



KALAYAAN

justice for migrant domestic workers

Briefing on Overseas Domestic Workers for the Modern Slavery Strategy and Implementation Group (MSSIG) Prevent meeting

11 September 2019

The government's approach to the prevention of abuse and exploitation of migrant domestic workers remains woefully inadequate. Reforms are urgently required to ensure the UK's framework does not continue to facilitate abuse or place workers at risk of further harm.

Minimum protections for workers have failed to be implemented

In March 2016, the government responded to the independent review into the terms of the Overseas Domestic Worker visa. This set out the minimum rights workers needed to ensure they were kept protected in the UK and not made vulnerable to abuse and exploitation. The review made two key recommendations:

1. Provide abused workers with an immediate escape route without jeopardising their status and livelihood by removing the visa tie bonding a worker to a specific employer. Permit all workers to be able to renew their six month visa for a further two years to enable them to find safe and decent re-employment
2. Introduce mandatory information sessions for workers who remain in the UK for more than 42 days to allow them to access advice and assistance

Disappointingly the government chose to ignore the findings made in the evidence based review which crucially, looked at the full spectrum of abuse suffered by workers in the UK including treatment which did not amount to trafficking or modern slavery. The government expressed concern that if all workers could change employers and renew their visa without reporting abuse this would result in a revolving door of abuse where perpetrators remain unidentified, however this failed to consider the recommendation that workers notify the Home Office of any change in employer (as is the case for those on the original Overseas Domestic Worker visa issued prior to April 2012) who could then pass this information to the police to consider commencing an investigation.

The following reforms were introduced in April 2016:

1. All workers entering on the Overseas Domestic Worker visa permitted to change employers for any reason but only for the remaining term of their six month visa with no entitlement to renew the visa

2. Workers identified as trafficked or enslaved who enter the National Referral Mechanism (NRM) and receive a positive reasonable grounds decision whilst their six month visa is valid can continue working whilst they await a conclusive grounds decision¹
3. In addition to the provisions under which Discretionary Leave can be granted to those recognised as victims of trafficking or modern slavery, workers issued a positive conclusive grounds decision can apply for further leave as a domestic worker for two years. To apply workers need to demonstrate they will be able to maintain and accommodate themselves. If leave is granted, workers have no recourse to public funds for the duration of their visa

Problems with the non-renewable visa

Workers take time to gather sufficient courage or despair to escape and many report having no control over when they are able to. After they do, they struggle to find re-employment in such difficult circumstances. Whilst appearing to untie workers, in reality the government's reforms have not reinstated meaningful protections for abused-but not trafficked workers as they now face trying to find a new employer to work full time with only months or weeks left remaining on their visa and without references.

49% of workers who arrived on the Overseas Domestic Worker visa after 6 April 2016 did not have possession of their passport containing their visa when they registered at Kalayaan² so in many cases cannot demonstrate to any prospective employer that they have permission to work in the UK. Without recourse to public funds and without knowing if they have valid leave, workers are resigned to having to accept any work offered to them or face becoming destitute. This leaves them at risk of going from one exploitative employer to another which undermines the underlying rationale for being able to change employers: to give workers a safe route out of an abusive situation and find safe re-employment. Some unscrupulous employers exploit this vulnerability and offer exploitative work by telling workers they are taking a risk in hiring them without their documents and others refuse to hire with the introduction of the offence of illegal working in the Immigration Act 2016.

Kalayaan considers it vital that workers can quickly and safely find out when their visas expire to ensure they are kept safe and not put at risk. Kalayaan has previously spoken with the Home Office about establishing a system to access this information, rather than having to make applications for disclosure under the Data Protection Act 2018 which can take 30+ days to receive, during which time a worker remains at risk. This issue is now compounded by the inclusion of an immigration exception in the 2018 Act which hands the government the power to deny migrants access to their data if they consider it is for the maintenance of effective immigration control. In response the Home Office has told Kalayaan that workers should report stolen passports to the police, approach their embassy for a replacement emergency document and then apply for a replacement vignette from UK Visas and Immigration. This response fails to acknowledge that workers are too fearful to approach the authorities. They are lied to by their employers that they will not be helped or believed should they report what has happened to them. Several embassies require a fee to apply for a replacement passport which many workers cannot afford and the processing time can take several months at which time workers remain at risk.

¹ In April 2016, the government said a referral to the NRM whilst a worker's six month visa was still valid would extend their leave and preserve their right to work. The Immigration (Variation of Leave) Order 2016 which came into force in October 2016 stipulates workers must have a positive reasonable grounds decision whilst their visa is valid - <http://www.legislation.gov.uk/uksi/2016/948/contents/made>

² Of registrations between 6 April 2016 and 19 August 2019

Lack of information fuels abuse and exploitation

Information sessions

In response to the independent review the government commented that ‘more should be done to ensure that both ODWs and their employers are provided with information on their respective rights and obligations and to provide workers with access to a neutral space in the UK in which they can be given advice and an opportunity to alert someone to their situation if they need to’. The government stated they believe that ‘empowering victims of hidden crimes like modern slavery is fundamental to bringing them into the light and ending the cycle of exploitation’ and committed to implementing the review’s proposals for the introduction of information, advice and support meetings for workers in the UK, hosted by an organisation independent of the Home Office.

In 2018 a procurement exercise was launched to identify a provider to run the sessions. Prior to this, Kalayaan and an advisory group of experts produced some minimum standards in consultation with migrant domestic workers to inform the scope and delivery of the sessions.³ These included and repeated some recommendations made in the independent review as to the procedure at Visa Application Centres (VACs) although Kalayaan was informed that these were considered outside the scope of the sessions. Kalayaan raised concerns over the draft requirements for the tender and the impact these would have on vulnerable workers including the fact the sessions could not be made mandatory and no welfare checks would be conducted on workers who were invited but failed to attend.⁴

In a meeting with Home Office officials in May 2019 they confirmed there were a number of commercial issues with the low number of bids received. Kalayaan was informed a final decision on the procurement process would be made in about a month’s time but no further information has been provided.

Visa application centres

In 2016, the government also stated ‘they would consider a proactive approach to ensuring information and messages concerning entitlements and obligations are understood before a visa is issued’ however Kalayaan understands no procedural changes have been made to the delivery of information at VACs, despite recommendations made in the independent review and by Kalayaan and the advisory group in the minimum standards produced for the information sessions.

The government continues to claim that safeguards are operating at VACs abroad, including the issue of an information leaflet to workers when they attend and enrol their biometrics which informs them of their employment and immigration rights, sparse details on the NRM and contact details for organisations in the UK who can offer support if they experience abuse⁵. Evidence collated from workers registering at Kalayaan proves these safeguards are not operating as claimed⁶:

³ <http://www.kalayaan.org.uk/news/kalayaan-and-experts-publish-minimum-standards-for-odw-information-meetings/>

⁴ <http://www.kalayaan.org.uk/news/tendering-process-for-odw-information-meetings-undermines-governments-stated-aim-to-empower-workers-and-penalize-exploitative-employers/>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730783/Overseas_Domestic_Worker_applicant_leaflet_2018_V2.1.pdf

⁶ Of registrations between 6 April 2016 and 19 August 2019

- 89% of workers were not issued an information sheet
- 58% of workers were accompanied to the interview at the visa application centre by their employer or member of staff
- 30% of workers travelled from Saudi Arabia, 24% from Qatar and 20% from UAE

The government continues to argue the information leaflet helps to prevent the abuse and exploitation of workers in the UK, workers who are often women with limited formal education, often suffering from mental illness resulting from past traumas and having learned or been conditioned to distrust authorities who will have limited or no understanding of the concept of being a victim of trafficking. The information sheet by itself, whilst an important safeguard, can only prevent abuse if it informs workers of clear and concrete rights which are not conditional upon their treatment amounting to trafficking or slavery.

Impact of differential rights of work for migrant domestic workers in the National Referral Mechanism

Only workers who enter the NRM and receive a positive reasonable grounds decision whilst their six month visa is still valid have permission to work whilst they await a conclusive grounds decision. Those who receive a decision after their visa has expired do not have permission to work and must survive on destitution based payments of £35 a week made under the Victim Care Contract, administered by the Salvation Army and their sub-contractors. On average, workers referred to the NRM by Kalayaan who received decisions in 2018 were waiting 24 months for their conclusive grounds decision. The longest wait was 37 months.

New research from Kalayaan demonstrates the arbitrariness of government policy in denying the right to work for those with expired visas and outlines the barriers workers face in being able to seek a referral to the NRM whilst they still have valid leave. The research also demonstrates how workers denied the right to work are drawn into destitution, sometimes forced into irregular work, made vulnerable to further harm and exploitation and suffer a deterioration in their mental health. The report demonstrates that in extending the right to work to all migrant domestic workers in the NRM they can live in dignity as they can support themselves and their families, prevent them falling into destitution and at risk of exploitation and assist them in their recovery.

Applying for further leave to remain as a recognised victim of trafficking or slavery

If the Home Office issues a positive conclusive grounds decision to a domestic worker but considers they do not fall for a grant of discretionary leave, it is open to the worker to apply for leave to remain in the UK as a domestic worker within 28 days. Home Office guidance⁷ provides that this information should be included in the conclusive grounds decision letter however Kalayaan has noted that this has been absent in letters received by our clients (instead contact information is provided for help and advice on returning home).

In order to apply, workers must provide a copy of their conclusive grounds decision and evidence which demonstrates that they can maintain and accommodate themselves without recourse to public funds. Those workers denied permission to work will struggle as they have been made reliant on support

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/828756/victims-modern-slavery-competent-auth-v8.0.pdf - see page 89

provided under the Victim Care Contract for months / years and will be made reliant on their communities when they exit the NRM.

Prior to a High Court challenge in 2019, recognised survivors were provided with just 45 days after receiving a positive conclusive grounds decision to exit the NRM and access mainstream services. The Home Office has now conceded this policy is unlawful and they will review their policy on providing support beyond 45 days based on individual need.⁸ It is unclear if or how this case will affect the requirement for migrant domestic workers to demonstrate they will be self-sufficient when applying for further leave within 28 days.

Only workers with permission to work in the NRM who make a valid application within 28 days can continue working whilst their applications for further leave are being processed. For those workers who do not have the right to work in the NRM, this represents a further wait before they can resume work and support themselves and their families. Kalayaan has supported several workers in this position, including some who have had to wait in excess of 9 months before they received their visas. These workers have been entirely reliant on charitable grants and support from their communities to prevent them becoming destitute as they have had no entitlement or access to support after exiting the NRM.

All immigration applications are now applied for online. This includes applying for further leave to remain for migrant domestic workers who have been recognised as victims of trafficking and modern slavery. To complete the application, workers will be required to provide supporting documentation via Sopra Steria, the company awarded the contract by the Home Office to process applications. Unless workers have access to a legal aid lawyer or have the assistance of a registered and regulated advice agency such as Kalayaan, they will need access to a computer and the internet to upload their documents otherwise Sopra Steria will charge them to do this when they attend one of their service centres. Applicants will also be charged depending on the location of the service centre and the date and time of their appointment. These charges are at odds with the government's claim that these applications have no fee to pay⁹ and may mean for some workers they have to borrow money from friends or community members or enter into illegal and exploitative work.

QUESTIONS

Kalayaan would be grateful if the Modern Slavery Unit / Migration Policy Unit / Home Office could confirm or provide information on the following:

1. What safeguards are in place for those workers abused but not trafficked or enslaved?
2. Will the Home Office review its decision not to establish a system where workers can quickly and safely establish when their visa expires?
3. Can the Home Office confirm how many applications it received from organisations bidding to run the information sessions?
4. Can the Home Office provide a final decision on the procurement of a provider for the information sessions? Will there be a public announcement on the final decision?

⁸ [https://www.duncanlewis.co.uk/news/Home_Office_concedes_that_their_45_day_policy_for_providing_support_for_victims_of_trafficking_is_unsatisfactory_\(28_June_2019\).html](https://www.duncanlewis.co.uk/news/Home_Office_concedes_that_their_45_day_policy_for_providing_support_for_victims_of_trafficking_is_unsatisfactory_(28_June_2019).html)

⁹ <https://www.gov.uk/domestic-workers-in-a-private-household-visa/victim-slavery-human-trafficking>

5. What safeguards will be introduced for workers in the UK if information sessions are not implemented? What safeguards have been or will be put in place for workers whilst the Commercial Directorate in the Home Office makes a final decision on the procurement process?
6. How do UKVI ensure information sheets are issued to all ODWs? Do they have any monitoring mechanisms of what takes place and the documents issued at VACs?
7. Is there any intention to review and assess the impact of the Immigration (Variation of Leave) Order?
8. Will the Home Office ensure conclusive grounds notifications expressly state workers have the right to apply for further leave to remain, in accordance with Competent Authority guidance?
9. Can the Home Office advise how workers demonstrate they can maintain and accommodate themselves when applying for further leave if they have been denied permission to work in the NRM?
10. Will this requirement be reviewed in light of the government's commitment to continue support to recognised victims of trafficking and modern slavery beyond 45 days?
11. Can the Home Office advise if workers will be expected to pay services charged by Sopra Steria? Kalayaan recommends there be a function that excludes recognised victims of trafficking from having to pay any charges.

We would be grateful if written responses could be provided ahead of the next MSSIG Prevent meet in the next 2 months.