



2024 POLICY BRIEFING

1. AN OVERSEAS DOMESTIC WORKER VISA THAT IS 12 MONTHS' LONG, RENEWABLE, AND ALLOWS DOMESTIC WORKERS TO CHANGE EMPLOYERS.
2. THE RIGHT TO WORK FOR ALL ENTERING THE NRM.
3. BETTER MONITORING AND ACCOUNTABILITY OF EMPLOYERS OF MIGRANT DOMESTIC WORKERS.

1. CHANGING THE ODW VISA

The current Overseas Domestic Worker (ODW) visa is:

- Six months' long;
- Non-renewable; and
- Allows the domestic worker to change employers and only work until the end of the original six months.

A better visa for domestic workers is one that will effectively protect them from further exploitation.

Kalayaan calls for a domestic worker visa that is:

- 12 months' long;
- Renewable;
- Allows the domestic worker to change employer; and
- Leads to settlement.

Why does the visa need to change?

(a) It does not protect migrant domestic workers across the spectrum of exploitation.

Currently, for most migrant domestic workers, being referred to the National Referral mechanism (NRM) is their only option to find support and seek redress for mistreatment, exploitation or breaches of their employment contract. However, not all domestic workers who have been mistreated or exploited have been trafficked or are in a situation that amounts to modern slavery. At the moment, it is near-impossible for migrant domestic workers outside of the NRM to access any support or redress at all as they usually have no way of remaining in the UK legally once their six-month visa has expired. While, in theory, they have enforceable rights whilst in the UK, many workers are unaware of this and that they can seek legal advice in the UK. An employment claim usually takes far longer than six months to resolve, which deprives a large number of workers from seeking remedy and redress but also enables unscrupulous employers to get away with abuse and exploitation, especially financial exploitation. A longer, and renewable, visa would give reasonable time to seek access to justice and help combat cycles of exploitation.

This is a worker's rights issue and a human rights issue. In 2021, UN Special Rapporteurs on modern slavery, trafficking and the human rights of migrants advised that being able to extend the ODW visa would "contribute directly and significantly to the prevention and protection from exploitation and abuse of migrant workers."¹

(b) It gives domestic workers more agency as "workers".

Migrant domestic workers who have survived exploitation, trafficking and/or domestic servitude want to be able to work and support their families in their country of origin. They do not want to be labelled as "victims" languishing in a broken system – this removes their human dignity.

¹ "Mandates of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children", AL GBR 6/2021, 27 May 2021. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26423>

Indeed, for many migrant domestic workers, their chief priority is to continue to support their families in their native country, which frequently involves paying for education, health care and debt as well as everyday expenses, such as food and housing. Few employers are willing to hire a domestic worker for just a few weeks or months, making the right to change employer for those on short-term visas, ineffectual and largely meaningless. The risk of not finding new work is too great and so many domestic workers remain in exploitative situations rather than face the risk of not finding work.

On a longer and renewable visa, domestic workers who are being exploited have more agency and can leave their employers and find new employment within which they may be able to enforce their labour rights under UK law. By empowering this vulnerable group, the UK would be rectifying the current power imbalance between domestic workers and their employers.

(c) It does not make economic sense.

By granting domestic workers permission to stay longer and work legitimately, they can pay taxes and contribute to the British economy. The current ODW visa requires workers to work a full-time job which is classified as a minimum of 30 hours per week. On that basis, migrant domestic workers on the National Minimum Wage would be making a minimum of £16,255 a year and contributing a minimum of £737.04 in income tax each year. In reality, most of Kalayaan's clients work between 40 and 48 hours per week and thus make between £21,673.60 and £26,008.32 annually. This would bring their annual income tax contribution to between £1,820.72 and £2,687.66.

At the moment, the majority of migrant domestic workers in the NRM (many of whom do not have the right to work) rely on subsistence payments of roughly £70 per week, totalling £3,640 per year. They are either locked out of the UK economy or forced underground – that means cash-in-hand payments and no national insurance or tax contributions. This does not add up and costs the UK more whilst significantly being a key driver in the re-exploitation of migrant domestic workers.

2. THE RIGHT TO WORK FOR ALL POTENTIAL VICTIMS OF TRAFFICKING ENTERING THE NRM

Current situation:

Workers who have a valid visa at the time that they receive a positive Reasonable Grounds decision for the NRM will have their right to stay and work in the United Kingdom until 28 days after a Conclusive Grounds decision is made about whether they are a victim of trafficking or modern slavery.

Many migrant domestic workers, however, are referred to the NRM and receive a positive Reasonable Grounds decision after their visa has already expired. These individuals may have overstayed their visa for many reasons, often through no fault of their own, for example, because their employer deceived them into believing that their visa had been renewed; because their employer has psychologically or physically coerced them into staying in the UK after their visa has expired; or because the worker ran away and, based on practices in other countries, they were so scared of the retribution they might face for doing so that they were afraid to seek help. For those workers, once they receive a positive Reasonable Grounds decision, they can stay in the UK until 28 days after a Conclusive Grounds decision is made, but they are not allowed to work.

Based on statistics gathered in September 2023 about Kalayaan's clients, since October 2016, when the right to work was first offered to migrant domestic workers on the NRM, about 45% of Kalayaan's clients on the NRM have had the right to work, and 49% have not (with 5% whose status was unclear).

During that same period, the mean wait time between a Reasonable Grounds decision and a Conclusive Grounds decision is 31 months and the median is 26 months. The longest wait for a Conclusive Grounds decision experienced by a service user was 59 months (4 years and 11 months). Moreover, these numbers do not take into account service users who have still not received Conclusive Grounds decisions. For example, over 70% of Kalayaan's clients who received NRM positive Reasonable Grounds decisions in 2020 have yet to receive a Conclusive Grounds decision, thus waiting for over 36 months (3 years) and counting.

Why this needs to change:

Many workers leave their native country to work as domestic workers overseas in order to support their families. They may escape from dangerous and exploitative situations only to find that they are not legally

permitted to work and have to wait for years before they can legally work in the UK. Prohibiting such workers from working to support their families is inherently unfair, and, in many cases, punishes them for illegal acts committed by their employer.

Moreover, refusing potential victims of trafficking the right to work makes no sense economically. The right to work of migrant domestic workers on the NRM is based on the terms of the ODW visa: it requires workers to work a full-time job, i.e. a minimum of 30 hours per week. On that basis, migrant domestic workers with the right to work on the national minimum wage make a minimum of £16,255 a year, thus contributing a minimum of £737.04 in income taxes every year. In reality, most of Kalayaan's clients work between 40 and 48 hours per week and thus make between £21,673.60 and £26,008.32 annually. This would bring their annual income tax contribution to between £1,820.72 and £2,687.66. Conversely, for migrant domestic workers on the NRM (many of whom do not have the right to work) who receive £70 per week, they cost the taxpayer £3,640 per year.

In some cases, the worker who cannot sustain a living on £70 a week, or whose family back home is desperate for financial support, may be forced back into exploitative work even as they are recognised as a potential victim of trafficking, supported under the NRM.

For those workers, the NRM fails to protect them from further exploitation. They are treated differently from workers who have entered the NRM before their visas expired, but this arbitrary distinction applies to a group of workers who do not have any real control or autonomy over their immigration status. Instead, this unequal treatment unfairly punishes workers who often have committed no wrong and have been forced into this position through no fault of their own but because of their former employer's actions or omissions.

By allowing all potential victims of trafficking the right to work, they will be treated with dignity, given agency and independence, and they can become active participants in the UK economy.

3. BETTER MONITORING AND ACCOUNTABILITY OF EMPLOYERS OF MIGRANT DOMESTIC WORKERS

Current situation:

The UK has a fragmented labour market enforcement system, and a 2021 consultation confirmed the UK Government's commitment to creating a single enforcement body (SEB) "to tackle the deeply fragmented enforcement landscape."² This SEB has yet to be created.

By virtue of their visa requirements, migrant domestic workers work, and often live, in their employers' households. Since a labour inspector cannot enter a private home in England and Wales without express permission from the owner or occupier, or without a warrant, it is extremely rare for labour inspectors to check on the working conditions of domestic workers. Moreover, there are no other monitoring processes in place to check these working conditions. Without these, there is no way to uncover abusive or exploitative working conditions, or even to prevent employment law breaches from escalating to situations of exploitation and domestic servitude.

In 2015, James Ewins's review on the overseas domestic workers visa recommended the introduction of information meetings which would provide migrant domestic workers with information and support about their rights in the UK and would "enable those overseas domestic workers who are victims of abuse to be identified as such" and "empower them to take practical self-help steps to leave such abuse."³ In 2018, the Government initiated a tender exercise for information sessions, but the meetings were never implemented and no reasons have been given as to why this was.⁴

Moreover, in cases of domestic servitude, there is often a lack of physical evidence which makes it very rare for criminal convictions, or even charges, to be made against an exploitative employer for human trafficking or modern slavery offences. These employers often don't face accountability for their actions and may continue to

² "Good work plan: establishing a new single enforcement body for employment rights", 8 June 2021. Available at: <https://assets.publishing.service.gov.uk/media/60be1b47e90e0743a210de29/single-enforcement-body-consultation-govt-response.pdf>

³ James Ewins, "Independent Review of the Overseas Domestic Workers Visa" (p.6), 2015. Available at: https://assets.publishing.service.gov.uk/media/5a806ecee5274a2e87db9c85/ODWV_Review_-_Final_Report_6_11_15_.pdf

⁴ See the Independent Anti-Slavery Commissioner's annual report 2021 to 2022. Available at: <https://www.gov.uk/government/publications/independent-anti-slavery-commissioners-annual-report-2021-to-2022/independent-anti-slavery-commissioners-annual-report-2021-to-2022-accessible>

employ migrant domestic workers in the UK and exploit them. Employment claims are also unlikely to succeed as they can be prohibitively costly for domestic workers, and – especially where the employer lives overseas – the enforcement of court orders is often unsuccessful.

Effective monitoring of domestic work employment should be proactive as well as reactive. Currently the NRM offers a reactive solution only for offences of modern slavery and trafficking. There needs to be a range of preventative measures to enable the UK to fulfil its international obligation to ‘prevent’ under the European Convention on Action Against Trafficking (ECAT). It is currently very difficult for workers to access justice: overseas employers can leave the country easily, prosecution thresholds may not be met, civil claims cannot be enforced, and the justice system is complex, protracted and time consuming, especially for workers who are unfamiliar with it and who cannot afford legal representation. Front-loading prevention measures would help, as would having offending employers face accountability for their actions.

Ideas for better monitoring and labour market enforcement for migrant domestic workers:

- i. Creating and implementing a Single Enforcement Body as recommended by multiple actors in the anti-slavery and trafficking sector.⁵
- ii. Implementing Mr Ewins’ second key recommendations and introducing information meetings for migrant domestic workers.
- iii. Considering new policies to facilitate labour market inspectors’ access to private household employing domestic workers. One idea would be to include in the ODW visa application a declaration of express consent by the employer allowing labour inspectors to enter their home unannounced and monitor the domestic worker’s working conditions while they are in the UK.
- iv. Requiring that employers applying for the ODW visa register their domestic workers with HMRC – regardless of the length of stay – as a means to monitor that the worker is receiving the National Minimum Wage.
- v. Requiring that employers provide upfront the total National Minimum Wage salary for the full length of their worker’s stay in the UK as a bond held and monitored by HMRC.

Ideas for better accountability for employers of migrant domestic workers:

Given that employers who exploit, traffic or commit modern slavery offences are unlikely to face criminal or civil liability, Kalayaan suggests that the Home Office apply its discretionary powers to penalise offending employers by denying them re-entry into the UK.

When an employer applies for an ODW visa for their domestic worker to join them in the UK, they provide their own identification information to the Home Office. In many cases involving ODW visas, the employer resides overseas and travels to the UK with their domestic worker for a temporary visit. This is one of the reasons why criminal and civil claims fail to succeed when the worker has suffered exploitation, trafficking or modern slavery offences.

In such cases, however, a worker who is referred to the NRM may well be determined to be a victim of human trafficking or modern slavery on ‘the balance of probabilities’ by the Home Office’s Single Competent Authority (SCA). In these cases, therefore, there is enough evidence to satisfy the Home Office that the worker has been trafficked.

Given the public interest in preventing human trafficking and modern slavery in the UK, it is thus within the Home Office’s power to find the identity of the employer who committed those offences, and to record the SCA’s determination on the employer’s file. Should the employer later apply to enter the UK, then the British Government would have the authority to refuse their entry into the country.

⁵ See Group of Experts on Action against Trafficking in Human Beings, “Evaluation Report, United Kingdom, Third Evaluation Round, Access to justice and effective remedies for victims of trafficking in human beings”, 20 October 2021. Available at: <https://rm.coe.int/greta-third-evaluation-report-on-the-united-kingdom/1680a43b36>; and FLEX, “A Single Enforcement Body: What an effective Single Enforcement Body looks like”, December 2023. Available at: <https://labourexploitation.org/app/uploads/2023/12/FLEX-Single-Enforcement-Body-Briefing-2023.pdf>