

TUC response to the Independent Chief Inspector of Borders and Immigration (ICIBI) call for evidence: An inspection of the immigration system as it relates to the social care sector

The Trades Union Congress (TUC) brings together almost 5.5 million working people who belong to our 48 member unions. We support trade unions to grow and thrive, and we stand up for everyone who works for a living. We campaign for more and better jobs, and a more equal, more prosperous country. Our affiliated trade unions represent social care workers in public, private and voluntary care settings and play a key role in supporting them and ensuring their rights are represented and recognised.

We welcome the ICIBI's inspection of the immigration system as it relates to the social care sector. In this short submission we present key evidence in response to the focus areas of this inspection. This evidence has been collated from information provided by the TUC's affiliated trade unions with members working in social care, as well as from key external sources.

The TUC will be pleased to further assist this inspection, including by supporting liaison between the ICIBI and affiliated trade unions. For example, the TUC would be happy to facilitate a roundtable meeting between the ICIBI and union officers to explore these issues in more depth.

The effectiveness and efficiency of the health and care worker visa route

Migrant workers play a crucial role in ensuring a skilled and fully staffed care workforce delivering care services - and will remain so in the years to come. This has been recognised by the government which added social care workers to the shortage occupation list and the Health and Care Worker visa route in February 2022, leading to an increase in new starters to the social care workforce having arrived from overseas to take up a post from 2 per cent in 2021/22 to 11 per cent in 2022.¹ The number of Health & Care Worker Visas granted grew from 47,194 in 2022 to 121,290 in the year ending June 2023 (a 157% increase), with the Health & Care Worker Visa representing 57% of all 'Worker' visas in the June 2022 to June 2023 period.² As of July 2023, there were 70,000 direct care providing roles filled by international recruits in England, a significant increase on the 20,000 roles reported in 2021/22.³ As the Migration Advisory

¹ Skills for Care (2022) [The state of the adult social care sector and workforce in England.](#)

² Home Office (2023) [National statistics - Why do people come to the UK? To work.](#)

³ Skills for Care (2023) The size and structure of the adult social care sector and workforce in England.

Committee has confirmed, 'it's now by far the biggest occupation that's using the immigration system.'⁴

There are many positive aspects to the Health and Care Worker Visa, notably that it is not a short-term visa, has lower costs attached than other skilled worker visas and exempts its holders from paying the Immigration Health Surcharge.⁵

However, there is strong evidence that the long-term and persistently poor employment conditions in the social care sector are being felt even more acutely by migrant social care workers. As Dr Madeleine Sumption, Director of the Migration Observatory at the University of Oxford has said:

*"High demand for overseas care workers is driven in large part by severe funding difficulties in the sector, that have led to poor pay and conditions and difficulty attracting local workers. The increase in migration of carers will surely help to alleviate recruiting difficulties in the short run, but does not address their underlying causes. There are also risks, because care is a high-risk industry for labour abuses. We now see growing evidence that migrant workers on visas are being exploited in the sector and that the scale of the problem is stretching labour enforcement resources."*⁶

Migrant care workers deserve to be valued, respected and secure in the workplace. Yet exploitation along this group is rife. Widespread employment abuses identified by the TUC and affiliated unions include:

- **Low pay and poor working conditions**

The TUC and affiliated unions have identified myriad examples of low pay and poor working conditions among the migrant care workforce, including non-payment of minimum wage coupled with non-compliance with regulations relating to workers' payslips in the sector, substandard accommodation, forced and unpaid overtime. Reports of workers being subjected to threats and abuse, including physical and psychological abuse and racial harassment are now commonplace.⁷

Calls to improve conditions have so far gone unheeded. There have been widespread calls for a funded social care workforce strategy, and increasing convergence around the need for a £15 per hour minimum wage in social care.⁸ In its April 2022 review of the impact of new immigration rules on the social care sector the Migration Advisory Committee called attention to the dire issues affecting the social care sector and recommended a '*fully funded minimum rate of pay for care workers in England that is above the national living wage, where care is being provided through public funds*'.⁹ The TUC has also recently drawn attention to inadequacies in the state-led labour market enforcement system, which requires comprehensive and long-term funding, more inspectors, more proactive investigations and more robust enforcement actions.¹⁰

⁴ The Guardian (2023), [Exploitation of care workers in England is 'appalling', says government adviser](#).

⁵ See Unison submission to this call for evidence for further discussion.

⁶ [Visas for care workers have driven increase in work migration, while small boats only account for 1/3 of asylum backlog - Migration Observatory - The Migration Observatory \(ox.ac.uk\)](#)

⁷ Guardian (2022) [Migrant care workers came to help the UK. Now they're trapped in debt bondage](#); Financial Times (2022) [Exploitation of migrants is rising as care homes struggle to fill jobs](#).

⁸ For example see: see TUC (2023) [A strategy for the care workforce](#); Care England (2023) [Care For Our Future: The roadmap to a sustainable future for adult social care](#).

⁹ MAC (2022) [Adult Social Care and Immigration: A Report from the Migration Advisory Committee](#).

¹⁰ TUC (2023) DLME Call for Evidence: Response from the Trades Union Congress

- **High recruitment agency fees**

As UNISON highlights in its submission to ICIMI, many social care workers coming to the UK are charged huge fees by recruitment agencies - sometimes running to tens of thousands of pounds - to find them jobs in the social care sector in the UK. As a result many workers face huge debt upon their arrival in the UK, and potentially face financial ruin if they lose their job. The UK government has denied responsibility for charges made by overseas agencies. Yet the vulnerable and exploited position many migrant care workers find themselves in the UK exacerbates the financial risk faced by workers, meaning that any debt incurred to come and work in the UK should not be viewed as a separate issue.

- **Repayment clauses and debt bondage**

Many migrant care workers are expected to sign contracts which require them to repay recruitment and training costs to their employers if they leave their post within a few years. TUC affiliated unions are finding many instances of their use including where workers are effectively being blackmailed by employers into accepting poor working conditions with the threat of taking on a large debt if they leave.¹¹ Many of the repayments charged or threatened are outside those permitted in *The Code of Practice for the international recruitment of health and social care personnel in England*.

- **Abuse of the immigration system by employers to exploit workers and prevent them seeking other employment**

The Health and Care Worker Visa creates worker dependency on individual sponsors, as workers must have a job offer from an approved UK employer. If a worker leaves an employer they need to find another sponsoring employer by 60 days or face deportation. Exploitative employers can use this to prevent a worker from leaving a job.

This creates a reliance on employers among international recruits whose stay in the UK depends on their employer, facilitating employment rights abuses and acting as a significant deterrent to workers reporting labour exploitation and other abuses. In some cases, employers have responded to complaints raised by workers about working conditions and service standards by threatening to remove sponsorship from that/those worker(s).

Exploitative practices often emerge during care home transfers or closure. For example, GMB union has told TUC that international recruits are often not given options for reasonable outcomes when facilities are shut. GMB cited the case of a company which closed a care facility in the south of England offering redundancy to UK national staff but informing international recruits that redundancy would entail the termination of their visa, leaving them without right to remain in the UK. This misguided threat resulted in 12 workers relocating to another care home over 100 miles away with only 24 hours' notice, without a home to move to or being able to deal with their personal financial arrangements, in some cases exacerbating existing debts.

- **Lack of access to trade unions and collective bargaining**

There is low density in trade union membership among migrant care workers. Dependency on employers sponsoring their visa deters these workers from joining a

¹¹ TUC (2023) [Labour Party Review: points-based system engagement: Submission from the Trades Union Congress](#).

union and advocating for better conditions, in fear of repercussions including losing their job and therefore their immigration status.

The TUC has long advocated that trade unions should be granted new rights to access workplaces so they can inform workers about their rights and enforce rights where they're being breached. The government should also introduce mechanisms to boost sectoral collective bargaining, including through a Fair Pay Agreement, giving trade unions and employers a key role in raising employment standards for all social care workers.

The extent and quality of communication and engagement between the Home Office and the social care sector

Communication and engagement between the Home Office and the social care sector has been insufficient and poor.

Until recently there has been a lack of a joined-up approach across government to tackling abuse and exploitation among international recruits in the social care sector, and – despite significant effort – the TUC has been unable to meaningfully engage the Home Office.

Furthermore, the Home Office recently scrapped the Vulnerability Advisory Forum which met with charities and unions to discuss issues faced by precarious migrant workers, meaning there is no longer a formal forum to discuss this with the Home Office.

Following discussions with the Department of Health and Social Care (DHSC), with whom the TUC communicates increasingly frequently on social care workforce matters, we understand that a cross-government roundtable (including the Home Office) was held over the summer, following which an Action Plan on unethical practices in international recruitment was developed. However, trade unions were not involved in the roundtable or in the development of the Action Plan. The TUC is now in preliminary talks with DHSC about union involvement in the implementation and oversight of the Action Plan. However, we have so far been unable to discuss the Plan with relevant teams at the Home Office.

The current suitability of the Home Office's licencing system for health and care worker visa sponsorship

The TUC has identified several issues with the immigration system in relation to care worker visa sponsorship.

First, there is the issue of people being forced into modern slavery. For example, the GLAA has flagged that some entering the UK on student visas are being pushed to work in social care in exploitative conditions¹².

¹² GLAA (2022) [GLAA questions further suspects in North Wales care home investigation](#).

An absence of transparency makes it difficult to comprehensively assess the Health and Care Worker visa sponsorship system – an issue which TUC has raised repeatedly with various government departments.

The TUC understands that licence revocations following labour and other abuses by employers are increasingly taking place. However, a lack of transparency and data mean that it has so far not been possible to identify the extent and nature of the labour abuses identified, number of and reasons for licence revocations, and what support had been offered to workers affected by revocations. The TUC submitted a Freedom of Information request to the Home Office in April 2023 in an attempt to obtain this detail, but no information was provided in response.

Furthermore, a lack of comprehensive and joined-up data coupled with a lack of transparency and oversight from the Home Office on posts actually filled by workers entering the UK on the Health and Care Worker Visa make it difficult to robustly assess how well the system is currently working. Nonetheless, the TUC understands that concerns have been raised with the Home Office around trafficking and other forms of criminality in the system, including where sponsors have brought large numbers of visa holders into the UK but spot checks have revealed only a handful of international recruits working with that provider. Yet – to our knowledge – these concerns have not been comprehensively followed up by the Home Office or other government agencies.

In short, there is a lack of oversight on providers, meaning it is easy to get a sponsorship licence but insufficient checks are taking place on what organisations are doing and whether they are engaged in bad employment practice once one is granted.

The effectiveness of the Home Office’s compliance requirements on sponsors, including how these safeguard employees from exploitation

As already discussed, significant evidence is emerging that sponsors are contravening the Home Office’s compliance requirements. This is shown by the increasing licence revocations taking place and the evidence of labour rights abuses experienced by international recruits to the social care sector. These abuses are in contravention of the Sponsor duties and compliance requirements stipulated by the Home Office, namely that sponsors must:

- Comply with UK employment law, including, but not limited to, National Minimum Wage, the Working Time Regulations, and (where required) enrolling your employees on a pension scheme;
- Not engage in behaviour conducive to the public good, which includes rejecting the rights of, or discriminating against, other groups or individuals on the basis of their sex, age, disability, gender reassignment, sexual orientation, marital or civil partnership status, race, or religion or belief (including lack of belief).¹³

Migrant workers are particularly vulnerable to exploitation. Employers can take advantage of migrant workers’ isolation, their lack of awareness of employment rights, their immigration status, and the fact that visas and basic requirements like housing are often tied to their employment. Even those who have the right to work in the UK are often fearful of coming forward to report exploitation to state enforcement agencies.

¹³ Home Office (2023) [Workers and Temporary Workers: guidance for sponsors Part 3: Sponsor duties and compliance Version 03/23](#).

For undocumented migrant workers the fear of speaking out is especially acute because they fear being referred to immigration enforcement which could result in them being deported, which can present significant barriers to labour market enforcement agencies' ability to gather intelligence and uncover exploitation.

The TUC has significant concerns about cross-government working, specifically where information is passed to immigration enforcement from the enforcement rights teams and where they carry out joint operations together. There is much evidence to show that close working between immigration enforcement and employment rights enforcement bodies deters vulnerable migrant workers from making complaints about their working conditions, and effectively prevents them from accessing justice.

- The Labour Exploitation Advisory group states¹⁴ that "workers with regular immigration status may refuse to report abuse or exploitation out of a real or perceived fear that reporting could put their jobs at risk and negatively affect their visas. Even British nationals may fear that reporting issues at work could result in their colleagues, friends and family being vulnerable to immigration enforcement action. This also extends to the wider public, with a 2019 University of Nottingham study¹⁵ finding that the British public are hesitant to report suspected instances of modern slavery out of a concern that it may lead to negative immigration consequences for victims due to the police's perceived close relationship with immigration enforcement authorities."
- A 2021 Home Officer Review into data sharing¹⁶ found that "It is recognised that data sharing between the police and Home Office can be a contributing factor influencing the decisions of migrant victims not to report a crime. We understand from the sector that many victims they support have been deterred from seeking help from the police. Perpetrators often use the victim's immigration status to exert fear or control, threatening that immigration action will be taken against the victim".
- Freedom of Information requests found that all labour inspectorates in the UK had provided information on migrant workers to immigration authorities for enforcement purposes at least once between 2016 and 2019, and all but one had conducted simultaneous operations with Immigration Enforcement.¹⁷

As UNISON highlights in its submission to the ICIBI:

'the stark reality for migrant workers in the UK is that they are under-protected by our employment rights framework and victimised by our immigration rules. Migrant social care workers are particularly vulnerable to this kind of ill-treatment because of the hostile environment. [...] Exploitative employers have threatened migrant workers with reporting to the Home Office. It cannot be right that migrant workers doing essential work are more frightened of our Government than the predatory employers seeking to exploit them. Migrant workers experiencing exploitation should feel able to turn to the Home Office and government agencies for help.'

¹⁴ Labour Exploitation Advisory Group (November 2022). *Written evidence submitted by the Labour Exploitation Advisory Group (POP0024)*.

¹⁵ Birks, & Gardner. (2019). "Introducing the Slave Next Door." *Anti-trafficking Review*.

¹⁶ Home Office (15 December 2021). "Review of data sharing: migrant victims and witnesses of crime". Home Office.

¹⁷ "PREVENTING AND ADDRESSING ABUSE AND EXPLOITATION". Flex, LAWRS & Trust for London.

Therefore, the TUC believes that the ties between immigration enforcement and employment rights enforcement should be severed – joint working should cease and a firewall between immigration enforcement and employment rights enforcement agencies should be established.

Finally, it is worth considering key actions outlined in the new cross-government 'Action plan to tackle exploitation and unethical employment practices: ASC international recruitment'. The Home Office currently appears to have limited responsibility assigned to it for implementing key objectives on ensuring international recruits understand their rights and how to report issues of concern (Objective 2), supporting providers to prevent non-compliance with their sponsorship duties (Objective 3), and ensuring enforcement measures are effective and responsive when ethical concerns are identified – and impacts for individuals are mitigated (Objective 4). We understand the Action plan is evolving but the Home Office's apparent lack of an active role in ensuring fulfilment of these objectives suggests the department is missing important opportunities to bolster sponsor compliance with basic labour standards and to safeguard international recruits from exploitation.

Recommendations

TUC makes the following recommendations to government to improve the immigration and employment rights systems. These should be underpinned by a humane approach to immigration that includes safe legal routes for refugees and asylum seekers to enter the UK:

- Ensure that employers can only source workers from abroad where they agree to adhere to a robust and comprehensive set of decent work standards, established through collective bargaining with trade unions represented within that sector.
- Establish safe recruitment processes by putting the Code of practice for the international recruitment of health and social care personnel in England on a statutory footing, and ensuring any employer recruiting indirectly uses only agencies, organisations or collaborators listed as 'Ethical Recruiters' in the NHS Employers Code of Practice.¹⁸
- Ensure that migrant workers are not paying any unfair/unlawful recruitment costs to work in the UK, including by removing visa and other recruitment fees payable by workers. The ILO General principles and operational guidelines for fair recruitment state that '[n]o recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers'.
- Separate employment rights and immigration status to ensure undocumented workers can claim their rights. The Immigration Act (2016) which criminalises undocumented working should be abolished.
- Cease joint working and establish a firewall between immigration enforcement and employment rights enforcement agencies so that processing of worker complaints around employment abuses are conducted separately from immigration checks.
- Establish clear independently-run complaints mechanisms which are informed by the needs of workers to make sure they are accessible and enforceable in practice.

¹⁸ See: <https://www.nhsemployers.org/articles/ethical-recruiters-list>

Workers should also be protected from retaliation by employers if they (or another person) report concerns about worker exploitation or care standards in their workplace.

- Run mandatory information sessions in the UK for workers prior to them starting their employment, involving trade unions or civil society organisations with relevant expertise, and focus on the rights available to workers in the UK, what support is available, and practical steps workers can take when their rights are not being upheld.
- Establish a clear employer transfer pathway with a right to switch employers and not be tied to one employer and abolishing the current 60-day window to find a new employer.
- Allow all visas to be easily renewable subject to ongoing employment, with a route to settlement.
- Provide for an income guarantee at point of recruitment, for a minimum amount of work over a minimum period.
- Support workers in the event of employment being terminated, including through loss of employers' licence or sale/closure of care home. This includes safeguards for employment and immigration status and equal opportunity for redeployment as that given to other staff in their workplace, with relocation beyond reasonable distance from current place of work being a last resort. Alongside this, migrant workers should be granted recourse to public funds so they have a safety net if work is withdrawn by the employer.
- Increase the resources for labour market enforcement to ensure there is capacity to conduct regular proactive inspections. There should be a focus on compliance with all employment laws, rather than only on breaches which reach the threshold of Modern Slavery.
- Introduce minimum standards for accommodation through regulations, with ongoing monitoring and prohibit employers from charging workers for accommodation or utilities/other associated costs if for any reason their wages drop below the real living wage.

Government should also develop a fully-funded social care workforce strategy, with the following four pillars and associated actions:¹⁹

- **Worker voices heard and valued** including through sectoral collective bargaining arrangements and through the creation of National Partnership Forums in social care and childcare. Trade unions should be granted new rights to access workplaces so they can inform workers about their rights and enforce rights where they're being breached.
- **Decent pay and conditions** for all care workers through a collectively bargained sectoral agreement on fair pay and decent working conditions, a new sectoral minimum wage of £15 per hour, sick pay, secure contracts and full, on-time and payment for all time worked. Migrant workers should receive at least the same pay, terms and conditions received by other staff in the workplace, including those set

¹⁹ For more detail see TUC (2023) [A strategy for the care workforce](#).

by agreement with trade unions for staff in that workplace. All workers should also have access to efficient labour market enforcement mechanisms and to redress if agreed pay and employment conditions are not met.

- **Skills, training, and progression pathways** with nationally negotiated training frameworks to ensure consistency and quality. These should be aligned with national pay structures to make sure staff are fairly remunerated and can progress as they acquire new skills and knowledge. Training must be accredited and qualifications recognised and transferrable to new employers.
- **Protect health, safety, and wellbeing** including ensuring that staffing levels are based on care and education needs and not arbitrary ratios. And a zero-tolerance approach to workplace abuse with comprehensive safeguarding and support, notably for staff who may be at increased risk of experiencing abuse and harassment including Black and migrant workers.

To discuss this evidence further or to arrange a more detailed discussion with TUC and affiliated trade unions please contact Abigail Hunt, policy officer public services (social care lead) on ahunt@tuc.org.uk or 020 7467 1299.