated that they want to refocus their checks on employers to ensure that they can better prevent them bringing more domestic workers to the UK when they do not comply with requirements. They stated in April 2016 their intention is to link the requirement to attend information meetings to an employer registration scheme and said they would do so through further changes to the Immigration Rules later in the year.¹² No further details are known at the time of this submission.

Recommendations

MDWs remain a vulnerable group in need of better protective mechanisms in the UK. Kalayaan recommends:

- **All MDWs should have the right to change employer and apply for annual visa extensions provided they are working as a domestic worker**

The current visa regime provides no protections to MDWs working for exploitative and abusive employers. Currently, the right to change employer is a meaningless concession as it does not allow MDWs the freedom and time required to recover and find safe and decent re-employment. The current government's response that MDWs have the NRM to access support fails to recognise that not all abuse meets the legal definition of trafficking or modern day slavery. If an NRM referral is the only route through which MDWs can remain in the UK, it will be easier for employers and perhaps NRM decision makers to claim they are fabricating allegations. The power imbalance remains in the favour of the employer.

¹¹ UKVI has relied on section 3(1)(c) of the Immigration Act 1971 as to the conditions that can be imposed on a visa national (this being a person's employment or occupation, their studies, that they have no recourse to public funds, registering with the police, reporting to immigration officer or Secretary of State, or where they live). UKVI has confirmed that a condition requiring a domestic worker to attend an information meeting would go beyond what is permitted as a condition restricting employment.

¹² <https://hansard.parliament.uk/Commons/2016-04-25/debates/16042535000002/ImmigrationBill>

- **Information meetings are made a mandatory condition of an employer and MDW's visa**

The independent review makes clear that any effective system of identification and support must address the inherent barriers facing MDWs in their work (including restrictions placed on their freedom of movement and social interactions). Failure to do so leaves identification of victims to chance which is at odds with the government's stated aims to prevent and deter the abuse of vulnerable workers in the UK.

MDWs need a real and accessible opportunity to find out about their rights as workers in the UK. As noted above, the review noted procedural failings in providing information to MDWs at visa application centres abroad and prior to their arrival in the UK. Despite some changes to the visa regime in April 2016, Kalayaan continues to register new MDWs who are unaware of their rights in the UK, including the right to change employer.

Information meetings, if left to a voluntary system, will fail to protect the workers it was intended to protect. Kalayaan recommends that the government make attendance at these meetings mandatory by making them a condition of both the employer's and MDW's visa to the UK. This will ensure MDWs leave their place of employment, that they receive information and if in exploitative employment, take steps to remove themselves and seek advice.

- **Information meetings are run by an organisation with proven expertise of the issues faced by MDWs**

Kalayaan has been informed by UK Visas and Immigration a tender is being put together for the information meetings. We have requested we see the terms of the tender before it is opened to bidders. Kalayaan strongly recommends that the meetings be run by an organisation with proven expertise of the issues faced by MDWs given the vulnerabilities they present with. A decision to award the contract to the most cost efficient bidder without due regard to the organisation's credibility and demonstrated experience, risks undermining the purpose of these meetings.

- **Ensure the programme and delivery of information at these meetings is developed with NGOs, trade unions, migrant community organisations and others who have first hand interaction and experience in supporting MDWs**

The UK is signatory to a number of international treaties and conventions committed to preventing and detecting trafficking in human beings. The Council of Europe Convention on Action Against Trafficking in Human Beings specifically requires parties to encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships to achieve the purpose of the Convention.

Following the independent review and the proposed changes, this time presents a crucial opportunity to improve and strengthen the mechanisms in place to prevent the abuse and exploitation of MDWs. This can only come about if the government provides real opportunities for engagement with civil society. Kalayaan is an associate member to the Modern Slavery Strategy and Implementation Group (MSSIG) however we have had limited engagement with UKVI on developments to the regime changes since they were announced more than 12 months ago.

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- Regulation of the sector and creation of a registration scheme for employers which ensures compliance with UK laws

To refocus checks on employers and ensure their compliance of UK laws, the proposed registration scheme needs to be regulated by an independent authority. The licensing and monitoring function carried out by the Gangmasters Labour Abuse Authority (GLAA) is recognised as a model of best practice worldwide for the sectors it regulates. The licensing standards are all legal requirements to protect workers from poor treatment and exploitation. They cover issues such as working hours, the national minimum wage and basic safety and welfare standards. The licensing team is responsible for making decisions on new and existing licenses and include granting licenses, placing additional conditions on a license following an inspection, revoking a license with or without immediate effect and refusing to issue a license. The GLAA has civil powers and extensive criminal powers required to ensure effective investigation including search powers and the power to request the production of documents (eg itemised payslips).

The appointment of David Metcalf as the new Director of Labour Market Enforcement could serve as a crucial oversight role to a regulatory agency or body tasked with ensuring employers abide by UK law, are penalised appropriately for any breaches and that MDWs attend information meetings. Kalayaan recommends that the Director's office reviews the successful licensing role of the GLAA and apply this model to a registration scheme for employers, with a commitment to funding and resourcing.

- Remove the current employment tribunal fee system to ensure access to justice

The employment tribunal system acts as an important vehicle for MDWs to hold exploitative employers to account, however fees introduced in 2013 have put the courts out of reach for many MDWs and prevented them accessing justice. Exploitative employers have been able to avoid settling claims as they know it will be difficult for low paid workers to bring such claims. Kalayaan supports the recommendation made in Ewins review where he says 'some legal aid provision must be made to enable overseas domestic workers who are not victims of slavery or human trafficking to be legally represented to take their cases to the Employment Tribunal and create an adequate body of case law to kick-start overseas domestic worker's access to obtain redress more generally and without representation. It is therefore recommended that the relevant provisions be amended to grant legal aid a limited number of such overseas domestic workers - initially, say, 20 per year - to enable their Employment Tribunal cases to proceed.'

For further information please contact

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