

Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in the United Kingdom

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Summary

The British government has taken several important legislative steps in addressing THB, the modern slavery bill being the most recent one. At the same time, it has adopted a number of policies that contradict the implementation of a public policy intent at criminalising and stopping THB. The change of the overseas domestic worker visa rules putting newly arrived domestic workers in a very vulnerable position as regards their employment is a case in point. The UK also remains a country with a largely unregulated domestic work sector and without a Labour Inspectorate agency overseeing the activities of employers and businesses across the sectors of the British economy.

The evidence collected in this study suggests that the main **obstacles** to prevent exploitative situations within the domestic work industry are: a) the strict immigration rules and political priorities of law enforcement agencies, b) the involvement of the State in the organisation and regulation of the domestic work labour market, and c) the state of the welfare regime protecting families and offering vulnerable individuals access to the rule of law. These are the structural reasons that lie behind the failure to protect domestic workers and deter abusive behaviour on the part of employers in the UK. The study's findings on national law-cases also demonstrate that the kind of work relationship established in domestic work aggravates the vulnerability of the workers and the sense of impunity on the part of the employers.



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About the project

Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in it or protecting the human rights of victims. However, European countries are increasingly exploring ways in which to influence the demand for services or products involving the use of trafficked persons or for the trafficked persons themselves. **DemandAT** aims to understand the role of demand in the trafficking of human beings and to assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights on regulating demand from related areas.

DemandAT takes a comprehensive approach to investigating demand and demand-side policies in the context of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches are studied in policy areas that address demand in illicit markets, in order to develop a better understanding of the impact that the different regulatory approaches can have on demand. Demand-side arguments in different fields of trafficking as well as demand-side policies of selected countries are examined, in order to provide a better understanding of the available policy options and impacts. Finally, the research also involves in-depth case studies both of the particular fields in which trafficking occurs (domestic work, prostitution, the globalised production of goods) and of particular policy approaches (law enforcement and campaigns). The overall goal is to develop a better understanding of demand and demand-factors in the context of designing measures and policies addressing all forms of trafficking in human beings.

The research is structured in three phases:

- Phase 1: Analysis of the theoretical and empirical literature on demand in the context of trafficking and on regulating demand in different disciplines, fields and countries. From January 2014–June 2015.
- Phase 2: Three in-depth empirical case studies of different fields of trafficking – domestic work, prostitution, imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.
- Phase 3: Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

Project Facts

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Country case studies - Introductory note

This country report is part of the DemandAT project's case study on trafficking in human beings (THB) in the domestic work sector. The study was conducted in seven European countries (Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK) and this paper is part of a series of seven country reports.

The key objectives of the country research were to i) investigate types of situations in domestic work that may involve extreme forms of exploitation and trafficking, ii) examine the motivations and factors driving and shaping the demand as well as iii) examine the gaps in legislations and policies. The scope of the country reports is comprehensive, and aimed at gaining a better understanding of the phenomenon in the country, and do not focus only on the demand-side aspects.

The reports are based on desk research of available literature as well as case law review and interviews with key stakeholders. Secondary sources, such as reports by international organisations and NGOs, and academic articles, were consulted, as well as primary sources in the form of legal instruments and policy documents.

The working paper 'Trafficking in domestic work: Looking at the demand-side' (Ricard-Guay 2016) provided a common research framework within which to conduct the seven in-country case studies.

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Acronyms

<i>AI(TC)A</i>	<i>Asylum and Immigration (Treatment of Claimants, etc.) Act</i>
ATLEU	Anti-Trafficking and Labour Exploitation Unit
CA	Competent Authorities
CCRC	Criminal Cases Review Commission
CFREU	Charter of Fundamental Rights of the European Union
<i>CJA</i>	<i>Coroners and Justice Act</i>
CPS	Crown Prosecution Service
EAT	Employment Appeal Tribunal
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ETI	UK Ethical Trading Initiative
GLA	Gangmasters Licensing Authority
J4DW	Justice for Domestic Workers
HMRC	HM Revenues and Customs
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act
MoJ	Ministry of Justice
<i>MSA</i>	<i>Modern Slavery Act</i>
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism
<i>SOA</i>	<i>Sexual Offences Act</i>
THB	Trafficking in Human Beings
UKHTC	UK Human Trafficking Centre
UKVI	Home Office Immigration and Visas
UKBA	UK Border Agency
DWP	Department for Work and Pensions

Introduction

The British government has taken several important legislative steps in addressing THB, the modern slavery bill being the most recent one. At the same time, it has adopted a number of policies that contradict the implementation of a public policy intent at criminalising and stopping THB. The change of the overseas domestic worker visa rules putting newly arrived domestic workers in a very vulnerable position as regards their employment is a case in point. The UK also remains a country with a largely unregulated domestic work sector and without a Labour Inspectorate agency overseeing the activities of employers and businesses across the sectors of the British economy.

The strict immigration rules on domestic workers and the weak labour market control regime in the UK affect a large number of people. Notwithstanding undocumented migrant workers from outside the EU, EU nationals who enter the UK without any visa requirements or third country nationals admitted as au pairs, around 15,000 workers enter the country every year on overseas domestic worker visas. In 2014 alone, 16,753 persons entered the UK on the Overseas Domestic Worker visa¹.

This national case study report gives an overview of the phenomenon of THB in domestic work in the UK and the government approach to it, giving special attention to its demand-side aspects. The goals of this paper are to describe the main features of THB in domestic work, and analyse structural and contextual factors shaping demand in the context of trafficking in human beings in the domestic work sector and helping to explain the occurrence of THB in domestic work.

This study combined secondary desk research and primary data collection. A literature review was carried out to examine relevant publications, national and international legislation, legal guidance and case law. This literature review was discussed against primary research material collected from 10 interviews with key stakeholders from different sectors: solicitors and barristers who have been involved in known case law on THB and were knowledgeable of cases of THB in domestic work (DW); NGO representatives and case workers (both official NRM first responders and unofficial first responders); and a Crown Prosecution Service (CPS) prosecutor. Extensive documentation and analysis of case law and stories of victims in websites of Kalayaan, a well-known NGO first responder and ATLEU, a well-known charity providing legal representation to victims of THB and labour exploitation, was also carried out. Workshops on trafficking prosecutions and trafficking-related issues were also attended to identify key national actors and potential interviewees.

1 National context: trafficking in human beings (THB) in the domestic work sector

1.1 Government approach and responses to THB in domestic work

There is ambiguity as regards the approach of the British government to THB. On the one hand there are certain nodal points in the recent history of its approach to THB which qualify it as being upfront and very vocal with the issue of human trafficking and slavery. In 2009 the government voted the Coroners and Justice Act under which several legal gaps as regards the definition of THB and the different forms it may take, including labour trafficking and domestic servitude, were addressed. The British government has expressed its latest commitment to tackling THB under the Modern Slavery Act voted in March 2015.

¹ <https://www.gov.uk/search?q=Immigration+statistics+2014> (accessed 10.5.15)

Nevertheless, the government has taken several steps which seem to undermine the implementation of a public policy which wishes to criminalise and stop THB. In June 2011, the UK was one of only nine countries that did not vote in favour of the International Labour Organisation Domestic Workers Convention. In 2012, it changed the overseas domestic worker visa rules putting newly arrived domestic workers in a very vulnerable position as regards their employment. Over the last years, the government has restricted legal aid access to migrants including victims of trafficking while it proceeded in deep budget cuts of the criminal justice actors who implement the anti-trafficking policy.

1.1.1 Regulations for domestic work

There are three formal channels to migrate and work in the domestic work sector in the UK; the overseas domestic worker visa; the visa for workers in the employment of diplomats; and the au pair system. The original migrant domestic worker visa (or Overseas Domestic Worker visa) was introduced in 1998. The visa had strict requirements: workers were limited to one full time job as a domestic worker in a private household, had no recourse to the benefit system in the UK and had to demonstrate evidence of this employment annually in order to renew their visa (Kalayaan 2013).

On 18 September 2002 the route for overseas domestic workers in private households was introduced into the Immigration Rules. This route allowed entry for domestic workers already employed by a person overseas to accompany their employer into the UK, for the purpose of domestic work. Under these rules, *established* domestic workers received a 12 month visa, were allowed to change employers provided they continued to be employed as a domestic worker and could apply for indefinite leave to remain after five years of continuous lawful residence.

Immigration Rules have changed since 6 April 2012. Overseas domestic workers who have applied to enter the UK on or after that date are limited to a maximum of six months in the UK, and cannot change employer. This practically means that domestic workers who came legally in the UK after April 2012 lose their residence status and rights as soon as they leave their employer. Also, in the immigration rules it is stipulated that these workers 'must have been employed as a domestic worker for one year or more immediately before the application for entry in the UK under the same roof as the employer'. They must also intend to leave the UK at the end of six months or extend their visa for as long as their employment is needed by the employer with whom they entered the UK (Home Office Guidance 2014). Similarly to the domestic workers on the 'old' visa, the domestic workers on the tied visa have no recourse to public funds (that is a range of benefits that are given to people on a low income, as well as housing support)². It should be noted at this point that these overseas domestic workers are live-in domestic workers, not live-out.

Domestic workers who entered the UK on the pre-2012 immigration rules were allowed to bring a dependant. The ones who applied to enter on or before 6 April 2012 are not allowed to do so. Also domestic workers on tied visas are not entitled to an indefinite leave to remain in order to settle in the UK.

Another category of overseas domestic workers regards those who enter the UK in the employment of a diplomat. They enter under Tier 5 of the Points Based System. Their visa can be valid for the duration of their diplomatic employer's posting, up to a period of 5 years. They are not allowed to change employer or, since April 2012, to apply for settlement or to bring dependants to the UK.

² See for a full list of public funds: <https://www.gov.uk/government/publications/public-funds--2/public-funds>

Another way into domestic work in Britain is through the au pair system. Nationals from a small list of countries outside the EU³ who wish to become au pairs may enter the country under the Tier 5 Youth Mobility visa, which enables the holder, aged between 18-30, to work for 24 months in the UK. Au pairs are not classed as employees, they are treated as 'part of the family' and the emphasis is rather on cultural exchange and language acquisition. They are allowed to work up to 30 hours per week and are entitled to 'pocket money' instead of salary. In reality, au pairs end up working for many more hours or even 24/7 for pocket money (Cox 2007). In a market where many au pair agencies advertise au pair placements as full time jobs⁴ there is clearly substantial room for exploitation, which could potentially lead to a THB situation.

1.1.2 Anti-trafficking policies and initiatives

The British criminal justice response to trafficking of human beings (THB) rests on legislation which is rooted in the UN Palermo Protocol 2000 definition, the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), 2005 and the EU *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*⁵.

The specific pieces of national legislation framing the UK's obligation to address THB in accordance with the European Convention and Directive are: *the Sexual Offences Act (SOA) 2003; section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act (AI(TC)A) 2004; s.71 of the Coroners and Justice Act (CJA) 2009; and the Modern Slavery Act 2015*. These pieces of legislation convey specific interpretations of what constitutes a trafficking offence and set the processes and channels under which it is criminalised.

Under SOA and AI(TC)A, trafficking is essentially conceptualised as a crime that is inextricably linked with immigration. It is no coincidence that the criminalisation of trafficking in AI(TC)A came in this piece of legislation which mainly criminalised immigration offences (see also Balch 2012; Geddes et al 2013). Additionally under s.4 AI(TC)A for a trafficking offence to be prosecuted there has to be evidence demonstrating continuous intention to exploit; that is proving that the exploiter/trafficker brought the person in the UK with the intent to exploit. The maximum sentence for an offence under s.4 is also 14 years' imprisonment.

Unlike the SOA which deals with sex trafficking, the AI(TC)A broadens what is meant by exploitation. However, s.4 AI(TC)A did not explicitly make reference to crimes of slavery or servitude, and forced or compulsory labour. This was done with s.71 CJA 2009. Under CJA servitude is an obligation to provide one's services that is imposed by the use of coercion. Forced or compulsory labour is work performed involuntarily and under the threat of a penalty and is seen as breaching Article 4(1) and (2) of the European Convention of Human Rights (ECHR). S.71 of the CJA essentially embeds into UK domestic law the provisions of Article 4 of the ECHR. The offence does not require movement to be evidenced; it focuses on the treatment of the trafficked person rather than how s/he was brought into the UK.

The Modern Slavery Act (MSA) 2015 is a comprehensive legislation which promises to deal with many of the problems mentioned in this study. It includes more severe sentences. Life imprisonment is now possible for offences of slavery, servitude, forced or compulsory labour and human trafficking. There is an Independent Anti-Slavery Commissioner put in place who will work with police forces and other front-line professionals to help improve their ability to

³ British nationals living abroad and nationals of Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, Republic of Korea, Taiwan. Au pairs from within the EU do not need visas to enter the country.

⁴ <https://thetraffickingresearchproject.wordpress.com/2014/08/08/703/>

⁵ https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu-applied-united-kingdom_en

recognise and support victims, including developing good practices in working collaboratively with NGOs. Most importantly on the matter of criminalisation of victims of trafficking, the MSA stipulates that a person is not guilty of an offence if the person does that act because the person is compelled to do it (s.45(1)).

Also, section 47 of MSA amends Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 allowing access to civil legal aid in situations where there has been a conclusive or reasonable grounds determination that the individual is probably a victim of slavery, servitude or forced or compulsory labour. Yet, it remains to be seen if it will be well implemented in practice (see below).

Labour law has been another avenue through which trafficking victims have sought compensation (see case law section below). Undocumented migrant workers are not eligible for compensation through this route in the UK. However, different courts in the UK have taken different decisions and tend to balance the seriousness of the illegality with the basis of the claim. For example, in the case of a work accident injury the employer is expected to retain a duty to take reasonable care not to injure the claimant even if he is not a legal employee. Legislation on false imprisonment, kidnapping, mental or physical assault, or even theft could also be used to seek some compensation for victims. But clearly these legal avenues fall short of the gravity of the offence.

Whilst keeping in mind this framework of law, it should be noted that the obligations of the UK to criminalise trafficking are implemented by policy rather than law. As discussed in subsequent sections of this report, the criminal justice system actors operate within policy priority frameworks developed over the years and appear to be less adequately tuned to contingent legislative developments on THB. The analysis which follows in this and the subsequent sections is based on the situation as it stood until the voting of the MSA on 26 March 2015. This legislation has not been implemented at least until the time of writing this report.

The National Referral Mechanism (NRM) is the policy framework introduced in 2009 for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate protection and support in the UK. The process of identifying who is and who is not a victim of trafficking initiates with a referral (an NRM form application) being sent to one of the two Competent Authorities (CA) in the UK by a first responder on behalf of the potential victim⁶. The CA are the UK Human Trafficking Centre (UKHTC), which deals with NRM referrals from the police, local authorities, and NGOs, and the Home Office Immigration and Visas (UKVI), which deals with NRM referrals identified as part of the immigration process⁷.

There are two stages in the NRM process of identifying trafficking victims. In the first stage the UKHTC, within a target of 5 working days from receipt of referral, is called to decide whether there are *reasonable grounds* to believe the individual is a potential victim of human trafficking or modern slavery. If there is an affirmative reasonable grounds decision, the NRM grants a minimum 45-day reflection and recovery period for victims of human trafficking or modern slavery (2nd stage). Access to safe house accommodation and specialist support stops after the 45-day reflection period.

Within the 45-day reflection and recovery period, the UKHTC is called to make a *conclusive* decision whether the referred individuals should be considered to be victims of trafficking. This is largely based on the victim testimonies given to the police⁸.

⁶ When the victim is a child the referral can be made without the consent of the child.

⁷ For authorised first responder agencies see ATMG 2013.

⁸ <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

In the case of a positive *conclusive grounds decision*, the referred individual may continue cooperating with the police who, in coordination with Crown Prosecution Service (CPS), the body authorised to take charging decisions, may resume the investigation of the crime of trafficking following the Anti-trafficking European Convention and Directive. The removal of specialist support and protection after the 45 day reflection period is a disincentive on the part of the victim to resume cooperation. During this criminal investigation stage, the police explores in collaboration with the CPS the facts of the case and decide whether or not they can hang them to a specific offence and accordingly proceed or not to the prosecution stage.

As will be analysed further below, most victims of trafficking do not report the trafficking offences committed against them. Reporting usually takes place when they are themselves defendants for immigration related or other offences (for example, theft and involvement in drug trafficking activities). The British criminal justice system does provide for a safety valve to prevent the criminalisation of victims from occurring. The CPS, in particular, operates a two-stage test before prosecuting an individual where there is suspicion that she is a victim of trafficking. First, the prosecution checks under the common law *defence of duress* whether the accused has been compelled to commit the crime in question. The second step is to assess whether it is in the public interest to withdraw the prosecution and acquit the defendant who acted under duress.

A notable initiative to rectify the problem of criminalisation of trafficking victims is the prison outreach initiative run by the POPPY project. This prison outreach involves one of the POPPY workers visiting detention centres and prisons to provide advocacy and support to women in those hard-to-reach situations who have been trafficked (interview 4).

Institutional framework: key stakeholders

As already mentioned, the UKHTC and the Home Office are eligible to decide who is and who is not a victim of trafficking after being sent an NRM form application by one of the first responders on behalf of the potential victim.

In the victim identification stage there is a whole range of formal and informal first responders to whom the victim may resort to and who could refer the victim to the competent authorities. These may be the police, social services workers, NHS primary care or secondary care employees (GPs, hospital nurses, physicians), UKBA immigration officers, NGO service providers (e.g. Salvation Army), as well as non-authorized first responders such as immigrant community organisations and churches. Also the HM Revenues and Customs (HMRC) and the Department for Work and Pensions (DWP) may also note irregularities in a business or household of benefit claimants which may uncover criminal activities amounting to a trafficking offence and could notice law enforcement authorities (ATMG 2013: 67).

Another key stakeholder in anti-trafficking policies is the Gangmasters Licensing Authority (GLA), a Non-Departmental Public Body which regulates the activities of labour providers (such as gangmasters and employment agencies) who provide workers in the farming, food processing and shellfish gathering sectors across England, Scotland, Wales and Northern Ireland. The GLA licenses these labour providers and works in close cooperation with their clients, labour end users/employers in disclosing illicit activity in their supply chains. In particular, the Association of Labour Providers in collaboration with GLA and the NGO Migrant Help has produced a booklet for employers and recruitment agencies under the project better2gether.org which gives them advice and signs to look out for in order to prevent labour maltreatment from occurring in their business's supply chain. The *charge rate guidance* is an example of a specific measure which builds up the cost of the supply of labour and indicates that below a certain point labour cannot be supplied without either exploitation of the workers or taxes not being paid (Stronger Together 2013). Such initiatives should be extended to regulate labour market activities in other sectors including the domestic work one. In the year 2013-2014 alone the GLA assisted in rescuing over 100 potential victims of trafficking for labour

exploitation (GLA 2015: 6-7). Although GLA's remit is limited in these sectors, its involvement in criminal investigations with other law enforcement agencies helps the latter inspect, uncover and prosecute offences of THB in other sectors. The UK has no Labour Inspectorate overseeing the activities of employers in the different sectors of its economy.

The national stakeholders who may be involved in criminal proceedings are the following: UKHTC, Police, HMRC, DWP, GLA, UKBA, CPS, Judges, Juries, Victim Support.

The ATMG is a stakeholder coalition instituted in 2009 to monitor the implementation of UK anti-trafficking policies.

Specific Anti-trafficking initiatives relevant to DW

The main difficulty in addressing trafficking offences against domestic workers is that they take place in private residences. Conducting precautionary site visits and investigations in private residences is legally and financially not possible. In this respect, a good enforcement practice has been the use of health and safety officers in police and immigration investigations and raids in order to inspect and collect possible evidence on poor living conditions which could be associated with a trafficking offence (ATMG 2013: 52).

The Met Police set up operation Paladin in 2004 precisely to look into the reasons behind the rise in the numbers of unaccompanied minors entering the UK. The operation Paladin uncovered a Nigerian pastor who trafficked children into domestic servitude in London (see R vs Lucy Adeniji in section 2).

There have been several initiatives around the training of first responders, law enforcement authorities and prosecution bodies on identifying trafficking, including domestic servitude. One example is the e-learning training on identifying trafficking driven by the National Centre for Applied Learning Technologies (ATMG 2013: 46). Over the years there has been a multitude of Investigator training packages but they appear to have lost momentum and have not been taken forward (ATMG 2013: 60). In a landscape of CPS lawyers not receiving official training for trafficking and forced labour offences, there is a new virtual training package entitled *Human Trafficking and Slavery E-learning* which is under development by the Prosecution College (ATMG 2013: 78).

1.1.3 Policies and measures addressing demand-side of THB in domestic work

Individuals are trafficked and forced into labour because there is a specific type of demand for their labour; a demand which seeks to maximise its profits or savings from these labourers by depriving them of their basic human rights. The state develops policies and measures in order to regulate and influence the conditions under which this labour should be demanded; and to curb the demand for labour which denies the rights attached by national and international law to this labour.

The main policies envisaged by the British government in order to address the demand-side of THB in domestic work are to raise awareness and prohibit criminal conduct among buyers of this labour through legislation.

Noteworthy amongst UK campaigns to encourage consumers to demand goods where there is no exploitation/forced labour in the supply chain, is the government funded UK Ethical Trading Initiative (ETI). The ETI is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe (Deegan et al 2014).

The death of cockle pickers at Morecambe Bay in 2004 led to a number of policy developments, the most notable of which has been the creation of the Gangmaster Licencing Agency aiming to regulate employment agencies providing labour in certain food industry labour markets. The

GLA has collaborated closely with the Association of Labour Providers and large retailers over the last decade in raising employer and labour provider awareness on trafficking and forced labour. In this respect the Stronger Together campaign has been a noteworthy initiative which was set up in order to create supply chain transparency. Nevertheless, there is no binding legal obligation for employers to report the actions they take in tackling labour exploitation and abuse in their product supply chains.

The absence of a Labour Inspectorate which would organise workplace inspections in the UK inevitably leads to different levels of protection of workers' rights in different sectors or types of employment (Balch 2012). Domestic workers and au pairs are at the short end of the stick along with workers of most other industries in the UK.

The main measure in deterring employers from abusing their workers, apart from consumer and employer awareness campaigns and the fragmented regulative activity in specific labour markets (notably the GLA sectoral remit), is punitive legislation. However, having appropriate legislation which hangs facts to offences committed and raises penalties does not suffice to address the demand-side of THB (in DW). In order for law to have a deterring effect, this report argues that the law enforcement authorities must ensure that traffickers and abusers will be brought to justice, and victims will be facilitated to access criminal justice stakeholders and report the crimes committed. But, as this report shows, there are significant hurdles in this direction.

First, the combination of strict immigration rules and weak labour market controls in the country hampers the workers' opportunities to know and feel empowered to claim their rights and generally leave a free reign to employers as regards the treatment of their workers. The government's loose interpretation of au pairs' rights and the post-2012 tying of domestic workers to their first employer, in a context of weak labour market controls with more regulatory efforts in a few sectors and none in others, like the childcare industry, leaves workers exposed to the whims of their employers. The government's rationale for not allowing migrant domestic workers to switch employers has caused controversy. Conservative members of parliament of the British government rejected an amendment to the Modern Slavery Bill seeking to remove tied visas on the grounds that abused workers who are allowed to leave their employers would be thus assisted to prolong their stay in the country beyond the eligible visa period and, secondly, would be less likely to report their ordeal to the authorities⁹. According to this rationale, keeping the tied visa regime would instead leave workers no other option but to report their abusive employers or brokers keeping them enslaved. The British government essentially seeks to address the illicit demand in DW by increasing the responsibility of the victim-workers to report; having crippled it in the first place with the imminent threat of deportation waved against those who leave their employers.

Empowerment of workers may come retrospectively through the efforts of NGOs to fill in the cracks in abused workers' awareness of and access to their rights. NGOs supporting domestic workers do their best to inform workers of their rights and find the funds to help them exercise these rights, as stated by interviews with NGOs for this study. From providing safe accommodation, legal counselling and emotional support in drop-in sessions to approaching isolated domestic workers in places where they tend to gather (local churches, parks), NGOs seek to empower vulnerable workers. But they are up against a tide when the migrant domestic workers' rights have such a limiting scope that workers often end up making use of them only as a last resort with deportation looming over their heads.

Second, the problem also lies with the very State institutional apparatus developed for tackling the specific crime of THB. In particular, law enforcement has complementary and competing

⁹ <http://blogs.findlaw.co.uk/solicitor/2015/03/employment-law-modern-slavery-bill-amendment-rejected-by-mps.html>

priorities to which it is answerable and which prevent it from tackling THB. In the process of fighting each and every of these priorities (human, drug trafficking, petty crime and so on) law enforcement authorities have been developed and equipped over decades in order to address certain crimes and not others. However, each of these areas of crime has different prominence in the public sphere. THB is a crime that has only recently emerged in the service provider law enforcement priorities as they have been developed in this interactive political process over the years. The ATMG study noted that there is a tendency among the police to prioritise certain cases, such as trafficking for sexual exploitation, and that this may be due to more experience and confidence in dealing with sex trafficking within police forces (ATMG 2013: 50, 63). One other possible reason related to policing priorities is that sex crime investigations may lead to uncovering larger criminal networks involved in other illicit and criminal activities whereas this would not necessarily be the case in domestic servitude offences.

1.1.4 Key debates

The current British government has declared its will to tackle THB by bringing the Modern Slavery Act 2015 into the existing legal framework developed around human trafficking. Apart from the challenge of rebalancing the priorities of core and peripheral authorities in the criminal justice system to address this specific crime, there are specific debates around the best way to reach justice that need to be critically discussed.

One of the points of friction between the UK government and the civil society regards the tied visa regime for domestic workers in force since April 2012. According to the experience of formal and informal first responder organisations and charities voiced in this piece of research and other reports (ATMG 2013; Kalayaan 2013, 2014), these visas which tie domestic workers to their employers have worsened substantially the already poor record in denouncing the crime of trafficking and domestic servitude. Coming forward and reporting this crime to British authorities equates to them losing their legal residence status in the UK and facing all the immigration sanctions in place, including detention and deportation. Despite criticism of the tied visa scheme by civil society actors as well as relevant parliamentary committees, the Modern Slavery Act 2015 did not address this shortcoming.

Indicative of the implausibility of this policy of keeping workers' visas tied to a single employer is that it has been criticised by committees of the British parliament itself. Back in 2009 the Home Affairs Select Committee inquiry into trafficking noted that retaining the visa for domestic workers who changed employers was "the single most important issue in preventing the forced labour and trafficking of such workers" (Home Affairs Committee 2011). Since its implementation the tied domestic worker visa has been criticised by two more parliamentary Committees¹⁰, Human Rights Watch¹¹, the United Nations special rapporteur on violence against women¹², among others.

Another source of discord among policy makers and practitioners is about the way forward in tackling trafficking. Should policy prioritise the development of specialist units undertaking trafficking investigations or seek to accommodate trafficking investigations in day-to-day policing? Proponents of the mainstreaming investigation of suspected THB cases in day-to-day policing has been expressed by first responder service providers and promoted in practice by law enforcement authorities (interviews 7, 4).

¹⁰ The Joint Committee on the Draft Modern Slavery Bill and the Joint Committee on Human Rights in their legislative scrutiny of the Bill.

¹¹ Hidden Away; Abuses against migrant domestic workers in the UK. March 2014; see also http://www.huffingtonpost.co.uk/2014/03/31/uk-domestic-servant_n_5061990.html

¹² Rashida Manjoo, following a visit to the UK in April 2014 (Kalayaan 2015).

1.2 THB in domestic work: general trends

1.2.1 Empirical data

The UKHTC began recording trafficking data in 2009. The number of potential trafficked persons referred to the NRM has been increasing ever since. By 2012 the number of NRM referrals had reached its highest point since 2009 (ATMG 2013: 26). The number of referrals for potential victims of trafficking to the NRM has shown a marked increase in 2014 with 2,340 victim referrals; a 34% increase on 2013. The share of cases of domestic servitude in the total of referrals for potential victims of trafficking has been stable from 2012 to 2014 at around 10-13% (see Table 1 below). However, the absolute number of adult victims of trafficking in domestic servitude followed the general trend of increase in NRM referrals and went up by 66% in 2014 in relation to 2013. This increase in referrals might be explained either as a result of improved identification and greater reporting or a reflection of a genuine increase in trafficking (ATMG 2013: 18).

Table 1: NRM referrals of adult and minor potential trafficked persons by type of exploitation and by positive conclusive grounds decisions.

Exploitation type	Jan-Mar 2012	Apr-Dec 2012	2013	2014
<i>Domestic servitude: count / share in total</i>	33 / 13.8%	139 / 14.6%	186 / 10.6%	305 / 13%
<i>Total</i>	238	948	1746	2340

Source: Author's own compilation of data from: National Crime Agency, Human Trafficking Statistics (NRM) available at <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics>

In contrast to this statistical picture, however, first responder NGOs note that the majority of the domestic workers with indicators of trafficking approaching them prefer not to proceed with the NRM referral process. One key factor behind this hesitation to report the crime of THB is that their case is disclosed to the immigration authorities as part of the NRM process. Reporting this crime puts their stay in the UK at risk.

The number of domestic workers registering to authorised first responders like the Kalayaan and the Poppy Project as well as unauthorised ones has consistently decreased since the introduction of the tied visa in April 2012 even though the number of visas issued each year to migrant domestic workers who accompany employers to the UK has remained stable at around 14-15,000 (Kalayaan 2015). Another first-responder NGO which provides support exclusively to domestic workers in need, noted that 92 out of the 100 domestic workers that participated in a survey conducted during the NGO meetings in 2015 had never reported the abuse they suffer to the competent authorities¹³.

The admittedly limited period of support for victims of trafficking is one other reason for which many victims approaching NGOs and charities do not proceed with a referral to the NRM or stop collaborating with the law enforcement authorities.

The NRM data (see Table 2) show that at least one in three of the potential victim referrals for domestic servitude made every trimester receive a negative reasonable and conclusive grounds decision. Only a minority of 7-13% receive a positive conclusive grounds decision six months after their referral submission to the Competent Authority. All of the first responder interviewees noted that potential victims generally wait for their NRM decisions for a long time¹⁴.

¹³ Justice for Domestic Workers, Overseas Domestic Workers Visa Review, May 2015.

¹⁴ For example, one non-EU national domestic worker case with clear indicators of trafficking referred by the NGO Poppy Project to the NRM in 2009 got her negative conclusive grounds decision in 2012 (interview 7).

Table 2: Trimester NRM referrals of adult potential trafficked persons in domestic servitude by positive conclusive grounds (PCG) decisions, rejections, and undecided PCG

NRM Decisions	Oct-Dec 2012	Oct-Dec 2013	Oct-Dec 2014	Jan-Mar 2015
<i>Positive Conclusive Grounds</i>	5	6	8	6
<i>Share of PCG in total</i>	13%	11%	12%	7%
<i>Conclusive Decisions not yet made</i>	11	29	39	52
<i>Share of pending concl. Decisions</i>	29%	55%	60%	57%
<i>Negative Decisions</i>	21	17	18	32
<i>Share of negative in total</i>	56%	33%	28%	35%
<i>Total referrals for Domestic Servitude</i>	37	52	65	90

Source: Author's compilation of data from: National Crime Agency, Human Trafficking Statistics (NRM) available at <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics>

The potentially large number of victims who are dismissed by the competent authorities and are denied support is evident in the fact that the majority of referrals are processed by the Home office which tends to reject at least 80% of them (see table 3).

Table 3. Rates of Positive Conclusive Grounds Decisions

NRM Competent Authority	Period	Total referrals processed	Percentage of NRM referrals' granted Positive Conclusive Decision
UKHTC	2012	299	80%
Home Office	2012	875	<20%
UKHTC	Oct-Dec 2011	65	80%
Home Office	Oct-Dec 2011	184	19%

Source: National Crime Agency, Human Trafficking Statistics, cited in ATMG 2014: 10

Potentially trafficked domestic workers who are in the UK under a tied visa and receive a negative NRM decision face immigration sanctions whether or not they cooperated with the police up to that point. Yet, even for those who receive a positive conclusive grounds decision, investigations might not be carried out, and thus they may also face the same fate. Whilst the number of potential trafficked persons referred and identified has steadily risen according to the above NRM data, this has not been followed by a comparable rise in prosecutions (ATMG 2013: 48). This is reflected in the Ministry of Justice (MOJ) and the CPS data on prosecutions and convictions of trafficking offences in domestic servitude.

Table 4: Prosecutions, Convictions and NRM referrals for labour trafficking and domestic servitude

	Prosecutions		Convictions	NRM referrals (domestic servitude)
	AI(TC)A {trafficking for other exploitative purposes}	CJA {Slavery, servitude, forced labour}		
2007	3	-	1	-
2008	10	-	4	-
2009	20	-	2	219
2010	21	-	6	
2011	37	15	0	161
2012	29	4	See section 2.2.	172
2013	20	36		186
2014	73	26		305

Source: Author's own compilation, Source: Crown Prosecution Service, unpublished data., CPS¹⁵

According to the MoJ data, between 2009 and 2012 the UK has obtained a total of 49 convictions of traffickers under trafficking legislation (ATMG 2013: 94).

Information on the specific offences for which the traffickers were convicted is not available as both MoJ and CPS figures are not publically disaggregated. Therefore, it is not possible to give the exact number of prosecutions and convictions which regard domestic servitude offences. Although the specific conviction offences are not statistically available, around 70% of the cases which include trafficking charges and a combination of other offences between 2010 and 2012 resulted in a conviction (ATMG 2013: 39).

As already mentioned, cases of forced labour and/or trafficking involving domestic servitude may often be uncovered as part of another criminal case investigation. All interviewees participating in this study corroborating findings of other studies (such as ATMG 2013; ATMG 2014), pointed out that there is a potentially large number of such criminalised victims of trafficking who pass unnoticed through immigration detention centres and prisons.

1.2.2. Main characteristics and features of THB in domestic work

The main form of THB in domestic work involves domestic servitude where the workers are coerced or physically held into captivity by their employers. In these cases they work without being paid, or are being paid very little, under inhumane conditions to perform housekeeping duties, childcare and/or eldercare.

Other cases detected involve combined sexual exploitation and domestic servitude. One such characteristic case is that of a Vietnamese girl who was trafficked to work in domestic servitude for the irregular workers of a cannabis factory and was forced to have sex with the house occupants (interviews 3, 10).

The ATMG 2013 report highlighted cases of domestic servitude in which additional crimes committed were sham marriages. Traffickers in this context would force trafficked persons who are EU citizens to marry non-EU nationals who would in turn "pay for this privilege with a view to applying for a UK visa" (ATMG 2013: 19). In other cases there is benefit fraud involved, where victims held in domestic servitude are forced to claim benefits from local authorities on

¹⁵ Since 2010, the CPS keeps records of cases where a trafficking offence is charged among other offences. This means that the post-2009 data on prosecutions presented in Table 4 have been brought to court using a trafficking offence among others but may be eventually convicted for other offences (ATMG 2013: 39).

behalf of their traffickers. The extent of trafficked persons who are criminalised is worryingly large as it will be discussed in section 2.

Victims of domestic servitude may be British nationals, EU nationals or migrants from non-EU countries. In the former two cases these victims may be au pairs who are not classified as workers. In the case of non-EU nationals, migrants may enter the country illegally or under a tourist visa and overstay. Or they may come legally in the UK with an overseas domestic worker visa (or an au-pair visa, eligible only for nationals of a few countries).

The reports of abuse made by workers who register with Kalayaan, the Poppy Project, Unseen, J4DW and other support organisations have not decreased over the three years since the tied Overseas Domestic Worker visa was introduced. On the contrary, an analysis of the working and living conditions of the 590 domestic workers (184 of them on tied visas, the rest on original pre-2012 visas) who registered with Kalayaan between April 2012 and end of March 2015 shows consistent levels of abuse, with a markedly higher occurrence of abuse among domestic workers on tied visas. In particular,

- 66% of workers on tied visas reported being prevented from leaving the house freely, compared with 41% of those who had entered on the original visa.
- 81% of workers on tied visas reported having no time off compared to 66% of workers not tied to their employers
- 31% of tied workers were not paid at all, compared with 11% who were not tied
- 74% of workers on tied visas reported having their passport taken from them, compared with 50% who were not tied
- Kalayaan staff internally identified 64% of the workers on a tied visa as trafficked, compared with 25% who were on the original visa (Kalayaan 2015).

A similar pattern emerges in the survey of 100 domestic worker service users which another support organisation (Justice 4 Domestic Workers) carried out in 2015.

- 73 respondents reported that they ran away from their employer because they did not get paid.
- 55 respondents ran away due to physical, sexual or mental abuse.
- 76 respondents ran away because they were not allowed a day off.

All of those on tied visas reported high levels of abuse by their employers and entrapment in this situation. As a worker eloquently put it: *"I have to either keep being abused or be illegal."* (interview 5).

The profile of victims of THB in domestic work may be deduced from the NRM data on referrals for potential victims of trafficking. In 2014 the UK National Referral Mechanism (NRM) received 2,340 referrals of potential victims of trafficking. The potential victims were reported to be from 96 countries of origin; this represents a 14% decrease on 2013 country of origin totals.

The 2,340 referrals were comprised of 1,432 females (61%) and 906 males (39%) and 2 (<1%) recorded as transgender. 1,669 (71%) were referred for adult exploitation categories and 671 (29%) referred for exploitation as a minor. These NRM data on age and nationality of victims are not disaggregated by type of exploitation.

According to the CPS Operations Directorate officer interviewed, the cases of trafficking in domestic servitude are not usually part of organised trafficking networks. The victims are usually recruited by an individual and exploited in the domestic environment. In such cases the domestic worker may be in the employment of the family prior to arrival in the UK and follows them in the country under an Overseas Domestic Worker visa.

Notable exception to the typical case of an individual family which exploits and abuses the domestic worker in its service is the case law vs Connors family. The Connors family acted as a criminal gang which regularly targeted vulnerable victims, held them in servitude for years and forced them to do unpaid work for the family business or housework duties (see section 2).

Victims supported by the Poppy Project have also revealed cases where women from their own country were being employed by sham employment agencies that would sell them as domestic workers to families for £700 each (interview 4). In the influential case law of *CN vs UK*, there has been an informal employment agent involved in the trafficking offence which was never investigated by the police.

2 Case law review

2.1 Key national and European case law

A fundamental change in UK's human trafficking legislation was brought under the Coroners and Justice Act of 2009. The last Labour government introduced in 2010 a new offence of slavery, servitude and forced labour under s.71 of the CJA 2009 following a campaign spearheaded by Anti-Slavery International, Liberty amongst others. The previous AI(TC)A 2004 did not provide protections to victims when there was a break in the chain of the offence. An instrumental role in addressing this lacuna of AI(TC)A in protecting victims was played by the *CN vs UK* case. Although a civil law case where traffickers were not investigated, the *CN vs UK* case was significant, first, in that it helped remove the need to prove the link to international transport for a criminal offence of trafficking to be brought to criminal courts (which was a prerequisite for offences brought in court under AI(TC)A 2004); second, it brought the specific offence of domestic servitude and forced or compulsory labour and slavery in British criminal legislation. In *CN's* case it was particularly challenging to hang facts to a trafficking offence firstly because she arrived in the UK in 2002 before the AI(TC)A 2004 came into force and secondly because her employers, the elderly couple that she looked after, treated her kindly and were not involved in the coercion, threats and abuse that she experienced while working for them. In this case, the appellant took the UK to the European Court of Human Rights (ECtHR) for lacking specific legislation criminalising forced labour and domestic servitude which resulted in the competent authorities eventually failing to act on her case. The ECtHR found that due to the absence of specific legislation criminalising domestic servitude and forced labour, the competent authorities did not carry out their investigative obligations into *CN's* case.

The *CN vs UK* case was prepared by her solicitor following the ECtHR judgement on case law *Siliadin vs France* App no 73316/01 (2005). After consideration of the case presented by *CN's* solicitor and barristers, the European Court judges confirmed that the circumstances of her case had been remarkably similar to the facts of the *Siliadin vs France* case, whereby the provisions of the French Criminal Code were found to be too restrictive to protect *Siliadin's* rights under Article 4 of the European Convention. In the *Siliadin vs France* case the European Court confirmed that Article 4 entailed a specific positive obligation on member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour.

The S.71 CJA 2009 has carried momentum in prosecutions. Between March 2011 and November 2012 there had been 14 offences of forced labour and servitude prosecuted under s.71. The key case law involving domestic servitude and/or forced labour or trafficking of domestic workers is discussed below. The cases discussed are not exhaustive but they were

the ones that got most attention in the media, law community circles, existing studies and reports, websites of NGOs and solicitor firms involved in case law on labour trafficking, and interviews conducted with solicitors, barristers and NGO case workers who supported trafficked domestic workers as part of this study.

A case similar to *CN vs UK* is *OOO & Others vs Commissioner of Police for the Metropolis [2011]*¹⁶. In this case of child domestic servitude the Claimants were victims of the failure to investigate. Each claimant was awarded £5,000 in damages. Interestingly, in the light of this civil trial, the police did agree to investigate this case and the investigation resulted in the successful prosecution of the Nigerian pastor Lucy Adeniji after an altogether four-year legal battle (see case law *R vs Lucy Adeniji [2011]*)¹⁷. She was sentenced to eleven and a half years in prison for child cruelty under s.1(1) Children and Young Persons Act 1933), assisting unlawful immigration (S.25 Immigration Act 1971), dishonestly obtaining property by deception, and ABH (assault occasioning actual bodily harm; s.47 Offences Against the Person Act 1861). She has been the first person to be jailed for trafficking children into the UK for domestic servitude even though she was not convicted for this specific offence under s.71 of CJA 2009.

A case law which involved several British and EU national victims of domestic servitude and

Miss Hounnga was a domestic servant in the household of a very wealthy family in Nigeria. She went into their servitude as a very young child. The family decided that one of its members living in London with her husband would benefit from having Hounnga as her domestic servant. In 2007 age fourteen she was brought to the UK under a false identity in order to be granted a visitor's visa for six months. Hounnga was told that she was going to go on a trip to London where she would be working but she would also be going to school. Instead she was used as a domestic slave. She was forced to look after the children of the family and do domestic duties, she was not paid, she was not sent to school and she was beaten up regularly. After 18 months held in domestic servitude, in July 2008, she was kicked out of the house and she managed to flee. ATLEU acted on Miss Hounnga's case and decided to bring employment law remedies. The Employment Tribunal held that Mrs Allen breached s. 4(2)(c) of the Race Relations Act 1976 and ordered Mrs Allen to pay Miss Hounnga compensation to the sum of £6,187. However, the Court of Appeal refused the victim the right to recover compensation after Mrs Allen filed an appeal on the grounds that the employment was illegal. The case was then taken to the Supreme Court where the issue of trafficking under s.71 CJA was raised. The judges unanimously allowed Hounnga's appeal and restored the order for compensation but the trafficker evaded a CJA conviction.

forced labour and led to the first prosecution and conviction of traffickers under s.71 of CJA is **the R vs James and Josie Connors [2012]** case¹⁸. The Connors were an Irish traveller's family who targeted vulnerable individuals from the streets, in particular homeless, addicted and isolated men, and offered them the prospect of money, food and accommodation in return for work. Instead the Connors used several methods of control, abuse and manipulation to keep the victims over many years in servitude and exact forced labour either for their own business or on domestic duties at their site. The traffickers were sentenced to eleven and four years imprisonment respectively.

Although not actually prosecuted for criminal offences, the case **Hounnga vs Allen and another**

[2014] UKSC 47¹⁹ is particularly important because it establishes a case law precedent which challenges the widely occurring phenomenon of criminalisation of trafficked persons under

¹⁶ *OOO & Others vs Commissioner of Police for the Metropolis [2011] EWHC 1246 (QB)*

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/QB/2011/1246.html&query=ooo&method=boolean>.

¹⁷ <http://www.bbc.co.uk/news/uk-england-london-12799805> and www.thelawpages.com/court-cases/Lucy-Tokunboh-Adeniji-6530-1.law

¹⁸ <https://www.judiciary.gov.uk/judgments/james-connors-josie-connors-sentencing-remarks-12072012/>. See also : <http://www.bbc.co.uk/news/uk-england-gloucestershire-20775623>

¹⁹ https://www.supremecourt.uk/decided-cases/docs/UKSC_2012_0188_Judgment.pdf and <http://www.lawteacher.net/cases/immigration-law/hounnga-v-allen-and-another.php>

which traffickers routinely escape liability and prosecution. This case involving domestic servitude and trafficking of a child was brought against the Employment Tribunal which awarded the payment of compensation to the child/victim. However, the defendant, Mrs Allen, managed to overturn the Employment Tribunal judgement at the Court of Appeal on the grounds that the victim was working illegally. Generally, undocumented migrants who have been working illegally are, under UK law, not entitled to claim compensation because their claim is based on an employment relationship that was not allowed to exist at all. However, different courts in the UK have taken different decisions in this respect, and tend to balance the weight of the illegality/irregularity factor with the type and seriousness of the claim. For example, in the case of a work accident injury the employer is expected to retain a duty to provide safe working conditions to even if the claimant is not a legal employee. There have also been cases where irregular migrants were able to obtain damages and back pay using anti-discrimination legislation rather than general labour law.²⁰

The Supreme Court judgement in the *Hounga vs Allen* case eventually restored the Employment Tribunal order to compensate the victim on the grounds that it would be an affront to current public policy against trafficking to permit the trafficker to escape liability. The Supreme Court judgement in *Hounga vs Allen* sets an important legal precedent for criminalised victims. Nevertheless, the problem remains as most victims of trafficking are criminalised, often for immigration offences, and eventually legal battles are often fought around the legality of the migrant's stay in the country and not the criminal offences that the accused victims suffered in the first place in the hands of their traffickers²¹.

R vs SK [2011]²² was a case of domestic servitude in which the initial jury convicted SK of the offence of trafficking the victim into the UK for exploitation under s.4(1) and (5) of the AI(TC)A 2004. The trafficker was sentenced to nine months imprisonment, and was ordered to pay compensation of £25,000 to the victim. The victim was physically and emotionally abused and maltreated from 2006, when she arrived in the country, until 2010 when she managed to escape with the help of the police who were alerted after R disclosed her situation to her local General Practitioner (doctor). However, the conviction was regarded unsafe and was eventually reversed by the Court of Appeal which found error in the way the judge directed the jury to test the s. 4 AI(TC)A trafficking offence. SK was eventually acquitted. As the Court of Appeal noted, the judge did not refer explicitly to the terms "slavery", "servitude" and "enforced labour" and instead "focused too much on the economics of the relationship between R and SK which would be appropriate to an employment law context" but not to the criminal law offence with which the defendant/appellant was charged²³. It should be noted however that, had there been more attention to the examination of the trafficking offence by the judge, the prosecution would still have had the difficult task to raise evidence that would link transport to the UK with intention to exploit.

In the case ***R vs Rebecca Balira [2011]*** the Tanzanian victim was in the employment of the defendant's relatives in Dar es Salaam who arranged for her UK visa application as a domestic worker. The victim was kept as a house slave in a flat in London after coming to the UK in 2010. The prosecutor said that the defendant, Ms Balira, a known HIV scientist, had imposed "conditions that... amounted to slavery and servitude". She was kept effectively at the whim of her employer without pay, and working long hours in conditions which were unacceptable. She was deprived of her passport, forced to share a bed with another person, abused both verbally and psychologically and not allowed to communicate with her family. One of the arguments

²⁰ Court case details: Mehmet t/a Rose Hotel Group v Aduma (UKEAT/0573/06/CEA, UKEAT/0574/06/CEA, May 2007

²¹ http://news.bbc.co.uk/local/london/hi/people_and_places/newsid_8125000/8125043.stm

²² R vs SK [2011] EWCA Crim 1691

²³ <http://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/gbr/2011/r.v.s.k.2011.ewca.crim.1691.html>

heard by the defence solicitor was that the victim made the allegations only days before she was due to return to Africa and that she made up the accusations as a way that would get her to stay in the UK. Balira was eventually convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour, and for common assault under s.71 CJA. Although her case was the first conviction under s.71, her sentence was surprisingly lenient: 6 months imprisonment and £3,000 in compensation. Another more recent case where the trafficker was charged under s.71 CJA and s.4 AI(TC)A led to a six year and three months imprisonment sentence (*R vs Dawid Siwak [2013]*)²⁴.

The *R vs D* case handed down at Cardiff Crown Court in October 2014 was the first ever slave case put before a jury in Wales. In this large multi-handed “slave” case, the victim, a British man, had been held at the family address for thirteen years. The victim had been picked up on a highway and offered work at a horse farm in Newport. The ‘work’ turned out to be forced labour and his accommodation was a rat-infested shed with no washing facilities. He was usually forced to work fourteen hours a day, seven days a week, and during the thirteen years he was forced to work at the farm he received no pay. R has been tracked down by his family with the help of the police and was rescued in 2013. The defendants were convicted to four and a half years imprisonment for forced labour exploitation related offences under s.71 CJA (HM Government 2014: 20)²⁵.

The longest sentence given so far for a domestic servitude offence was given to a couple of Pakistani nationals who trafficked a ten year old deaf and mute girl from Pakistan into the UK and held her captive in their house cellar for nearly a decade. The man repeatedly raped the victim and his wife forced her to cook and clean at a number of properties that they owned while they claimed benefits on the victim’s name. The victim was found sleeping in a cot bed in the Ashars’ cellar by trading standards staff who were investigating allegations of money laundering on bank accounts which were in the victim’s name. *Ilyas and Tallat Ashar*, the traffickers, got a sentence of fifteen and six years imprisonment respectively for the offence of human trafficking into the UK for exploitation (s.4 of AI(TC)A 2004) and benefit fraud and were ordered to pay the victim £100,000 in compensation (HM Government 2014: 22)²⁶. Most part of Ilyas Ashar’s sentence (13 years) was for the rape offences²⁷. Had s.71 of CJA 2009 been used, the Ashars would have served a much longer sentence of imprisonment.

In 2015, three cases of domestic servitude and forced labour involving diplomat employers who raised their defence on the grounds of state immunity were handed down in the Court of Appeal. In all three cases the victims and their solicitors opted to claim compensation under employment legislation although there were clear indications of criminal offences of domestic servitude and slavery. The claimants in the first case *Reyes and Suryadi vs Al Malki and Al Malki* [2015]²⁸ were both identified by the Home Office as victims of trafficking and sought to bring employment claims against their employer, a Saudi Arabian diplomat. Despite the seriousness of the victims’ allegations, the Court of Appeal held that they cannot pursue their claims because of the doctrine of diplomatic immunity which trumps any rights that they have as victims of trafficking²⁹. The other two cases (*Benkharbouche vs Sudan*, *Janah vs Libya* UKEAT/0401/12/GE) followed cases from European Courts in order to challenge the protection

²⁴R v Dawid Siwak [2013] (Portsmouth Crown Court, Case No T20120208). <http://www.bbc.co.uk/news/uk-england-hampshire-21235714> and http://www.cps.gov.uk/wessex/cps_wessex_news/polish_national_jailed_for_six_years_for_human_trafficking/

²⁵ See also <http://churchcourtcourtchambers.co.uk/portfolio-item/slavery/>

²⁶ First sentence was handed down in 2012. The final sentence came from the Court of Appeal in 2014: <http://www.gmp.police.uk/live/nhoodv3.nsf/WebsitePagesLite/9ED2D7D864C02B8880257D7200501C84?OpenDocument>

²⁷ <http://www.gmpcc.org.uk/news/justice-has-been-done-today-deputy-commissioner/>

²⁸ *Reyes and Suryadi v Al Malki and Al Malki* [2015] EWCA Civ 32

²⁹ <https://www.judiciary.gov.uk/judgments/ms-c-reyes-and-ms-t-suryadi-v-mr-j-al-malki-and-mrs-al-malki-and-others/>

awarded to diplomat offenders under the State Immunity Act 1978. The domestic worker claimants argued before the UK Employment Appeal Tribunal (EAT) on the 4th of October 2013 that, following the cases of *Sabeh el-Leil vs France* (2012) and *Cudak vs Lithuania* (2010)³⁰, the application of immunity to their employment-related claims against Sudan and Libya amounted to a disproportionate interference with their rights under Article 6 of the European Convention on Human Rights (ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union (CFREU). The article 6 provides that everyone has the right to a fair trial in both civil and criminal cases and the article 47 regards the EU right to an effective remedy.

The EAT concluded that the application of immunity to these claims did amount to a breach of both Article 6 ECHR and Article 47 CFREU. However, in respect of claims for unfair dismissal and failure to pay the national minimum wage, the EAT advised the Claimants to seek a declaration of incompatibility in the Court of Appeal under section 4 of the Human Rights Act 1998. In the end, the Court of Appeal quashed their claim in 2015. Although these cases were not brought to court under a criminal offence, they constitute an indication of the persistent immunity of diplomats who commit abuses to their workers which could amount to trafficking and forced labour.

2.2 Key challenges in implementing legal dispositions and in legal proceedings

Despite the national case law which have applied UK's THB legislation, there are substantial hurdles and challenges in implementing the country's obligations to criminalise THB and forced labour. First, the victim identification and support process and the way it is linked to criminal investigations for the offence of trafficking and/or forced labour is at the heart of the challenges in the current public policy against trafficking. Closely connected to the identification and investigation stages, the decision to proceed to the criminal prosecution of the traffickers seems to be influenced by the balance of the contingent policy priorities and practice of law structures. Finally, the case law history and actual convictions handed down – a key constituent of the deterrent effect of policy – remain a matter of concern and reflect the challenges ahead for the operation of the criminal justice system.

Victim identification challenges

As already noted above, there is substantial evidence to assume that the number of trafficked persons who report their enslavement and are identified as victims by the NRM is potentially a small fraction of the reality.

One problem emanates from the way the initial consent of a trafficked person to go along with his/her traffickers is perceived by the competent authorities. Sometimes the fact that the victims give their consent to travel into the UK and work for their traffickers is understood as complicity in what unfolds afterwards (ATMG 2013: 35).

Looking for signs of an employment relationship is the next test by the law enforcement authorities in checking the validity of a trafficking claim. As several of our respondents noted, one of the first issues that the police seek to clarify is whether the victim has actually received any payment from the traffickers, however small that may be, to later on dismiss her claims about trafficking and start a deportation process.

Political and public concerns about restraining immigration tend to be prioritised over exploitation enforcement matters in the hierarchy of law enforcement authorities' performance targets. Corroborating other studies (ATMG 2013: 43) all interviewees in this study noted several incidents where attempts to report trafficking resulted in detention.

³⁰ *Sabeh el-Leil vs France* (2012) 54 EHRR 14 and *Cudak vs Lithuania* (2010) 51 EHRR 15

It is not only the NRM competent authorities that tend to shift focus on the employment side of the story and away from trafficking indicators but also the circumstances of the applicant/victim and the way the practice of law and access to legal representation is structured around them.

When non-EU national victims escape from their traffickers they become de facto illegal, especially had they arrived in the UK under the tied visa. Stopping deportation orders and getting a leave to remain becomes their imminent priority. The victims' immigration solicitors are preoccupied with their clients' immigration priorities that need to be addressed.

Considering to file an asylum application is usually the first channel of action because it can buy victims more time and support than any other legal route. Legal aid is made available to victims of trafficking in relation to immigration matters if a positive reasonable or conclusive grounds determination has been made. As a result, the victims may claim asylum as a way of obtaining early legal aid (Home Office 2014: 37) in order to attempt to resolve their immigration status.

However, the previous coalition British government made £350 million worth of cuts to civil legal aid since 2013. Under the LASPO Act legal aid for judicial reviews – which challenge the lawfulness of decisions made by public bodies such as the UKHTC and the Home Office, for example, in NRM trafficking identification applications or in asylum applications – is curtailed. The Government will no longer pay legal aid until a judicial review has been approved by the High Court. This means that in practice individuals with non-asylum immigration applications no longer get legal aid.

In turn, civil law solicitors preparing an NRM application for trafficking victim identification or a relevant judicial review have a strong financial disincentive in following-up any potential trafficking indicators in a case. Paraphrasing the sayings of all of the solicitors and barristers interviewed for this study, no lawyer can afford to prepare and bring a complex trafficking case without knowing if they'll ever be paid³¹.

Corroborating the untenable position of many legal aid firms across the UK, a recent study commissioned by The Children's Society found that, across the UK, free regulated services which deal with appeals and representation have been reduced by almost 50%, while overall immigration advice services have been cut by at least 30% since the LASPO Act came into force in 2013 (Connolly 2015).

However, filing an asylum application to the NRM prior to making a trafficking identification claim (as was the case in *R vs Rebecca Balira* 2011) is treated as an indication that the alleged victim of trafficking is not credible. Not stating anything about trafficking in the asylum interview weighs negatively on a trafficking claim filed later on. As one of the interviewed legal support workers explains:

She's been in detention and is interviewed for an asylum case. Within detention asylum interviews are very focused on asylum.... So they don't ask particular trafficking questions. They are not designed for that. They ask why is it not ok to go back to her country of origin. And then because somebody has not mentioned it [the trafficking issue] during that interview, they [the victims] are found not to be credible (interview 4).

There are many victims of trafficking who do not have a strong asylum case. Yet they go along with it because going back is not an option (interview 5). Keeping these migrant victim concerns in mind, solicitors try all possible avenues to help their clients. Sometimes they bring the case to an employment tribunal seeking compensation for the victim (interview 4). However, as case

³¹ See also <https://savejusticeuk.wordpress.com/whats-happening/victims-of-trafficking/>

law experience indicates, bringing the employment side of the victim's exploitation in court may be challenged if the victim is not eligible to work in the UK. This is what occurred in the Court of Appeal in the *Hounga vs Allen* case.

Apart from the problematic access to legal aid, the strict immigration rules and the immigration-related priorities of the competent authorities, further victim identification hurdles are posed by the state of funding amongst law enforcement authorities and the state of the victims. Competent authorities faced with cuts allocate limited time and resources in every case and victims are often not in a state to comply to the demands made on them efficiently in those tight frameworks. Home Office officers regularly base their NRM decisions on a credibility assessment based on "coherent, consistent and undelayed disclosure" from the trafficked person. (ATMG 2013: 54). But they are not likely to get that from an abused, traumatised person who is afraid of being deported, is 'cornered' around her immigration case and may, at the same time, be asked to disclose and fit in a short time facts and possibly upsetting details around her exploitation and abuse in the UK. Trafficked persons may only disclose partial facts with delays and sometimes may even change their accounts. As NGO support practitioners argued, the health complications of trauma may prevent victims from bringing up disturbing facts and details and eventually lead to testimonies with many gaps and inconsistencies (interviews 8, 7).

A key test question posed in interviews by many law enforcement officers during the identification process as well as CPS solicitors during the investigation enquiries stage, and finally the solicitors defending the traffickers in court is "*why did you choose not to escape?*" (interviews 2, 4, 5, 6, 7, see also ATMG 2013: 56). Especially in the cases of domestic worker victims who were in the employment of their UK-based family in other countries before coming to the UK, this test question imminently spirals into a series of questions challenging the credibility of the victim. As several of the interviewees noted, domestic worker victims are frequently asked "*why didn't you report this in the country that you were before? And why did you agree to join them here knowing what they are?*". Criminal justice actors sometimes fail to understand that live-in domestic workers who are facing abuse prior to their coming to the UK do not necessarily have a choice to escape. There are many cases where the domestic 'workers' are either 'sold' by their own families to clear off debts to local powerful individuals or are afraid to denounce out of fear for retaliation to their families (interview 4).

Victims are often detained for immigration offences, are defendants accused of a crime in a criminal case investigation or are already imprisoned. As already mentioned above, the British criminal justice system does have a mechanism that could intervene and acquit defendants who are actually trafficked and acted out under a state of duress. The problem, as many legal practitioners have noted (ATMG 2013, and interviews 2, 3, 4, 6), is that there is a very high threshold in proving that a person accused of a crime committed it under compulsion.

Investigation and prosecution challenges

Particularly concerning about the British justice system is the fact that people with positive conclusive grounds decisions do not see their cases go into prosecution. Instead they may face deportation. The examples from NGO support first responder organisations are many.

There are several reasons behind the failure to investigate. In domestic servitude cases the offending usually occurs within the private domain and corroborating evidence is more difficult to detect compared to other criminal offences. As already noted, when the offenders are diplomats, the state immunity act continues to shield them from any investigations or prosecution and perpetuates impunity across this group.

The decision whether or not to investigate a potential offence of trafficking or servitude of a domestic worker is largely influenced not only by immigration priorities but also by other crime enforcement priorities and structures which are in place. Policing has over the years developed investigative strategies, training and day-to-day policing patterns for other offences such as

drug trafficking and sexual exploitation which indirectly skew the allocation of resources (ATMG 2013: 50, 63).

The competition between the different law enforcement priorities is aggravated by the limited funding and resources in the police's disposal. Funding concerns and resources saving priorities do end up in poorer investigations. When the police have less resources they are more likely to charge suspects based on the facts before them, rather than carrying out a more thorough investigation. In one current case reported to us by a solicitor, there were two young Vietnamese found locked in a cannabis factory looking after the plants. The police had two choices, to either continue the investigations to try and find the people at the higher levels of the criminal network or to arrest the two people in front of them and charge them with drug offences and effectively strike two more points in their monthly performance sheet. Eventually, it was through their defence solicitor, who was experienced in THB cases and was able to put more work into it, that those two Vietnamese were acquitted of the drug offences as victims of labour trafficking and servitude under duress.

The amount spent by the Home Office on the police has been reduced by 20% since 2011. Police forces are facing a 5% cut in government funding in 2015/2016 and deeper cuts are forecasted over the next five years³². Similar problems arise in prosecution with the CPS enduring significant cuts over the last years³³. Characteristically, according to the CPS Business Plan 2010-2011, the CPS budget was planned to decrease by 25% by 2015³⁴.

Most prosecution charges are based on AI(TC)A 2004 despite the coming into force of CJA 2009 (ATMG 2013: 32-3). In such prosecutions there emerge technical difficulties in proving that the trafficker brought the victim in the country with the intent to exploit. This is evidenced in the *CN vs UK* and *R vs SK [2011]* case law. AI(TC)A offences require costly international assistance or investigative techniques in order to accumulate incriminating evidence. Thus, such a line of prosecution and investigation may not be prioritised at times of cuts and limited resources available to fight crime. The decision of the CPS to proceed to a prosecution rests on an assessment between available evidence, resources required to obtain prosecutable evidence and the public interest in pursuing one or another line of investigation and prosecution (interview 9).

One commonly reported reason for not following up an ongoing investigation or prosecution is when the victim stops cooperating (interview 9). First responder support NGOs noted that several investigations stop because the victim absconds for aforementioned reasons.

Cases of domestic servitude and forced labour, in particular, may not be prosecuted or may be prosecuted using inappropriate criminal legislation and end up in unsafe convictions due to the accumulated experience of prosecutors in different types of offences. Sex trafficking cases, for example, are more likely to fall in the hands of prosecuting barristers with relevant experience because there have been set investigative and prosecuting procedures developed over the years for rape victims (ATMG 2013: 77).

As the *R vs SK [2011]* case law indicates, judges may also not be adequately trained and thus contribute to the miscarriage of justice by handing down unsafe convictions and lenient sentences.

³² www.bbc.co.uk/news/uk-31771456

³³ The CPS has cut the number of employees charged with looking after witnesses by more than half over the past three years. In 2013 alone, Witness Care staffing levels dropped by nearly a quarter (<http://www.independent.co.uk/voices/editorials/cuts-to-the-crown-prosecution-service-budget-are-no-excuse-for-reducing-support-for-victims-and-witnesses-9150108.html>).

³⁴ <http://www.cps.gov.uk/publications/reports/corpbizplan10-11.html>

Part of the problem of lenient sentences in cases of trafficking has to do with the lack of sentencing guidelines and training of the judiciary (ATMG 2013: 78-80) as well as the fact that victim-witnesses have not been well prepared to testify in court. The inadequate post-NRM support to victims of trafficking and their unresolved immigration status are contributing factors.

2.3 Other remedies for persons who have been trafficked or exploited in domestic work

Domestic workers who came legally in the UK after April 2012 lose their residence status and rights as soon as they leave their employer. There is no legal access to work or benefits for trafficked domestic workers who collaborate with the police. If they are conclusively recognised as trafficking victims they are entitled to apply for the relevant stay permit (leave to remain) which is valid for a year. However, this is not so straightforward due to the legal aid cuts barring most migrants' access to government funded legal representation.

There are several good practices in place, however, which may mitigate some of the identification and investigation problems discussed in the previous sections. There is multi-agency working with service providers at several points in the identification and investigation of a case; notably the participation of NGO workers as expert observers in police-led Achieving Best Evidence interviews in order to ascertain the validity of a THB case, and in local community police visits to places which may harbour illicit activities. Another example is the Cross-Sector Intelligence Sharing hubs coordinated by the Anti-Human Trafficking Coordinator in Wales (ATMG 2013: 65). Multi-agency working is also observed in cases where different agencies investigative activities overlap. UKBA funded spot checks in nail bars, carried out jointly with HMRC and UKBA have been reported.

During criminal proceedings, victims can be granted Special Measures at the discretion of the judge on application by the prosecutor (see Youth Justice and Criminal Evidence Act 1999). There is a victim protection (mainly relocation to a safe house) scheme for witnesses in trafficking trials. The victims' families back home are not covered under this scheme.

Victims may be entitled to compensation but compensation orders are not regularly actively pursued by the police or the prosecutors (ATMG 2013:90). Ordering the defendants to pay compensation is considered only when there has already been a confiscation order on their assets (under s.130 of the Powers of Criminal Courts (Sentencing) Act 2000). Another avenue to get compensation for trafficked victims is to initiate a civil claim for compensation but without pro bono legal assistance this is not possible (ATMG 2013: 91).

Last but not least, a safety net for criminalised victims of trafficking is set under the Criminal Cases Review Commission (CCRC).The CCRC reviews such cases for possible miscarriages of justice and 'have already had a number of convictions quashed from cases referred' (ATMG 2013: 102).

3 Discussion of results

3.1 Key motivation factors and demand-side dimension

In this section, will be discussed the factors which drive the demand on the part of employers (households) and intermediaries for exploiting and abusing domestic workers. Firstly, the very features of the domestic work arrangement may mask the exploitation occurring. The work relationship in domestic work is often blurred under its familial or emotional intensive character.

The fact that, in many cases, abused domestic workers had been in the service of the family from a very young age or have been 'helped' by the employer family in the previous countries of employment blurs the fact that they have been treated as slaves. It conceals this fact not only from the law enforcement authorities but also from the domestic workers themselves. Receiving pocket money rather than a salary and working 24/7 would not be out of the ordinary for many workers who had been in the employment of a family prior to coming to the UK. This has been the case with workers who from a young age had been taken out of poverty into the service of the wealthy employer family in the Middle East or African countries. Coming and working into the UK under similar conditions would not prompt them to leave or denounce the family unless the worker is physically harmed. As some of our respondents noted, the domestic workers often have no awareness of their employment rights in the UK and would argue that their employer had been good as long as he/she did not physically assault them (interviews 4, 5). In many cases it takes domestic workers years before they decide to take action. As an NGO worker noted,

it's that something actually has happened, they have been like this for years and years of trauma and abuse but whatever that is, something has triggered, 'I need to get out now' and that's where you get the referrals from....

In the majority of cases the way to deal with an intolerable situation, however, is to leave the employer in secret and try to find other work (Triandafyllidou and Maroukis 2013).

Workers and their families may also be in debt or gratitude to employers for bringing them in the UK. In many cases reported to us, this is something that gives employers the upper hand in the employment relationship and makes the workers endure abusive situations. In such cases employers feel that the domestic workers they employ owe them their very existence in the UK and feel righteous in exploiting and abusing them. In several cases, the workers were portrayed by their abusers as lazy and ungrateful despite all the lengths the employers went to bring them in the country, feed and house them (see case law *R vs Rebecca Balira*). The ATMG (2013) study notes that there have been domestic servitude cases reported to 'law enforcement officers who mistakenly understood situations where "free" accommodation or education were exchanged for the trafficked person's domestic work, as outside of the ambit of the definitions of trafficking, servitude and forced labour" (2013: 36).

In many cases (including case law) the fact that the migrant domestic worker has consented to do this job for the abusive family employer leads the police to assume that this is a case of labour dispute at most. The police look for evidence of physical violence, bodily harm, rape in order to investigate allegations of THB. As one NGO representative who is a domestic worker herself notes, '*do we need to be beaten, to be raped in order to access protection?*' (interview 5).

The weak cultural association of domestic labour with a formal form of work³⁵ and even the young age of most domestic workers (in many cases domestic workers are children and teenagers) are factors that render these workers more vulnerable to exploitation by their employers. The fact that domestic work is a type of work literally hidden from public view is an additional factor motivating unscrupulous employers to exploit and abuse their workers. Unlike other EU countries where the domestic work sector is largely organised and inspected by state authorities, a significant segment of the UK domestic work industry is not regulated by any public bodies, adding to the impunity of abusive employers. The au pair system is also

³⁵ The terms characterizing this type of work were 'servant' (mostly associated with a past of slavery) (DuBois [1899] 1996) or 'nanny' (denoting a past of charity) (Nelson 2006).

unregulated (Cox 2007). Under the inspection powers of Ofsted³⁶ and the Care Quality Commission³⁷ are childminders and home care agencies. Evidence however shows that this inspections regime is inadequate. Care workers' exploitation by home care agencies has been reported by several studies (for example, Maroukis 2015; Moriarty 2010). Whether or not this occurrence amounts to trafficking or forced labour is something that needs to be further researched. Employment agencies and agents have been involved in law cases of domestic servitude (e.g. CN vs UK). However, they have neither led to any policy initiatives in regulating this industry nor have they resulted in prosecutions except in one particular case (R vs Dawid Siwak). In any case, in a setting of poor labour market controls where the cost of social care is increasingly outsourced to private service providers and passed on to families, it is more likely than not to document cases of extreme exploitation in the domestic work industry. In this context, it would be sensible to extend the mandates of competent authorities like the GLA with the task of regulating providers in this industry and thus limiting the incentive to exploit.

The strict immigration rules and priorities of law enforcement agencies and the existing welfare benefits regime in the UK also contribute towards a favouring environment for the exploitation of domestic workers, which may lead to THB.

The migrant domestic workers who flee from their employers are first and foremost treated by the police as immigration law offenders and this is something that employers know and use to their advantage to perpetuate the exploitation or even enslavement of their workers. The tied visa regime for domestic workers consolidates this leverage that the employer has over the employment relationship.

The welfare regime in the UK creates conditions conducive to the exploitation of domestic workers in two ways. First, there have been benefit fraud cases where employers claimed family benefits (*Ashars case*), unemployment benefits or working tax credits (*R vs Dawid Siwak case*) on behalf of the people they kept in domestic servitude. Exploiting the benefit system gave them a further financial incentive in keeping their workers in slavery. Second, the ever-rising costs of childcare in the UK and the increasing welfare cuts and sanctions by the British government combined with the very weak rules of the au pair system and the practically unregulated domestic work industry structure an environment for more exploitative employment relationships in domestic work³⁸. Households with child or elder care needs can barely meet these for the amount of hours they want under local government provided or funded services. Covering these needs privately either comes at a high cost or may come on the cheap by getting someone to work illegally. Doing the latter when there is little chance of being caught becomes a realistic economising strategy for households.

Another reason contributing to an environment of increasing demand for exploitable domestic work in the UK is the failure of the British criminal justice system to deter offenders when crimes of THB are reported. The British government has done well in passing legislation which hangs facts to offences committed, and raises penalties to deter abusive behaviour over the years.

Implementation is however what matters in a criminal justice system more than anything else. As noted above, the familial features in the employment relationship in domestic work and the length of it make police officers dismissive around THB claims reported to them. This study also found that there are several 'priorities' to which the criminal justice system is called to respond. When looking at how these markets play out in the implementation of the criminal justice system it seems that reducing net migration levels outplay labour trafficking and exploitation concerns. The way the NRM identification mechanism operates is an example

³⁶ <https://www.gov.uk/government/organisations/ofsted>

³⁷ There have been many criticisms as regards the inspecting capacities and span of the CQC over the years. Indicatively see <http://www.theguardian.com/politics/2012/feb/23/care-quality-commission-problems-timeline>

³⁸ <https://thetraffickingresearchproject.wordpress.com/2014/08/08/703/>

where concerns about the victim's immigration status tend to influence the decision of who is and who is not regarded a potential victim of THB. Attesting to this are the dramatic differences in rates of positive and negative decisions by the two competent authorities for NRM decisions (see Table 3, section 1.2.1.). That in combination with the limited NRM support for potential victims of trafficking discourages them from reporting crimes inflicted upon them, encourages their absconding and less cooperation with the criminal justice authorities. Policing priorities over different areas of crime and the historical development of the resources of police forces and public prosecutors to addressing specific crime areas also have an impact on investigating and prosecuting different forms of THB. Different public concerns can also impinge on public security priorities. Public concerns about the size of welfare state in the UK, materialised in cutting several criminal justice actors' budgets and legal aid cuts also bear their stamp on the capacity of the British legal system to defend victims and prosecute traffickers.

3.2 Key gaps in legislations and policies

The fact that there is no overarching agency such as a Labour Inspectorate to inspect employer practices across the labour markets of the UK economy is an institutional gap which perpetuates conditions to exploit labour in DW situations.

Two of the first responder interviewees of this study noted the lack of awareness among social workers and family courts on THB occurring in the domestic sphere (interview 4, 7). Familiarising these institutional actors with trafficking indicators would be appropriate in the overall effort of growing awareness of this crime among local authorities and social services and generally beyond the span of the core criminal justice actors.

A key gap in existing policies is the end of specialist support and safe accommodation provided to alleged victims 45-50 days after they send the relevant application form to the NRM. Many victims abscond and stop cooperating with the police in investigations because of this reason. Another significant gap obstructing the access to justice is that legal aid is not available for victims who wish to challenge a negative NRM decision.

A significant organisational structure problem reported is the fact that the Home Office does not share with the police intelligence NRM asylum applications where trafficking is raised due to confidentiality clauses (ATMG 2013: 55). It is argued that this may be overcome by inserting a clause in the NRM form which trafficked persons can tick to indicate that their information can be shared with the police (ibid.). However, placing full reporting responsibility on individuals who do not distinguish between Home Office and UKHTC officer agendas, do not know what parts of their story is in their interest to disclose and to whom, and are anyway not prepared to disclose all in an interview with a random officer does not seem appropriate. More training, awareness and alert raising communication channels across law enforcement bodies seems more appropriate in such cases.

The police have a duty to halt a prosecution if there is suspicion that the defendants are victims of trafficking. Currently there is *'no specific police guidance on this apart from the 2010 ACPO's Position from ACPO Lead's on Child Protection and Cannabis Cultivation on Children and Young People Recovered in Cannabis Farms'* (ATMG 2013: 99-100).

Despite the centrality of the role of the prosecutor in deciding to continue investigations and press charges against traffickers, there is no trafficking training for general CPS staff (ATMG 2013: 76)

Furthermore, although in rape prosecutions the victim-witness can meet with the CPS solicitor and barrister prior to the trial, this does not occur in cases involving trafficking offences (ATMG 2013: 87).

Several gaps are identified in the existing sentencing regime for THB. In the UK, labour trafficking conviction rates are generally lower than sex trafficking cases, with adult domestic servitude cases faring the worst. Several of the cases discussed in section 2 corroborate this argument (e.g. R vs Rebecca Balira, R vs SK). This may reflect a lack of understanding on the part of judges as to the seriousness of the offence or the ill-preparation of the case or the victim-witness by the prosecution and the police. However, this may also be explained by the lack of specific guidelines accompanying labour trafficking and forced labour offences under AI(TC)A and CJA (all the guidance on the application of the recently voted Modern Slavery Act has not been produced yet). Specific sentencing guidelines have not been produced for labour trafficking offences, while the concept of coercion is not defined in the existing Sentencing Guidelines for the Sexual Offences Act.

Related to the sentencing question is the problem that law enforcement authorities face in obtaining information on the trafficker's previous conviction for both EU and non-EU countries. This is to a certain extent due to the fact that the UK is not party to the Schengen Agreement in Europe (ATMG 2013:82).

4 Concluding remarks and key messages for national policy makers

This report has built evidence suggesting that an environment conducive to exploitation and enslavement for domestic workers is an intersection of strict immigration rules and political priorities of law enforcement agencies, the stake of the State in the organisation and regulation of a labour market, and the state of the welfare regime protecting families and offering vulnerable individuals access to the rule of law.

Domestic work arrangements are largely unregulated in the UK and this reinforces a regime of impunity for unscrupulous employers and labour provider agencies. This is not only due to the fact that these arrangements take place in the domestic sphere but also due to the absence of an overarching agency that would organise and monitor employment relationships across the British labour markets. In order to address this situation, the British state needs to create conditions in which labour inspections will become applicable in domestic environment. One way to do this is to re-organise the domestic work industry in such a way that individual domestic work arrangements gradually become redundant. Introducing a domestic work voucher system which offers tax exemptions to households making use of home care and childcare agencies is one possible avenue in bringing domestic work arrangements closer to light. Extending the remit, resources and powers of the GLA to the domestic work industry (among other unregulated labour markets) is the second necessary step (interviews 1-6) without which the labour provider agencies will be added to the employers as parties who have not only a stake but also a good chance in exploiting labour without being penalised. Licensing, monitoring domestic work agencies and having the power to penalise those which exploit their workers, help them uncover illicit activity in their supply chains and initiate investigations on abusive employers using agencies should be the key roles of a GLA(-like) inspectorate in this labour market.

The existing criminal justice system needs to build in practices in its infrastructure which would, in time, alter the balance between the public safety priorities and the way resources are used. Treating trafficking as just another crime, that is incorporating it in the policing culture and infrastructure, would involve for example developments in local policing strategies. In the case

of THB in DW it is practically and legally impossible to arrange police visits to houses. But it is possible to add churches to the list of regular police visits including nail bars, brothels and other places which potentially harbour trafficked persons, as the church is one of the few outings of migrant domestic workers and a place where they might come forward. Of course, a prerequisite for any such ground initiative to work is to ensure that law enforcement and criminal justice actors will not prioritise immigration concerns over trafficking and worker abuse concerns. Victims will have to be facilitated to access the criminal justice system. The abolition of the tied domestic worker visas and the restoration of the legal aid system are part and parcel of this process. Social services and family law courts stakeholders will need to be trained and attuned to THB situations in DW settings. Welfare and legal aid cuts only deteriorate the capacity of stakeholders to adapt their resources towards identifying and acting on situations that may be harbouring THB crimes.

The UKHTC, law enforcement authorities such as the police and the Home Office UK Border Agency, defence solicitors, prosecutors and the judiciary would also have to be in a position to invest resources in improving identification of trafficking and forced labour indicators, in carrying out more nuanced investigating and prosecuting decisions and awarding appropriate sentences to trafficking crimes. In order to do all the above, however, a balance would need to be re-drawn a) with the other crime-fighting priorities that the law enforcement and criminal justice actors are instructed to deliver upon, are assessed against and funded for and b) with the public concerns about the size of the welfare state in the UK.

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Annexe

List of interviews

Sector	Position	Organisation	Date of Interview	No of interview
Victim	Victim of trafficking	n/a	12/04/2015	1
Law sector	Solicitor	Bindmans	27/03 & 10/04 2015	2
Law sector	Barrister	Matrix Chambers	23/04/2015	3
NGO	Legal advisor/ case worker	Poppy Project	29/04/2015	4
NGO	President	Justice 4 DW	09/06/2015	5
Law sector	Solicitor	Garden Court Chambers	09/06/2015	6
NGO	Head and case worker	Unseen	26/05/2015	7
NGO	Case worker, therapist	Solace	12/06/2015	8
Judicial / Government	Public prosecutor – Operations Directorate	CPS	29/04/2015 (informal int.) 20/08 (email exchange)	9
Law sector	Barrister	Bhatt Murphy	16/09/2015	10

About the author

Thanos Maroukis is a Research Associate and Part-Time Teaching Fellow at the Department of Social and Policy Sciences, University of Bath, UK. He has recently concluded a Marie Curie Research Fellowship on migration and temporary agency work in the EU. Thanos's principal areas of research are migration studies, policy and crime (focusing particularly on human smuggling and trafficking), precarious, 'atypical' forms of employment and active labour market policy, health care policy and in-work poverty in the UK and Europe. He has authored several articles in scientific journals, book chapters and newspaper articles. His books include *Migrant Smuggling: Irregular Migration from Asia and Africa to Europe* (2012, Palgrave MacMillan, co-author), and *Migration in 21st century Greece* (2010, Kritiki, co-editor, in Greek).

Addressing demand in anti-trafficking efforts and policies (DemandAT)

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