

**JRF Programme Paper**  
**Forced labour**

**REGULATION AND ENFORCEMENT  
TO TACKLE FORCED LABOUR IN THE  
UK: A SYSTEMATIC RESPONSE?**

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This paper:

- maps the legal and organisational framework relating to forced labour;
- highlights gaps in the UK's actions to combat forced labour; and
- develops a set of recommendations for improvements and changes to the current system and makes suggestions for future research.

**The Joseph Rowntree Foundation (JRF) commissioned this paper as part of its programme on forced labour, which aims to influence the development of policy and practice to reduce forced labour in the UK and support its victims.**

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## Executive summary

This programme paper forms part of an interconnected series of research papers funded by the Joseph Rowntree Foundation (JRF) into forced labour. The aim of the research is to examine the extent to which forced labour in the UK is influenced/ exacerbated by specific factors. This paper focuses on the problems that exist in terms of enforcement and regulation in the UK context. Two forthcoming papers look at business practices and the role of immigration policies.

The purpose of this piece of work is to provide a critical analysis of the legislative framework and organisational field and how this affects regulation and enforcement. The approach is systemic in that it aims to locate the legal measures and organisational environment within the broader context of the protection of workers' rights in the UK. The paper considers the legislative framework around forced labour, the organisations that are charged with regulating and enforcing the rules, and problems of knowledge and expertise within those organisations.

The findings demonstrate how loose and complex the structural coupling is between the legislative system and the organisational field when it comes to forced labour. The UK government has decided against joining some international agreements that could help to tackle the problem, and there are questions over implementation with those it *has* opted to join. The system of protection for workers' rights is patchy and inconsistent, partly due to the lack of a coherent regulatory authority or system of monitoring employment practices. It is likely that there are varying levels of awareness across all front-line staff. Large-scale multi-agency enforcement operations have been successful in harnessing the combined expertise and resources of the various organisations that can act to stop forced labour, but there have been mixed results in the courts. There are also questions over the capacity to carry out such operations in the future.

The paper ends by developing a series of recommendations for improving the operation of the current system, proposing points of action in the light of findings and making suggestions for future research.

## Introduction

In early 2007, Lithuanian journalist Audrius Lelkaitis went undercover to reveal levels of exploitation in the UK labour market appearing to show evidence of forced labour.<sup>1</sup> Apart from the appalling conditions that were uncovered, perhaps the most notable outcome of the undercover investigation was the lack of subsequent criminal proceedings and the ability of those allegedly exploiting foreign workers to completely escape punishment. This is particularly poignant for the UK – a country historically associated with the international abolition of slavery.

Labour exploitation, in common with other types of crime, evolves over time to evade attempts by legislators and regulators to eradicate or circumscribe it. The fact that forced labour still continues to exist in a liberal democratic country such as the UK underlines this, and also the importance of not taking the implementation of basic human rights for granted. As the International Labour Organization (ILO) observes, while forced labour is now generally recognised as a crime, it is ‘rarely prosecuted because of the difficulties in articulating the various offences that constitute forced labour in national laws and regulations. In addition, there are various obstacles to law enforcement and the identification of forced labour victims ...’ (ILO, 2005, p. 18)

The main aim of this paper is to spell out these ‘difficulties’ and ‘obstacles’ in the context of the UK labour market where the regulatory environment is complex. Enforcement is spread over a number of agencies and regulatory bodies; the powers, interests and capacity of these organisations in dealing with forced labour vary widely; and there are inconsistencies in terms of the levels of regulation and enforcement applied to different kinds of activities, economic sectors or employment types.

The attention brought by Lelkaitis’ investigation in 2007 occurred in the midst of a revival in global interest in modern slavery since the turn of the century. However, government responses have tended to converge around international human trafficking rather than forced labour as exploitation of the individual. The UK, for example, has joined the international framework around human trafficking, but has stayed out of other agreements which potentially help in tackling

forced labour. There has been an emphasis on immigration rather than employment rights, reflected in both the national legislative framework and the growing raft of international agreements and conventions.<sup>2</sup>

These problems were subsequently acknowledged with the introduction of Section 71 in the Coroners and Justice Act (2009), which specifically addresses 'slavery, servitude and forced or compulsory labour'. Since then, high-profile criminal cases involving forced labour have emerged in an increasing number of economic sectors, involving victims who are both foreign and UK nationals. This paper looks at these developments, explores what they mean for the organisation of regulation and enforcement in the UK and asks if we continue to turn a blind eye to forced labour.

# Approach and focus

## Methods

The work that informs this paper was carried out between January and May 2011. During this period, 20 semi-structured interviews were carried out with key actors and organisations involved in regulation and enforcement around forced labour in the UK.<sup>3</sup> This was supported by desk-based research and also a roundtable event where representatives from agencies and organisations discussed issues around enforcement and regulation.

## Framework of analysis

It is widely recognised that there are gaps between rhetoric and reality regarding implementation of workers' rights<sup>4</sup>, but relatively little is known about what and where these gaps are, why they exist and how best to tackle them. We are often told, for example, that the fight against human trafficking has been hampered by significant knowledge gaps (Kelly, 2005) and that forced labour is confused with other issues (Anderson and Rogaly, 2005), but how does this relate to the organisation of regulation and enforcement? Non-governmental organisations (NGOs) have also criticised legislative gaps and inconsistencies, and the government's willingness to allocate resources (ATMG, 2010a), but how do they hamper the work of those protecting workers' rights? We know that these are difficult questions because in the organisational context there can be disconnections or gaps between 'talk', 'decision' and 'action' relating to the prevailing culture and identity within (and among) implementing organisations (Meyer and Rowan, 1977; Brunsson, 2003).

The approach taken here is to respond to these questions by systematically identifying gaps in regulation and enforcement, attempting to develop a better understanding of them, and using these findings to generate a set of coherent and practical recommendations to narrow or mitigate their effects. As part of this research, interviewees were asked to identify where, in their opinion, the main challenges existed in regulation and enforcement around forced labour. These responses have been incorporated in combination with

a mapping of the organisational field around forced labour to identify key areas where there are concerns over gaps in enforcement and regulation. The results of this research are intended to be particularly valuable in terms of addressing those differences that exist between the ideal and the current state of enforcement and regulation.

### **Clarification of terminology: exploitation, forced labour, slavery and trafficking**

There are a host of definitional issues around forced labour, ranging from the academic to the legalistic, with varying implications for enforcement and regulation. For example, the word 'slavery' is often employed in contemporary policy debates as interchangeable with that of 'forced labour'. However, historians often point out that slavery was originally defined as legal ownership of human beings (and their offspring). Despite this definitional ambiguity, the emotive resonance of the term has meant that 'slavery' is frequently employed to provide greater symbolic power as a rhetorical device and can be used as a powerful call to action (Quirk, 2011).

For the purposes of this paper, the UK's regulation of forced labour will be considered with reference to the definition and indicators as developed through the ILO. This defines forced labour as: 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.<sup>5</sup> According to the ILO, if two or more of the following indicators are present then there is a strong possibility of forced labour:

- threats of or actual physical or sexual violence;
- restriction of movement and confinement to the workplace or to a limited area;
- debt bondage: where a worker works to pay off debt or loan, and is not paid for his or her services;
- withholding of wages, refusing to pay the worker at all or excessive wage reductions;
- retention of passports and identity documents;
- threat of denunciation to the authorities.

Another distinction worth mentioning is that between 'trafficking for

forced labour'<sup>6</sup> and forced labour more generally (which may, or may not involve trafficking). These are offences that are often closely correlated, but the term 'forced labour' is not synonymous with 'human trafficking'. In enforcement terms the link is important, however, because identifying cases of forced labour is an important aspect of the fight against human trafficking and can constitute part of the evidential basis for prosecutions. As will be discussed later, the legislative framework on human trafficking in the UK – and the linkages with forced labour – is complex and spread over various legislative acts.<sup>7</sup>

## **Mapping the legal and organisational framework**

A key task for front-line staff in enforcement and regulation is to identify and differentiate between cases of forced labour and those of labour exploitation. As Skrivankova (2010) points out, this is challenging because of the continuum that exists between these two conditions. However, from the perspective of the regulatory system in the UK there is separation: cases of labour exploitation are dealt with through employment law and labour market regulation while cases of forced labour should automatically become a matter for law enforcement agencies and the criminal justice process.

Not only are there a wide range of organisations that play a role in the fight against forced labour, the regulatory landscape in which they operate is made up of multiple legal regimes, conflicting political demands, varying levels of public support and linkages with other interests. While forced labour is a criminal act and therefore a matter for the police, by its very nature the offence occurs in the context of the workplace, which has its own system of regulation. In addition to this, due to linkages with immigration, the government has chosen to make the UK Border Agency (UKBA) the main organisation responsible for anti-trafficking efforts, which includes trafficking for forced labour. The following pages map this legal and organisational framework by exploring the tapestry of organisations that operate within the employment and immigration regulatory systems and how these link with the related criminal justice system around forced labour. We begin by taking a step back and examining the vertical or top-down implications of international human rights norms for the UK state. This is because, as freedom from forced labour is a basic human right, all aspects of the UK government are subject to international law in this area.

### **Human rights: meeting our international obligations?**

The 21<sup>st</sup> century has been marked by a wave of agreements, protocols and conventions at international and regional (European) levels on forced labour and human trafficking. What are the key obligations for the UK state when it comes to action on forced labour?

This section examines the significance of relevant international agreements, the problems there are in terms of implementation, and what the decision to adopt or remain outside tells us about the kind of enforcement and regulation regime that exists around forced labour in the UK.

The UK is a signatory to ILO Convention No. 29. This document states that: 'the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced'.<sup>8</sup>

As a signatory to the European Convention on Human Rights (ECHR), freedom from slavery or forced labour is also specifically protected in the UK (under Article 4). Indeed, the UK was one of the first signatories of the Convention and allowed individual rights of access to the European Court of Human Rights in 1965.

A key challenge that emerges regards implementation. Most assessments of the impact of international agreements on human rights recognise the difficulties in this area. In his 2011 annual report, Council of Europe Commissioner for Human Rights Thomas Hammarberg complained that: 'Progress in implementing human rights is too slow and the agreed standards are not consistently enforced. The implementation gap is wide.'<sup>9</sup> Furthermore, Article 4 has not historically been among those parts of the Human Rights Act (1998) where there has been a significant impact of case law (in the case of the UK this has mainly been felt on other parts of the Act, e.g. Article 3)<sup>10</sup>. However, there have been a number of key developments in recent years which have potentially narrowed this gap:

1) *The introduction of the Human Rights Act (HRA) in 1998.*<sup>11</sup> This made rights from the ECHR enforceable in UK courts and was intended to address a deficit in access to justice by reducing the time, expense and complexity in bringing cases before Strasbourg. However, bringing the ECHR closer has also had some negative effects. A report written ten years after the Act was introduced found that the circulation of a number of myths has led to the HRA being widely misunderstood by the UK public.<sup>12</sup>

2) *Case law on forced labour developed by the ECHR*. The case of *Siliadin v. France* (2005) established for the first time that there are positive obligations for the state to have effective criminal justice measures in place in the area of forced labour.<sup>13</sup> The case of *Rantsev v. Cyprus and Russia* (2010) further clarified obligations for states to protect against (as well as investigate) human trafficking.<sup>14,15</sup>

These landmark cases follow a general trend for the ECHR to progressively establish more areas of positive obligations. The incorporation of a stand-alone offence of forced labour into UK law in 2009 brings the UK into line with the findings of *Siliadin v. France*. There are, of course, concerns that the trend towards greater positive obligations through the ECHR awards too high a value to criminal law as the main means with which to deal with human rights violations. The main fear is that this might mean that states avoid other measures to protect victims (Pitea, 2005). It also poses the question of how far positive obligations through the ECHR should extend beyond punitive measures, to include other needs, such as those of compensation, regularisation and rehousing of victims (Cullen, 2006).

### *Joining in: the war against human trafficking*

The dilemma over joining in or staying out of international agreements and instruments is more than simply a question of influence versus autonomy (Adler-Nissen, 2008); the decision to adopt or reject an agreement reveals the underlying political interests, and how this relates to the perceived costs and benefits to different parts of the state.

The passage of the Council of Europe Convention on Action against Trafficking in Human Beings (2005) is a good example. The agreement underlines the growing importance of emerging international norms in this area, but also of the costs/challenges of implementation when transferring to the national level. The UK government was initially reluctant to sign, arguing that the Convention could reduce autonomy and effectiveness in immigration control. However, a combination of political calculation and symbolism led to a rethink and the UK joined the most prominent European instrument to fight against trafficking in 2007 (Balch and Geddes, 2011). Opting into the Convention has had mixed effects on punitive and non-punitive

measures to deal with forced labour in the UK. This is not least because it only relates to cases where there is evidence of trafficking.

In terms of punitive measures, the Convention has led to a harmonisation of UK legislation with other European countries. This closed a number of legal gaps and effectively introduced forced labour into UK criminal legislation for the first time. However, it bears repeating that the new laws were constructed such that trafficking was a pre-condition for prosecutions over forced labour. Indeed, the two concepts of 'human trafficking' and 'forced labour' have frequently been confused, 'to the disadvantage of those who might have been victims of forced labour but who were not trafficked' (Skrivankova, 2010, p. 8). In the context of the UK, this problem was key to arguments put forward in the debate leading up to the incorporation of the forced labour offence in Section 71 of the Coroners and Justice Act (2009).

For all its problems, one of the key achievements of the international war on human trafficking has been the development of non-punitive measures, particularly regarding the treatment of victims. These are laid out in some detail throughout the 47 articles of the Council of Europe Convention. They include rights for victims (of residence, for a period of reflection and compensation) and the creation of an identification system (the National Referral Mechanism, or NRM). However, for victims of forced labour there is a requirement for trafficking to have taken place in order to benefit from these measures. Furthermore, despite the UK's signature and successful ratification of the European Convention on trafficking, there remain deep concerns over implementation. In its report on implementation, the Anti-Trafficking Monitoring Group in 2010 went as far as declaring the system 'not fit for purpose'.<sup>16</sup>

The NGO sector has been consistently critical of the UK Border Agency, which has been given a crucial role in the government response to the problem of human trafficking, and thus indirectly for cases of forced labour involving non-EU nationals. The agency was charged with leading the implementation of the Council of Europe Convention on trafficking, demonstrating the government's immigration focus on the issue. One argument raised against implementation being UKBA-led is that victims may well not be foreign

nationals – or could be from EU member states that enjoy free movement of labour<sup>17</sup> and therefore not subject to immigration rules.

Some elements of implementation have proved particularly challenging for the UKBA, either in ideological or organisational terms (Balch and Geddes, 2011). Forced labour is mentioned in training modules for front-line staff as a particular type of trafficking.<sup>18</sup> However, in terms of the internal politics of the UKBA, there is a clearer consensus over the trafficking of women and children for sexual exploitation, helped by the creation of an internal ‘children’s champion’, for example, or the strategic group on implementation of the Council of Europe Convention on trafficking. For forced labour as a separate offence there are as yet no specific Home Office guidelines outside the trafficking framework for front-line staff, although the Crown Prosecution Service (CPS) has provided legal guidance.<sup>19</sup>

Conflicts between different departments over the implementation process for trafficking generally reflect the conflict inherent within and between various government priorities. One could point to, for example, the difficulty of managing migration to boost the UK economy while also pursuing other priorities (strengthening borders, fast-tracking decision-making and enforcement of the rules). All of these priorities potentially conflict with the obligation to identify victims of trafficking. The victim focus of human trafficking policy is at risk of running contrary to targets on removals and tipping the balance on asylum claims. There is also a general trend, especially since the UK Borders Act 2007, towards an enforcement focus, with an increase in powers for immigration officers and a doubling of the enforcement budget.

The (delayed) new anti-trafficking strategy announced on 19 July 2011 (too late to be included in the interviews) continues a familiar framing of these issues. The document demonstrates an expanded focus on overseas enforcement and a stronger border, thus reiterating the link between trafficking and immigration control rather than human rights abuses. Although the document is generally short on detail, there is some mention of improved identification of victims, but the reaction by NGOs working in the area was that this was a missed opportunity. Steve Chalke MBE, founder of the charity Stop the Traffik and UN.GIFT (United Nations Global Initiative to Fight Human

Trafficking) Special Advisor on Community Action against Human Trafficking, said the new plan was a disappointment, claiming that ‘It could also increase the vulnerability of the men, women, and children who are trafficked into the UK and exploited, by concentrating more on their immigration status than their position as victims of a horrible crime. Human trafficking is a human rights abuse, not an immigration offence.’<sup>20</sup>

### *An awkward partner: protecting national interests*

The Council of Europe Convention on Action against Trafficking in Human Beings (2005) highlights how selective governments can be when it comes to implementation even when they decide to adopt an agreement. The other cases where the decision is to remain outside an agreement tell us where the perceived costs of entry outweigh the benefits, i.e. where state preferences trump the normative power of international human rights regimes.

*UK reservations over regulation of domestic work.* In June 2011 a new ILO convention was agreed on domestic workers. This was considered necessary because of ‘historical and continued exclusion of domestic workers, mainly women and girls, from labour protection’ (ILO, 2011, p. 1). In its formal response, the UK raised concerns that ‘requiring a licensing system would provide difficulties’ (ibid., p. 51) and that the health and safety measures would be problematic because ‘national occupational health and safety regulations do not apply to domestic workers’. In the final vote (passed with a majority of 83 per cent), the Confederation of British Industry (CBI) was one of the few organisations to vote against, and the UK government abstained.

According to Sean Bamford of the Trades Union Congress (TUC), the main problem for the government is regarding the power of inspection, i.e. the right to inspect the workplace, which in the case of domestic workers is someone’s home:

*There are issues around privacy, and the migration cap – they are worried that anything they change will attract more workers; also a problem with creating more employment legislation – it is an attitude of ‘one in-one out’ – an anti-red-tape thing. The government attitude is*

*that it is a 'sledgehammer to crack a nut' – why should we put in new legislation and interfere in people's lives when it is only a few people really suffering these things?<sup>21</sup>*

*UK reluctance to commit to European agreements on trafficking.* In addition to reservations regarding regulation of domestic work, the UK has also exhibited reluctance towards committing to European-level agreements on trafficking. Its signature of the Council of Europe Convention came comparatively late, and the response to the EU directive on trafficking in 2010 was initially critical. However, on 22 March 2011, the UK government indicated that it will opt in to the EU directive on trafficking. Minister for Immigration Damian Green explained the UK's previous reluctance and change of heart:

*In June, the Government took the decision not to opt in at the outset to the proposal for a directive to combat human trafficking but undertook to review the position when there was a finalised text. We have now carefully considered the finalised text. The main risk associated with the text has now been overcome: by waiting to apply to opt in, we have a text that has been finalised and we have avoided being bound by measures that are against the UK's interests.<sup>22</sup>*

The widening of the trafficking definition by the EU directive will potentially enhance UK efforts to tackle trafficking but not forced labour where trafficking is not present. This is because the directive strengthens the immigration frame over that of exploitation. In other words, it maintains a focus on 'the acquisition of people by improper means' (UN definition) with 'the aim of exploiting them'. The expansion created by the EU directive is to enlarge the scope to include 'instigating, aiding, abetting or attempting to commit such an offence'. The offence in question remains trafficking, rather than exploitation, the latter serving to provide proof of the former.

In the process of negotiation the link between trafficking and immigration was also protected. A critical part of the EU directive is contained in Articles 9 and 10 – these widen the jurisdiction and obligation for states to prosecute. The key area was how demanding it would be with respect to prosecution in cases of trafficking into, within or out of the UK when the offender is a habitual resident or when the

victim is a UK national – i.e. not subject to immigration rules. These conditions were watered down during the parliamentary stage and so in these contexts there is a reduction in the obligation to prosecute (CARE, 2011).

*EU directive on sanctions against employers of illegally staying third-country nationals.* The government concluded that it was ‘not in the national interest’ to opt in. The argument was that the directive would place additional administrative burdens through the need for compliance inspections and the inclusion of subcontracting as an employment type. The response from the government made it quite clear that basic employment rights have a lower priority than immigration rules. Damian Green explained that the government was concerned because:

*The directive also guaranteed additional rights to illegally-staying employees, including provision of back payments where an employee has earned less than the minimum national wage, which would be difficult to administer and would send the wrong message by rewarding breaches of immigration legislation.<sup>23</sup>*

*More out than in? UK rules on agency work.* In contrast to the EU directive on employers of irregular immigrants, the UK has actually adopted a piece of EU legislation which tackles the agency worker sector. The adoption by the UK of the Temporary Agency Workers Directive (TAWD)<sup>24</sup> would seem to represent a departure from the UK’s aversion towards EU legislation on employment rights. However, it is an exception to an otherwise consistent line regarding the protection of the UK’s agency work sector under the banner of labour market flexibility. This is made clear when one considers the context of numerous ILO conventions over temporary agency work where the UK remains outside. The TAWD was only belatedly introduced after it had been modified through the EU legislative process, and following a TUC–CBI agreement and several consultations. The government has also imposed a lengthy delay in its introduction (to October 2011, the maximum possible under EU law) and there are already concerns over its implementation. Health sector unions, for example, have expressed concerns that there are too many loopholes in the directive’s implementation into UK law and a lack of commitment to enforcement.<sup>25</sup>

## **Workers' rights: fair employment for all?**

The observation that there is a continuum between labour exploitation and forced labour has significant implications for enforcement across the whole labour market. The following pages consider how well the UK protects workers' rights, and whether the best system is in place for helping to prevent a forced labour situation from occurring. We focus on some of the key ideas which underpin labour market regulation and enforcement in the UK before turning to how these impact specifically on tackling forced labour. This paper is primarily concerned with regulation and enforcement around workers' rights carried out by public sector actors and organisations. See Box 1 on private sector self-regulation, corporate social responsibility and forced labour.

### **Box 1: Self-Regulation, Corporate Social Responsibility and Forced Labour**

This report focuses on state-led regulation and enforcement, but it is important to note the important potential role of self-regulation in the private sector. The Ethical Trading Initiative (ETI) is a good example of how the private sector can respond to issues such as forced labour, through the development of codes of conduct, for example. Historically companies have tended to focus more on conditions for workers overseas than in the UK, but this is changing, especially with the publicity of cases uncovered by the GLA (whose creation was supported by the supermarkets):

“UK issues are also really important to retailers and brand owners, since these are the issues closest to their customers' hearts... People often believe that conditions for workers are worst overseas; perhaps that's why they get most scandalised when something goes wrong at home. UK retailers know this and generally put as much emphasis on applying their codes of practice in the UK as they do abroad.”  
(Martin Cooke, ETI, correspondence with the author)

Ongoing developments at the European and international level

around Corporate Social Responsibility (CSR) also have the potential to move the concept forward and genuinely change the way that the private sector incorporates human rights principles into their business practices. Human trafficking / forced labour has been specifically identified by the UN and EU in this context. Businesses in Europe could soon be asked to disclose what efforts they are making to eliminate human rights abuses in their supply chains (already a legal duty for large companies operating in the state of California).

Historically CSR has referred to a wide variety of 'add-on' policies for businesses (ranging from the social to the ecological). The incorporation of a human rights focus opens up opportunities for a potentially meaningful shift towards the idea of 'social enterprises'.<sup>26</sup> Key to these developments are the UN Guiding Principles on Business and Human Rights (UNGPR) - adopted in June 2011 (UNHCR 2011). The product of 6 years work by John Ruggie (Harvard, US), these principles constitute a coherent framework and provide a new focus which aims to develop the business response to human rights issues. The emphasis is now turning to how business is able and willing to respond.

In January 2011 the US state of California passed the 'Transparency in Supply Chains Act' which will come into force in early 2012. This law has already generated serious discussion around how businesses can meet their new obligations in relation to the issue of human trafficking.<sup>27</sup>

In the European context the Council of the EU is pushing for the EU to take a lead in CSR and is one of the goals of the Europe 2020 Strategy.<sup>28</sup> In its communication of October 2011 the European Commission stated that: "Better implementation of the UN Guiding Principles will contribute to EU objectives regarding specific human rights issues and core labour standards, including child labour, forced prison labour, human trafficking, gender equality, non-discrimination, freedom of association and the right to collective bargaining." (CEC 2011: 14)

## *The hidden costs of flexibility*

The UK labour market has been trumpeted by some as the ‘free-est in Europe’ (Demos, 2007, p. 10), with job creation facilitated by immigration policies (Balch, 2010), and the largest temporary agency sector in Europe (EFILWC, 2006, pp. 6, 22). However, as the work of the Gangmasters Licensing Authority (GLA) and others has shown, groups vulnerable to exploitation in the UK labour market, and therefore at risk of forced labour, are often immigrants and/or agency workers. Evidence suggests that these groups are often over-represented in economic sectors characterised by poor working conditions and a lower level of protection in terms of employment rights (Scott *et al.*, 2007; Balch *et al.*, 2009).

This issue was brought very much into the political sphere after the 2004 Morecambe Bay cockling tragedy, where 23 people died. The victims were foreign workers who had been employed via complex sub-contracting arrangements which ultimately left them excluded from any kind of employment protection (*ibid.*).

Although the political response included the creation of the GLA, the UK has consistently demonstrated a commitment to maintaining its flexible labour market in the face of pressure to enhance protection of employment rights. The preference is for sector-specific regulation and a light touch. See, for example the use of ID cards in the construction sector (Balch and Scott, 2011). This relates to a wider point about enforcement of regulation in the UK. Enforcement of the offence of corporate manslaughter provides a good example of how ‘business crime’ is generally treated differently to ‘conventional crime’ (Tombs, 2002). The offence of corporate manslaughter was introduced in 1965 and between then and 2000 there were more than 20,000 people killed at work, but in the same period there were only five prosecutions and two convictions (Slapper, 2000).

## *Negative, rather than positive, protection*

One of the main problems in relation to preventing forced labour is the extent to which the UK system is characterised by a negative conception of rights protection. The enforcement of individual employment rights to a large degree rests on employees taking it

upon themselves to act in order to remedy their situation. In other words, the UK system presupposes a sufficient degree of awareness (about employment rights and where to go to enforce them) and capacity (an ability and willingness for the individual to take action). Evidence would suggest that this is a problematic assumption, particularly for vulnerable groups (BERR, 2008, p. 5).

When it comes to remedying the harm of exploitation in the labour market in terms of compensation and/or retrieving unpaid wages, employment tribunals are the main route. However, employment tribunals are notorious for being slow and unpredictable, and the results for individual cases linked to trafficking would suggest that they have not thus far proved effective in supplying a remedy for victims (ATMG, 2010b).<sup>29</sup> There are also problems of access for vulnerable or 'undocumented' workers (ECCR, 2009).

### *Complex and differential enforcement and regulation*

Another key characteristic of the UK's labour market regulation is the lack of consistency in terms of regulation across different sectors and a stratification in the types of rights that are covered through different enforcement regimes. As Table 1 illustrates, there are relatively few areas where the government plays a direct role in enforcement. Where there is such a role it is carried out by a variety of agencies and organisations that are accountable to different government departments. The rights that are covered by this system are:

- the right to a minimum wage (national, with an equivalent for the agricultural sector);
- the right not to have to work more than 48 hours a week (on average);
- the right to health and safety;
- rules governing the conduct of employment agencies;
- rules governing the conduct of gangmasters operating in the agriculture, forestry, horticulture, shellfish gathering, food processing and packaging sectors.

**Table 1. Enforcement agencies and employment rights protected**

<b>Enforcement agency</b>	<b>Rules enforced</b>	<b>Rights protected/ how protected</b>	<b>Universal coverage?</b>
Her Majesty's Revenue and Customs (HMRC)	National minimum wage (on behalf of BIS)	Right to fair pay/ via tribunal system or complaints investigated by HMRC	No – some types of employment exempt
Department for Environment, Food and Rural Affairs (Defra)	Agricultural minimum wage	Right to fair pay/ complaints-based enforcement regime operated by the Agricultural Wages Enforcement Team (AWT)	No – specific sectors or types of employment
Employment Agency Standards Inspectorate (part of Department of Business, Innovation and Skills, BIS)	Employment agency standards	EAS works with employers of agency workers to ensure compliance with employment rights	No – specific sectors or types of employment
Gangmasters Licensing Authority – a Non-Departmental Public Body (NDPB) sponsored by Defra	Gangmaster licensing standards	GLA regulates businesses in certain sectors to ensure employment rights are observed	No – specific sectors or types of employment
Health and Safety Executive – an NDPB sponsored by Department for Work and Pensions (DWP)	Health and safety and working time	Right to safe working environment, working time rights/ investigates complaints made to Health and Safety Executive	Yes
<i>Source:</i> The author; BERR (now BIS) (2008, p. 10); Unite (2010)			

As can be seen in Table 1, each of these agencies operates under different sets of priorities and with different systems of enforcement (e.g. inspection, licensing, tribunals) (Unite, 2010).

Only the Health and Safety Executive can claim to offer universal protection, with the others all limited either by economic sector or employment type.

There have been attempts to harmonise the approach to regulation and enforcement, notably since the Hampton Review (2005)<sup>30</sup> (see also section on monitoring and inspection). The findings of Hampton have led to the adoption of a system whereby regulators are encouraged to develop targeted, risk-based and intelligence-led enforcement practices. In some regulators this has led to the creation, or expansion, of intelligence-gathering activities and for these to be central to operational and enforcement strategies. An example of this is presented by the GLA where there has been a notable transfer of police-inspired techniques around enforcement and intelligence usage.

Part of the problem is the sheer scale of the UK's labyrinthine regulatory environment. The original Hampton Review highlighted the complexity of the regulatory system. At the time the report was released (2005), there were 63 national regulators employing 41,000 staff, with 12,000 involved in primary inspection.<sup>31</sup> Added to this, there were 468 local authorities, employing around 20,000 staff, 25 per cent of whom were involved in primary enforcement duties.

Since the abolition of the wage councils in the early 1990s, the UK (unlike many of its European partners) has had no overarching agency or authority to organise workplace inspections – such as a labour inspectorate. This has a number of implications in the context of tackling forced labour. It has allowed the system to become increasingly complex and atomised. This inevitably leads to different levels of protection of workers' rights in different sectors or types of employment. This is exacerbated by varying levels of knowledge and awareness about issues such as forced labour within those agencies that are most likely to be able to identify the problem. This is not least because the complexity of the system makes it difficult to construct an appropriately standardised training system for all the different agencies. Instead, each organisation is required to look after its own training needs and make its own links with other regulators and law enforcement agencies.

In addition to the above factors, in the context of budgetary austerity measures introduced by the Coalition government in 2010 and 2011, many regulators are also facing significant budget reductions. The Health and Safety Executive, for example, had its budget cut by 35 per cent in 2011.<sup>32</sup> Needless to say, a reduction in resources for regulators mean that there will be pressure for inspections to be increasingly narrowly focused on only the highest risk employers.

### *Government review of employment regulation*

In early 2011 the Coalition government announced a review of 'workplace rights compliance and enforcement arrangements' – to be led by Ed Davey MP (Lib-Dem). This review (ongoing at the time of writing) and a parallel overhaul of employment law provides the government with a chance to reconsider the whole system of business regulation, and it is an opportunity that should not be missed. There are a number of options for an improved structure of regulation, including extension of the GLA, the creation of a new nationwide and economy-wide labour inspectorate and setting up a fair employment commission. Unfortunately, some of these options have already effectively been ruled out.<sup>33</sup>

A labour inspectorate could potentially be presented as a cost-saving option considering the number of agencies which it could replace. This would nevertheless carry with it the danger of an even lower level of inspections and the possibility of eliminating good practice tackling exploitation in sectors where it is particularly prevalent, such as that developed by the GLA. Another option is the creation of a fair employment commission as previously envisaged by the vulnerable worker forum (TUC, 2007) – a proposition currently supported by a number of NGOs and civil society organisations. This could potentially have many benefits in terms of tackling the problem of exploitation in the UK labour market (CABx, 2011). It is, however, beyond the scope of this paper to comment in detail on the future design of the UK's regulatory institutions – instead, several key principles in relation to the regulatory system and tackling forced labour are set out in the recommendations section.

## **Criminal justice: finding and preventing exploitation?**

The response to forced labour by the criminal justice system needs to be framed within the context of increased operational and political pressure. This includes conflicting demands for prioritisation, and political demands for modernisation of enforcement agencies (e.g. regionalisation or new overarching national structures). The creation of the United Kingdom Human Trafficking Centre (UKHTC) was an attempt to circumvent some of these issues and graft on a political top tier to the fragmented structure of the police service – a unit better placed to manage certain issues and meet and reflect the conflicting demands of outside interests. However, the relocation of the UKHTC (in both the organisational and geographical sense) to become part of the Serious Organised Crime Agency (SOCA) resulted in many key staff leaving the agency. There was a consensus among those interviewed that the move had – at least in the short-term – led to a loss of political momentum and expertise. However, the new institutional location offers greater international reach and despite fears (particularly over transparency) regarding its move to SOCA, the UKHTC continues to build on its previous work, and linkages with other actors and organisations.

Since the creation of the new offence of forced labour through Section 71 of the Coroners and Justice Act (2009), the police have a clear duty to investigate in this area. There have also been judicial reviews which have played a key role in identifying and clarifying the responsibility of enforcement agencies around forced labour. For example, a precedent over forced labour in the UK context was set by *PA v. Commissioner of the Police of the Metropolis* (2009). This was a judicial review of a case (supported by Liberty) over the failure of the police to investigate and prosecute a trafficker for offences, including forced labour. The police accepted they had acted in breach of the investigative duty imposed on them under Article 4 ECHR and the case was reopened.

Considering the multiple demands on police time – from political priorities to demands from the general public – an important question is where forced labour comes in the key ‘force priorities’ and ‘categories of crime’ that each police force publishes. One of the key objectives that was part of the government Action Plan on Trafficking

(first published in 2007 as part of the ratification process for the European Convention) was to make human trafficking a part of core policing – a significant challenge for the 52 police forces in the UK. There has since been no evaluation of how effectively this objective has been achieved. One of the problems here is the perception of trafficking as an additional demand on police time. Another is that the focus on trafficking means there are types of forced labour which are not included. For most forces, human trafficking has now become part of the list of crime categories, but it is still seen as an exotic crime, mainly associated with the sex industry, and forced labour – related or unrelated to trafficking – is generally unlisted.<sup>34</sup> As police officers interviewed for this project explained, there are *difficulties in terms of perceptions around forced labour that is not related to trafficking for sexual exploitation*:

*They [the police] are very alert for human trafficking for sexual exploitation – but domestic staff or agricultural staff, you are not tending to look at it. (Officer B)*

There are also *difficulties in terms of drawing the line between exploitation and forced labour*:

*I am not the expert – there isn't any case law on it, it's all new stuff, and I think this is the problem that we've got ... If you get up at 6.00am you go to work until 10.00pm and all the money is given to your agent for bringing you into the UK, that is forced labour ... but you are fed and watered and you have a roof over your head. Although it is wrong, and it is criminally wrong that that person has been brought into the country, it isn't as bad as bringing someone in, telling them they have to work, they are not ever going to get paid, and they are going to have to service [have sex with] all these blokes ... that is different. (Officer D)*

These responses illustrate some of the key problems around issue framing. It would be helpful to reframe trafficking and forced labour away from something which is only really a problem when it involves sexual exploitation, and something which only affects unfortunate foreigners, to something which affects the whole community. In order to underline this it would be helpful to use cases of forced labour to

illustrate the nexus between trafficking, forced labour and broader issues around local criminality.

### *A specialist or generalist approach to policing?*

Pockets of expertise have developed over human trafficking, and these would be the natural place to locate enforcement action over forced labour. However, these have been subject to funding uncertainty – specialist immigration crime units are often part-funded by the UK Border Agency with a mix of police and immigration officers. An underlying question here is what kind of model is best suited to combating forced labour: a specialist approach where specific units are created in areas of most risk to focus on the issue, or a generalist approach where there is an attempt to expand and extend training to ‘mainstream’ forced labour? Clearly there needs to be a balance between the two and there are resource implications: specialist units have their place, but can only deal with what they are given, and can sometimes draw unnecessary attention.

The history of the Metropolitan Police’s Human Trafficking Team (HTT), located within the Specialist Crime Directorate (SCD), provides a good illustration of the issues. The anti-trafficking unit – which had no remit on forced labour – disappeared when the Metropolitan Police Service changed its organisation because of the removal of Home Office funding, leading to negative press coverage and fears that efforts to combat human trafficking were being downgraded.<sup>35</sup> However, responsibility for investigating organised human trafficking did not disappear; on 1 April 2010, it was passed to the Clubs and Vice Unit (CO14), which was itself moved to SCD to become SCD9. The remit of SCD9 will include the investigation of organised human trafficking of adults whether this is for sexual or labour exploitation.

In the Metropolitan Police, specialist units or ‘squads’ are synonymous with high-priority areas of policing. However, this system does not necessarily fit for all police forces, and there are other potential issues. First, existing evidence on trafficking might suggest London is an area at high risk, but there is less knowledge around forced labour on which to base such calculations. Data on detection or conviction rates, for example, can be unhelpful if the underlying knowledge of the problem is scarce. Recent alleged forced labour cases in

Bedfordshire<sup>36</sup> and Northamptonshire<sup>37</sup> demonstrate the nationwide nature of the problem. Second, leading on from this, there are therefore potential drawbacks to only maintaining specialist units in forces in large urban areas – this might make more sense for trafficking for sexual exploitation than for forced labour.

Third, it is not enough to simply create a specialist unit to address a specific problem; this must be accompanied by awareness-raising activities. The success of any such unit is dependent upon the levels of awareness within the rest of the organisation – there is a reliance on good lines of communication for it to do its work effectively. Finally, rather than an either/or question, the creation of specialist units should be seen as one of several stages in developing the knowledge base in core policing. There is an argument that such units could dissolve once knowledge is sufficiently cross-cutting and has successfully become part of core business.

Clearly there will be wide variations in the types of forced labour which exist in the UK. Research into police handling of rape, for example, often criticises regional variations in conviction rates (Lloyd and Walmsley, 1989). On the one hand, such statistical differences are almost certain to occur within a police force divided into 52 unequal parts. On the other hand, variation might also suggest other issues relating to different attitudes and beliefs regarding the crime itself and appropriate methods and practices for policing (see Box 3 on Operation Ruby).

Key to tackling forced labour is the ability of law enforcement agencies to identify – and disseminate – ideas and best practice that exist within specialist units to the force, or to a national level. How well this is being achieved is an open question, considering uncertainty over the objective to make trafficking part of core policing. This highlights the need for police forces to develop and spread expertise around new offences such as those created on trafficking and forced labour – it also highlights the need for such practices to be properly evaluated.

### **Pulling together: a systematic response?**

To what extent can we say that there has been a systematic response following the creation of a new criminal offence of forced labour?

Interviews conducted as part of this research found mixed results. When asked about strategy over forced labour, the Employment Agency Standards Inspectorate (EAS) referred to the ongoing review of enforcement being undertaken by the Department of Business, Innovation and Skills (BIS), led by Ed Davey MP (see *Government review of employment regulation*, p. 18).

The Home Office were keen to point to the significance of the forthcoming National Crime Agency (NCA, due to be established in 2013) for future efforts to tackle human trafficking. According to their written response, the NCA will:

*build on and enhance the UK's capabilities. It will connect the efforts of local policing and neighbourhood action to national agencies and action overseas to improve the UK's response to serious and organised crime, including human trafficking, and strengthen arrangements at the border.*<sup>38</sup>

The Home Office response confirms that the UKHTC remains central to the anti-trafficking strategy, but it becomes clear that the agency will be ever more firmly embedded in the NCA web:

*At its [the NCA's] heart will be an intelligence hub which will build and maintain a comprehensive picture of the threats, harms and risks to the UK from organised crime. Building on the existing, improved capability of the UKHTC, this hub will draw in intelligence from a wide range of law enforcement organisations – such as the police and UK Border Agency – to form a comprehensive picture of organised crime that the UKHTC will be able to use in tackling those involved in human trafficking.*

The response from the Home Office revealed that almost no specific measures exist on forced labour outside the trafficking framework. There was, however, one suggestion of future cooperation with other EU member states on this issue:

*We will also be working closely with labour inspectorates across EU Member States to achieve common standards on identifying and punishing labour exploitation.*

The GLA appeared to be the most proactive in exploring the

significance of the new law on forced labour – perhaps unsurprising considering the publicity over labour exploitation associated with the creation of the agency. This is also reflected in the way the licensing standards were set up – particularly Section 3, which effectively incorporated the ILO indicators on forced labour.

The GLA argued that they should be empowered to investigate the offence directly, but this was rejected by the Ministry of Justice on the basis that it would create ‘differential enforcement’ due to the GLA only being empowered to regulate in certain economic sectors. This leaves the question of what regulators such as the GLA should do if they find cases of forced labour:

*Another way round this is to develop agreement on how we handle cases – with MOU (Memoranda of Understanding) and make sure that the (forced labour) indicators are elaborated upon, and are consistent, more parallel and logical across agencies. (Darryl Dixon, GLA)*

The GLA’s experience of what constitutes the criminal offence of forced labour develops the possibility that joint prosecutions under Section 71 or 47 and Section 12 and/or 13 of the Gangmasters (Licensing) Act 2004 will arise:

*We are not empowered to investigate – but if we find Section 3, we need to make sure this is investigated and continued – by the police. We have identified that compared to child and sexual exploitation they have little knowledge. (Darryl Dixon, GLA)*

**Box 2. Differential enforcement? Hampton and the GLA v. EAS**

While the GLA has won plaudits for its ability to identify and tackle exploitation in the workplace, EAS remains synonymous with the lightest of light-touch approaches. Until 2007, EAS only had 12 staff to cover the whole agency work sector for the UK. Even a doubling of inspectors (announced in 2007) only makes it roughly comparable with the GLA, which covers a narrower range of economic sectors and operates on the basis of licensing. The following extract is from a campaign by the Institute for Human Rights and Business (IHRB), which supports the extension of the GLA system into other sectors.

The Hampton Implementation Review Report (2009) of the GLA

found:

- The GLA's impact in improving working conditions for some vulnerable workers has been impressive, particularly in view of its relatively small size.
- The GLA has a good awareness of the unintended consequences of its operational decisions and takes proactive steps to minimise these.
- The GLA has done well in building consensus amongst its diverse stakeholders on the best way forward with regulation.
- The GLA has actively sought to minimise any unnecessary additional regulatory burdens that might have followed its licensing regime.

The Hampton Implementation Review Report (2009) of the EAS found:

- EAS's strategy and operational systems should keep up with changes in the industry.
- Currently sanctioning options are limited. EAS has insufficient powers to address rogue businesses (i.e. no 'stop now' orders or administrative penalties are available).
- The EAS capacity to store, analyse and share data related to business risk and non-compliance is weak.

Source: IHRB 2011

### *Multi-agency working and forced labour*

Multi-agency or partnership working has become a well-worn phrase in regulation and enforcement. In the development of action to fight human trafficking, the UKHTC deliberately emphasised the centrality of its partnerships with governmental, inter-governmental and non-governmental agencies as 'fundamental to the successful combating of THB (Trafficking in Human Beings)'.<sup>39</sup> This is more than a rational choice, it is a necessity given the fragmented system in the UK and the complexity of workplace regulation.

If applying a multi-agency approach is a natural outcome of the UK system, it also raises a series of questions when it comes to implementation in the context of regulation and enforcement. How are relationships between and among agencies developed and maintained? How well does this work when it comes to tackling forced labour? What information and intelligence is being shared and through what kind of protocols? In the context of labour market governance

there are also broader questions over defined political lines of responsibility in the absence of an overarching labour inspectorate. Do the incentives and capabilities necessary for agencies to work effectively together exist, ditto the capacity to coordinate and monitor that cooperation? We can also presumably expect that these issues become more challenging during uncertain times, when cutbacks and reorganisations mean that links between individuals and organisations can be lost and priorities change.

There is insufficient space here to fully consider all the issues around multi-agency working,<sup>40</sup> but Operation Ruby is used as a case study to examine some of the challenges and points of best practice (see Box 3). Most of those involved in this operation felt that it represented an excellent example of multi-agency working, even if the eventual result was disappointing (all those charged were acquitted in April 2011). Some of those interviewed reported problems over getting agencies to take ownership of expensive and personnel-heavy operations. In theory the changes made to criminal law should make this a more clear-cut issue with suspicion of forced labour or human trafficking for forced labour requiring leadership by a law enforcement agency.

### *Partnership with front-line services*

The emphasis on multi-agency working also involves an extension of sources of intelligence for enforcement agencies. The numbers of potential first responders who might encounter cases of forced labour include nearly all public sector workers who have contact with the general public. For example, the SOLACE<sup>41</sup> report (2009) outlined how local authorities have key competencies in relation to trafficking. These include identifying and supporting victims, disrupting criminal networks and working in partnership. Examples of some of the organisations include local authority staff, foster carers, children's services, teachers, LSCBs (local safeguarding children boards), youth offending teams, A&E staff, GPs, crime and disorder reduction partnerships, health and safety inspectors, environmental health officers, trading standards officers, housing officers, adult social services and migrant integration teams. There is a need for further research to determine levels of awareness among these first responders as they represent a key tool in the fight against forced labour and human trafficking.

### **Box 3. The police and multi-agency working: Operation Ruby**

Operation Ruby was the first large-scale multi-agency operation in the UK to focus on trafficking for forced labour (Criminal Justice System Trafficking Toolkit 2009). Other more high-profile enforcement operations around human trafficking had focused on sexual exploitation (Pentameters I and II), although the latter of these included an intelligence requirement on trafficking for forced labour. The operation involved 9 agencies including UKHTC, UK Border Agency, the Gangmasters Licensing Authority (GLA), Northamptonshire Police, SOCA (Serious Organised Crime Agency), Kettering Borough Council and NGOs such as the Red Cross and Migrant Helpline. In total there were around 200 officers, targeting 21 premises. There were 13 people charged in connection with the case, all of whom were subsequently acquitted following trial.

The approach and design of Operation Ruby was developed through Operation Tolerance – a series of pilot operations run with UKHTC, UKBA, GLA and others in various parts of the country. Tolerance was both an information-gathering exercise and an opportunity to develop the National Referral Mechanism (NRM) and victim support for victims of labour trafficking. Ruby took place in late autumn 2008 following intelligence that gangmasters were severely exploiting migrant workers on a leek farm in Northamptonshire. The background and origins of the case, along with the complexities of the trial, show how difficult it is to enforce forced labour offences in the UK. The following quotes are from interviews conducted with three police officers involved in the investigation (referred to as officers A, B and C).

Operation Ruby has been held up as a best practice example of multi-agency working, and those interviewed agreed that this was crucial:

*We had lots of good inter-agency work on the operation. We had a multi-agency team – and we all agreed what different roles we would play – it was a really good example of how to put together an operation. (Officer A)*

*We would have never done it without the Gangmasters Licensing Agency involvement for sure ... and some of the*

others. (Officer C)

In terms of the way in which the operation was carried out, there were a number of innovative examples of best practice which have subsequently been incorporated into other large-scale operations:

*There were coaches with interpreters, pre-translated leaflets and so on. We realised that individuals would be terrified. We got them ... to a reception centre – where there was the Red Cross, and some other voluntary groups. At the centre we had medical care, accommodation – and that gave us time for interviews, which was where we got most of the evidence. (Officer A)*

The operation emphasises the benefits of the multi-agency approach, but also the need for a big operation to pull everyone together, and the dependency on other agencies:

*The trouble is that it's only when something big like this happens and then you pull them together that something gets looked at properly ... you've got all these different agencies looking at different little bits. You've obviously got the UK Human Trafficking Centre that are sort of coordinating all of the intelligence, and supporting the investigations. But there's no enforcement capacity. (Officer C)*

What the officers found when they arrived at the site appeared to be strong evidence of forced labour:

*We have been able to show they [the workers] were expecting one thing but the conditions were to the point of slave labour – machinery was set up to actually physically punish the workers if they went too slow ... (Officer A)*

The complexity of the criminal case is reflected in the time taken to get to court (two and a half years) and the length of the trial itself (more than four months). However, the result was an acquittal<sup>42</sup> and further charges were then dropped. This raises questions over the strength of the case, but also the ability of the criminal justice system to prosecute over cases of exploitation involving foreign workers.

The disappointment is clear from comments made by officers involved:

*The people who owned the fields have got away with it. The company who employed the gangmaster – they got away with it. The problem was we couldn't sufficiently show their knowledge of what was going on ... (Officer A)*

*There might be an element of prejudice about people coming into the country ... because it was a big issue, immigration, Eastern Europeans coming in 'taking our jobs', etc. And that may have had a slight opinion, an impact on that jury. (Officer B)*

Among the interesting comments from those involved in the case was the opinion that the results of the trial back up the change in the law:

*With Operation Ruby the new legislation [on forced labour] would have made life a lot easier for us. I believe we might have got guilty pleas if the legislation was there ... (Officer A)*

Other organisational/resource issues that emerged from our interviews were the difficulties in getting clear lines of leadership and being able to commit resources.

*When we first got it – we need someone to [act as] SIO (Senior Investigating Officer) it and some people ran a mile – there needs to be some clarity – who takes the primacy on this? It is down to the UKBA – and if they want to run another one like this [Operation Ruby]. (Officer A)*

*This [operation] has been incredibly expensive – who is going to police these sort of events? Unless you dig for it you won't find it – they are all over-stretched – this has crippled the entire unit ... (Officer A)*

*I think it's going to be difficult to get police forces to do the jobs, you know, with the current resourcing, because they're difficult long-winded jobs. I mean we started on this in May 2008 and then ... they've obviously only just gone to court recently and been found not guilty, so it's a long time with a lot of money and work going into it. And obviously the police want to see reasonable results coming out the back of it as well, like anybody does. (Officer C)*

# Understanding and explaining gaps in regulation and enforcement

This paper has demonstrated through a mapping of the organisational field how problems in enforcement and regulation can be traced back to dynamics and practices around workplace regulation and the criminal justice system. The evidence presented here suggests that there is patchy and inconsistent regulation and enforcement around forced labour in the UK – apart from some high-profile examples of best practice, there remains too little in the way of a systematic multi-agency approach.

This section of the paper seeks to develop a greater analytical focus by reconsidering these issues in the context of different *types* of gaps. If we are to develop a truly systematic response to forced labour, it is essential to identify the origins of these gaps, and understand how to mitigate them and their effects. In order to do this, the following pages conceptualise the different types of gaps: those relating to problems of **knowledge** around forced labour; those concerning **structural** problems – i.e. concerning the environment or system within which regulators and enforcement agencies operate; and finally gaps that relate to factors within those regulators and enforcement agencies, i.e. **organisational** issues, in particular around perceptions of forced labour and commitment of resources.

## Knowledge gaps

### *Scope/extent*

Perhaps the most obvious gap in knowledge around forced labour concerns its scope and extent. By its very nature it would be impossible to know the full extent of the problem, but there are concerns about particular areas of the economy where there has already been evidence of forced labour (or it is presumed to exist). These are the domestic service, care, hospitality, catering, agricultural and construction sectors. However, respondents were keen to point out that there are likely to be forms and types of forced labour which we do not know about, in parts of the economy which are outside the formal system of employment regulation. There is a danger that the

understandable emphasis on labour providers (e.g. through GLA and EAS), or on the immigration system, will mean other areas are overlooked – for example, in other sectors or in other types of employment.

This lack of awareness was repeatedly raised by respondents during this research. Such knowledge gaps link with wider cross-cutting questions about the actual scope and extent of the problem of forced labour in the UK. A forthcoming report commissioned by the Joseph Rowntree Foundation (led by Dr Sam Scott, University of Bristol) explores this (Scott, 2012, forthcoming).

Rather than simply providing more knowledge about forced labour, it is very important that research has impact in terms of moving the debate forward. The UK government has arguably become more open to expertise in some areas of policy (Balch, 2009), but the political discourse has been dominated by the question ‘how many?’ rather than ‘how can we stop it?’ There is a need for more research on the experience of forced labour as a human rights violation from the victim perspective, in particular, research that asks to what extent the practice of regulation and enforcement is operating effectively to remedy the victim’s situation.

### *Definitions of forced labour*

How forced labour is perceived impacts directly and indirectly on how regulation and enforcement is carried out. The way an issue is framed as a problem, in terms of causes/effects, leads to particular policy prescriptions. The larger the gap between perception and reality, the less likely that policies – regardless of how vigorously they are enforced – will achieve their aims. This is particularly problematic when simple solutions are imposed on complex problems.

In the case of forced labour, this is exacerbated by the difficulty of translating international norms into a complex national regulatory environment. From the legal perspective we can see clarity in terms of forced labour as a contravention of basic human rights. However, ambiguity grows as we travel down the chain of implementation and when it finally comes to protecting and enforcing those rights in the context of governing the workplace.

In the context of the UK, this ambiguity stems from an association of forced labour with certain groups (immigrants) and certain practices (trafficking). This has allowed for a blurring of the protection of human rights with other logics of government around immigration control and management. This is, in particular, the focus on reducing immigration numbers, irregular migration and informal working. An example of this is provided by a response to a parliamentary question about how the government is tackling forced labour. Immigration Minister Damian Green underlined the prioritisation in targeting illegal workers with reduction of forced labour as a secondary effect of this approach: *The UK Border Agency takes robust action against employers of illegal workers and by taking action against businesses that flout the law we are able to crack down on illegal working, one of the drivers of forced labour.* (Hansard, 22 March 2011)<sup>43</sup>

This framing of forced labour as an outcome of illegal working links with the role of the UKBA (as the lead agency in this area) and its overarching priority (and increased powers) to remove unwanted migrants. There is a danger that this is both simplifying the problem of forced labour in policy terms and also treating symptoms (rather than causes) when it comes to enforcement. It is well known that policy debates on immigration can often descend into a numbers game that distorts and confuses (Balch and Balabanova, 2011). The suggestion here is that rather than an immigration control problem, forced labour should be seen as an issue of workers' rights. With this framing of the problem, the policy logically shifts away from a strengthening of immigration/borders and moves towards a bolstering of labour market regulation and enforcement. However, the difficulty in achieving such a shift was made explicit with recent comments by current Home Secretary Theresa May to scrap the Human Rights Act in order to deport more foreign citizens.<sup>44</sup> This underlines the government's priority of strengthening border controls over protecting the human rights of those who live and work in the UK.

### *Expertise/operational knowledge*

Crucial to effective regulation and enforcement, and a criminal justice system that can successfully convict those who are guilty, is the development and maintenance of specialised knowledge. At the

operational level, the existence of knowledge gaps not only allows forced labour to continue, but also undercuts enforcement efforts aimed at tackling the problem. This clearly involves the development of effective and targeted training programmes that can be rolled out to all front-line staff. However, it also involves issues around retention of key personnel within those agencies involved in regulation and enforcement.

Both of these issues were explicitly recognised in the creation of the UKHTC – which was specifically designed to act as a key source of training and as a depository of knowledge for all police forces and other enforcement agencies. The UK Action Plan, for example, aimed to make trafficking part of core policing, but it is not clear to what extent this was achieved, or whether this fully incorporated forced labour. This would seem unlikely given the recent change in the law brought in by Section 71 of the Coroners and Justice Act (2009). More research is needed to evaluate the impact of training and to identify levels of knowledge around forced labour.

The movement of the UKHTC into SOCA (and soon into NCA) meant a relocation and virtually complete turnover of staff resulting in a loss of knowledge – and of the accumulated momentum which had been built around it. This issue links with similar concerns that have been raised at the disbanding of specialist police units, in particular the Met's trafficking team. These developments have been mentioned by many in the course of this research as representing a problematic erosion of specialised expertise. There have also been press reports of key staff involved in human trafficking research lost in the Home Office.<sup>45</sup>

However, as discussed earlier, it is just too simple to equate good policing around trafficking and forced labour with the creation or maintenance of specialist teams. These may well play a crucial role in the spread of innovative techniques and best practice, but they should not be seen as a panacea to enforcement issues. There needs to be a renewed focus on the objective to make trafficking part of core policing, and how forced labour fits within this. A key finding here is the lack of any evaluation to ascertain whether such objectives are being met across the police forces of the UK.

## Structural gaps

The research presented here demonstrates how loose and complex the structural coupling can be between the legislative system and the organisational field when it comes to an issue such as forced labour. We now turn to the different kinds of gaps in the normative, regulatory and criminal justice environment which exist around those organisations charged with regulation and enforcement.

### *Legislative*

This paper found general support and approval for the new legislation (Section 71, Coroners and Justice Act 2009) on forced labour among those agencies and organisations charged with implementing it. This should be placed in the context of criticism over the pre-existing trafficking legislation from all sides, and in particular criticism of the dependent link between trafficking and forced labour by NGOs. The way that these laws are located within the immigration rules is one problem with the trafficking legislative framework. For many cases of forced labour there have been issues over the difficulty in being able to prove intent to traffic – a point underlined by the not-guilty verdicts in the cases brought to trial following Operation Ruby.

### *Regulatory*

The regulation of employment rights in the UK has a business-friendly, rather than workers' rights-friendly, focus with a low-cost, low regulatory-burden approach. Most of the organisations and agencies involved in regulation and enforcement, while ostensibly protecting employee rights, focus their enforcement energies on the basis of risk assessment, punishing bad employers and removing them from the labour market. The case of the GLA is illustrative – it has done a great deal to highlight and address problems of worker exploitation, but only in specific sectors – why should workers across the board not enjoy the same protection? As one manager working in the sector put it:

*Every organisation is the same – when you ask them to do extra they don't*

*want to do it. They don't want to put in extra numbers – and they are not comprehensively trained at the moment.* (Interview with author)

In line with the approach to business regulation more generally, the UK is characterised by a relatively light touch system of monitoring around the regulatory activities that could detect, prevent and prosecute cases of forced labour. That evidence which exists regarding workplace regulation suggests gaps in implementation that are particularly relevant to vulnerable workers. A review of the regulation of employment rights carried out in 2007 by BERR<sup>46</sup> found a series of problems: low awareness of rights and how to enforce them amongst vulnerable workers; a reluctance to report problems and a lack of knowledge about how to do so; a confusing enforcement picture with different government agencies enforcing different rights. All of these were exacerbated by the rather low profile of some of the enforcement bodies.

Reviews of regulators carried out through the Hampton process also reveal high levels of inconsistency between different bodies. As outlined by the Institute for Human Rights and Business (see Box 2): 'the resources and powers available to the GLA combined with its active, intelligence-led approach contrasts in particular with the Employment Agencies Standards Inspectorate (EAS), which is generally reckoned to be an inefficient regulator relying largely on complaints.' (IHRB, 2011)

### *Criminal justice*

Specific issues regarding enforcement around tackling forced labour include the structure of the UK police service – it is difficult to gauge, but performance is likely to be patchy around investigation into forced labour across police forces. There are also questions over levels of inconsistency across different parts of UK. As mentioned throughout this paper, the combination of different actors in the regulatory environment with enforcement agencies is crucial to tackling forced labour.

As already explained, it is difficult to establish the extent to which law enforcement agencies are successfully identifying and prosecuting forced labour cases. What information we have relies on reports from bodies such as the Independent Police Complaints Commission,

which has been criticised for reacting to individual issues rather than undergoing serious analytical reviews of why patterns and problems continue (Home Affairs Committee, 2010).

Enforcement agencies such as the police and UK Border Agency are subject to increased efforts to improve accountability and transparency. The UKBA, for example, is now subject to independent inspection, through the Chief Independent Inspector (currently John Vine). Aside from ensuring continuous improvement and operational delivery, one of the key inspection criteria is safeguarding individuals. In his review of UKBA's enforcement, the Independent Inspector found a number of problems. In particular, there was a poor application of systems.<sup>47</sup> It was found that officers had not followed rules in terms of procedure, there were problems with record-keeping, with briefings, etc. The UKBA's enforcement instructions and guidance say that officers must consider potential trafficking victims during operations before checking immigration status. It is not clear that they follow this guidance.

Another key issue in terms of enforcement is striking a good balance between punitive and non-punitive measures. The former are associated with criminalisation, the latter with a more holistic approach incorporating prevention and restorative justice. There is clearly a tendency towards more punitive sanctions, which is not necessarily in the interests of those who are subject to forced labour. From their perspective, financial compensation and continued employment is likely to be more important than criminal prosecution for their employers.

### *System checks and balances – what's missing?*

A key question with respect to the system that has been described here is how well it is monitored to ensure that it is working properly and efficiently. The ATMG report (2010a) argued strongly for the UK to appoint a rapporteur for trafficking (or ombudsman in UK parliamentary parlance), i.e. independent monitoring of implementation and compliance with national and international legal obligations, but the government has thus far been reluctant to create such a post.

The case here is not straightforward. There are questions over the added value of a rapporteur on trafficking – would there be any

qualitative improvement on existing arrangements? Could this lead to an even greater emphasis on immigration-related offences? A strategic monitoring group on the Council of Europe Convention on Action against Trafficking in Human Beings (2005) already exists, and so an alternative might be to make this group's work more readily and publicly available. In either case, there is certainly a strong argument that there needs to be greater transparency and accountability – whether through the creation of a national rapporteur or via another method. The need for this will doubtless become clearer when implementation by the UK is evaluated by GRETA (the Group of Experts on Action against Trafficking in Human Beings).<sup>48</sup> There is arguably a more urgent need for reform to strengthen the current system of inspections and regulation. A more consistent and effective system would potentially do more to stop trafficking and forced labour by combating exploitation in the workplace.

## **Organisational gaps**

It is important to recognise the disjunction that can occur between those who make policy and those who are responsible for implementing it. This can happen because there can be a decoupling between the formal demands made on organisations and the way that work actually gets done (Meyer and Rowan, 1977). This can relate to the structure within which those organisations operate (Brunsson, 2003) or because of the way those organisations create and maintain an identity about what they do and what they are for (Weick, 1995). The focus here is on how the culture of organisations can make it difficult to adopt new practices; how different organisations communicate and interact with each other; and how the perceptions of front-line staff who work in those organisations can be influenced and shaped by organisational identity.

### *Cultural*

There are significant cultural issues in terms of the way that agencies and organisations deal with/understand forced labour in the context of their overarching aims and identity. The conceptual problems around forced labour have already been mentioned. It could be argued that these relate to a wider challenge: to change the organisational culture

which shapes how forced labour is perceived. In the case of the UKBA, for example, it is sometimes difficult to square a human rights approach with a systematic questioning of the credibility of immigrants. These assumptions, along with the possibility that victims of forced labour have contravened immigration rules, create a conflict between protecting workers' rights and the pressure to meet targets over deportations and immigration numbers in the Home Office.

The findings here echo those of other reports where practitioners have expressed concerns that certain forms of trafficking overshadow awareness of other types; that because disclosure by victims usually needs to be elicited, this highlights the importance of first responders and the need for a relationship of trust (Pearce, Hynes and Bovarnick, 2009). It is therefore crucial that we understand how organisational factors might have an impact on tackling forced labour.

### *Relational*

The importance of relationships within and between organisations with operational knowledge of forced labour is clear. As in the past, inter/multi-agency working will be central to successful operations in the future, and there is already a wealth of knowledge of how these have developed. One problem here is a dependence on a diverse range of actors and organisations (such as NGOs) as repositories of that knowledge. There have been good cases of multi-agency working, but unfortunately some cases where lead agencies have shown less interest in taking ownership of an investigation into forced labour. Given the state of the public finances in the current context of austerity measures, there are a host of associated reform-related issues (reorganisations, cut-backs, etc.) that will have an impact.

In view of this, there needs to be more high-level agreement on lines of responsibility and more intelligence sharing, and this should be formalised through Memoranda of Understanding between those agencies most able to identify forced labour.

### *Attitudinal*

We found problems of perception among enforcement agencies, particularly with confusion over where the line is between exploitation

and forced labour, or hierarchies of 'deserving' and 'less-deserving' victims.

The result of the trials following Operation Ruby should not be seen to condone poor treatment of workers. There are also particular dangers in the UK when it comes to coverage in the press on immigration, where the rights of foreigners to justice and fair treatment are routinely questioned. These issues should lead to a greater effort to educate the public and tackle such attitudes and opinion. The problem of forced labour could provide an excellent opportunity to do this. Toleration of certain levels of exploitation and equation with conditions in less-developed countries is wrong and should never excuse the existence of forced labour in the UK. Although not directly linked, proposals for police reform (e.g. elected police chiefs) make this more pressing, given that public opinion is set to become more influential, inevitably increasing demand for certain police priorities.

## Recommendations

This paper has sought to highlight gaps in the regulatory framework, but without the combined energies of regulators and enforcement agencies, the legislative framework designed to tackle forced labour is rendered irrelevant. It is therefore essential that while gaps are acted upon, good practice is also recognised and built upon. It is in this spirit that the following recommendations are made. Table 2 presents a summary and links individual recommendations with the gap analysis.

### Improving the current system

#### *Expanding and widening of training*

Training should always be a priority: the way it is delivered needs to be systematic, top-down and bottom-up. There is evidence that this is being done for the police and front-line UK Border Agency personnel, but it needs to go beyond these staff, and there needs to be more detail about forced labour where trafficking is not present. Training modules should be delivered for all front-line and management staff in agencies and organisations likely to come into contact with potential victims of forced labour. It should be a priority that training packs include legal clarifications of terms and the different offences (trafficking, forced labour, etc.) and incorporate the ILO indicators. This is not just to improve knowledge within enforcement agencies, but training modules should be also used to expand the use of first responders and increase spread of good practice over multi-agency working. There also needs to be some evaluation of the effectiveness of this training. It was an aim of the Action Plan to make trafficking part of core policing, but how far has this actually been achieved?

#### *Checking the system*

One of the findings of this paper is that there is little in the way of systematic monitoring of the complex enforcement system that exists around forced labour. There are a number of ways this could be addressed, including repeating this exercise in the future. However, there have been some developments in monitoring of enforcement, for example the creation of the office of the Independent Chief Inspector

of UKBA. The Independent Inspector should be urged to look at the role of UKBA in trafficking/forced labour, and to monitor how UKBA's enforcement practices operate to protect human rights more generally. In more specific terms, this could include looking at how the National Referral Mechanism regime operates (ideally incorporating a comparison of practice between UKBA and UKHTC). Finally, and as a way of enhancing accountability and performance in the system, the government should make more public the work of the inter-ministerial strategic monitoring group on the Council of Europe Convention against trafficking, or consider creating a national rapporteur.

### *Balancing punitive with non-punitive measures*

The introduction of a separate offence of forced labour should be welcomed, but there needs to be a good balance between punitive and non-punitive measures in enforcement and regulation. Enforcing the law is not enough – the main emphasis should be on remedying the situation for victims of forced labour, as well as punishing those responsible for criminal acts. Along with the enforcement of the law, there therefore needs to be an adequate system of compensation, regularisation and rehousing for victims. As more cases emerge under the new legislation, this is something which will become crucial if there is to be a willingness on the part of victims to help with prosecutions.

### *Providing adequate resources*

One of the more predictable findings was that the agencies we spoke to as part of this research were feeling the pressure to bear down on budgets. There has also been much debate about areas of government spending that should be ring-fenced, particularly in light of the dynamic and constantly changing nature of policing. It is important that certain aspects of enforcement be considered separately from these budgetary discussions; a risk-based inspection regime will not always be the solution. This is particularly the case when tackling criminal offences that are human rights related – the enforcement of human rights should not be determined by cost.

## **Changing the system**

This project occurred in parallel with a number of other reviews and policy announcements from the government. It is important that these reviews provide a robust analysis and have the courage to call for changes where needed. There was too little of this contained in the updated strategy on trafficking, announced in July 2011. It is not the intention of this paper to recommend one system over another, but there are several key principles which any future system must consider as priorities.

### *Not just more, but more fair employment*

The much-repeated political priority of job creation should not come at the cost of the principle of fair employment. Plenty of evidence already exists that there are problems of fair employment in the UK (COVE, 2007). More policy focus needs to be placed on this end of the labour market. Businesses need to be encouraged and supported to develop good, sustainable jobs giving employees the full range of labour rights they are entitled to.

A lot of work has highlighted the problem and the vulnerability of certain groups such as migrants in the UK labour market. Considering this, if serious exploitation and human-rights abuses such as forced labour were found to be increasing, then there can be few excuses. We know, for example, that the employment tribunal system fails the most vulnerable workers and is not providing compensation. The response need not represent an unnecessary burden on business. The TUC's vulnerable workers forum and the helpline for vulnerable workers set up following the review highlighted – and helped to address – problems around exploitation at relatively little cost to the taxpayer.

### *Greater regulatory consistency and effectiveness*

Risk-based and intelligence-led inspection regimes might reduce the burden on business, but when resources are scarce the approach

dictates that only the highest-risk businesses are inspected. It is not always clear how that risk is conceived and calculated. This system leaves gaps that are opportunities for businesses which exploit or harm their workers. Regulatory complexity and inconsistency are key findings of this paper. To improve this (and in the absence of an overarching labour inspectorate) some kind of merger of regulatory bodies in the agency sector should be considered. The best way to achieve this would be to extend the GLA model to all sectors of the economy that are characterised by temporary/agency work or the use of labour providers (to start with, construction, health care, hospitality). This could be incremental and sector-by-sector rather than a 'big bang'. Such a move could have very positive impacts on how forced labour is dealt with because the GLA has created a robust system of licensing and the standards incorporate the ILO indicators on forced labour.

### *Enhanced leadership*

There needs to be a greater sense of leadership over forced labour that can facilitate efforts to bring together all the different actors and agencies that can help to tackle the problem. The arguments around more accountability and transparency in the political hierarchy have already been discussed (e.g. creation of a rapporteur post or other measures to publicise the work of a strategic inter-ministerial group). At the operational level, the UKHTC could potentially be a key driver in the coordination of enforcement activities around forced labour. This is not currently the case and would need to be facilitated by changing or expanding the UKHTC's remit to include all 'modern forms of slavery' – i.e. offences that did not involve trafficking. The UKHTC is well-placed to use the networks that it has built up (with NGOs and other enforcement agencies, among others) via its working groups. These should be given more power to lead in the building of partnerships and reforming of practices throughout the enforcement system.

Another way would be to coordinate – and thereby generate more publicity around – large-scale national police-led operations that have taken place in the area of forced labour.

## **Future research**

One of the most difficult tasks for those researching forced labour is to produce work that has genuine impact. Unfortunately the political debate (and this has been particularly problematic for human trafficking) is often reduced to an overemphasis on numbers. Future research should therefore attempt to focus more on the experience of forced labour for victims rather than simply counting how many have been identified.

The system of regulation and enforcement should be acting to punish those committing these offences, but we know little about how priorities within individual police forces impact on enforcement practices across the UK. A key area for future research is therefore to map where trafficking and forced labour sit among other force priorities in each police force, including tracking/mapping of officers trained on human trafficking.

Research also needs to redirect our focus onto the harm created by forced labour. Of course we need to improve our understanding of the scope and scale of forced labour in the UK, but it is also crucial for research to tell us how the enforcement system is (and is not) helping individuals who have experienced forced labour to remedy the situation they find themselves in.

From the policy-making perspective, there needs to be more work done around the linkages between forced labour and other issues in the policy-making sphere, particularly how human rights violations link with regulatory practices, business culture and macro-economic policies.

**Table 2. Programme paper summary: gaps in regulation and enforcement and recommendations<sup>49</sup>**

<b>Category</b>	<b>Description</b>	<b>Issues</b>	<b>Recommendations</b>
<b>Knowledge gaps</b>			
<b>Definitional</b>	<b>Distinction</b> between trafficking, forced labour, sexual exploitation, domestic servitude	<ul style="list-style-type: none"> <li>• Awareness of forced labour as a criminal offence, i.e. knowledge of ILO indicators</li> <li>• Differential treatment of categories (i.e. hierarchies of deserving and less-deserving victims)</li> <li>• Detection rates, identification of victims</li> <li>• Confusion with other issues (immigration, informal working)</li> </ul>	<ul style="list-style-type: none"> <li>• Expand training – ensure that training packs include legal clarifications of terms – (trafficking, forced labour, etc.) and spread beyond UKBA staff</li> <li>• Independent inspection of UKBA enforcement, training on trafficking, identification of victims and the NRM regime by Chief Inspector</li> </ul>
<b>Scope</b>	<b>Scope and extent</b> of forced labour, causes and effects	<ul style="list-style-type: none"> <li>• Low level of knowledge</li> <li>• Obsessive focus on numbers in political debates</li> <li>• The targeting of illegal workers as priority, with reduction of forced labour as a secondary effect of this approach</li> </ul>	<ul style="list-style-type: none"> <li>• As above (i.e. training) but informed by more research – quantitative but particularly qualitative</li> <li>• Suggest research on problem of elision/confusion of forced labour with other issues, e.g. human trafficking, irregular immigration, prostitution, irregular employment</li> </ul>
<b>Expertise/operational knowledge</b>	<b>Creating and maintaining</b> availability of expert knowledge of forced labour	<ul style="list-style-type: none"> <li>• Specialist v. generalist system of policing</li> <li>• Loss of personnel, e.g. disbanding of Met team, transfer of UKHTC into SOCA</li> <li>• Lack of evaluation over incorporation of forced labour and human trafficking into police force priorities</li> </ul>	<ul style="list-style-type: none"> <li>• Enhance leadership of UKHTC, expand remit to include forced labour where trafficking not present; make public the work of strategic monitoring group on the Council of Europe Convention on Action against Trafficking in Human Beings (2005), or consider creating a national rapporteur</li> <li>• Carry out research to evaluate effectiveness of specialist units,</li> </ul>

			trafficking and forced labour – is it part of core policing?
<b>Structural gaps</b>			
<b>Legislative</b>	<b>Legal framework</b> ; protection of employment rights	<ul style="list-style-type: none"> <li>• Forced labour and human trafficking legislation in different places</li> <li>• Problems with the latter, too early to say for the former</li> <li>• Emphasis on negative rather than positive rights in employment law</li> </ul>	<ul style="list-style-type: none"> <li>• Consider review of all legislation in the area</li> <li>• Consider changes to the employment tribunal system to ensure better access to rights for vulnerable or excluded groups</li> </ul>
<b>Regulatory</b>	<b>Regulatory effectiveness</b> , consistency and coherence re implementing agencies	<ul style="list-style-type: none"> <li>• Differential enforcement, lack of consistency, problems of fair employment</li> <li>• Role for UKBA as lead agency for forced labour when this might not involve foreign nationals – e.g. UKBA is agency that is cooperating with other EU labour inspectorates</li> </ul>	<ul style="list-style-type: none"> <li>• Reform system of protection for workers' rights through, e.g., extending GLA into more sectors</li> <li>• Change employment tribunal system</li> <li>• Create fair employment Commission</li> <li>• Consider the creation of a labour inspectorate</li> </ul>
<b>Criminal justice</b>	Specific issues in the UK <b>criminal justice system</b> around tackling forced labour	<ul style="list-style-type: none"> <li>• Difficult to gauge, but investigation expected to be patchy across police forces</li> <li>• Knowledge about forced labour throughout police forces (i.e. beyond specialist units)</li> </ul>	<ul style="list-style-type: none"> <li>• More research – into where trafficking and forced labour sit in force priorities in each police force, tracking/mapping of trained officers</li> <li>• Underline important leadership role of UKHTC – consider revisiting division of responsibilities with UKBA</li> </ul>
<b>Organisational gaps</b>			
<b>Cultural</b>	The way that agencies and organisations <b>understand</b> forced labour in the context of overarching aims and identity	<ul style="list-style-type: none"> <li>• Challenge of a human rights approach for enforcement agencies (e.g. UKBA and police)</li> <li>• Credibility issues when dealing with immigrants who are potential victims</li> <li>• Target culture of Home Office</li> </ul>	<ul style="list-style-type: none"> <li>• Use research to reduce emphasis on numbers</li> <li>• Review the effectiveness of existing training on trafficking (e.g. UKBA training modules)</li> <li>• Expand these to incorporate more forms of exploitation</li> </ul>
<b>Relational</b>	<b>Relational</b> issues – within and between	<ul style="list-style-type: none"> <li>• Good cases of multi-agency</li> </ul>	<ul style="list-style-type: none"> <li>• Extend training to more front-line</li> </ul>

	organisations – inter/multi-agency working	<p>working, but still done in an ad hoc manner</p> <ul style="list-style-type: none"> <li>• Lack of formalised system or response to forced labour</li> <li>• Reform-related issues (e.g. reorganisations, cut-backs), communication, lack of ownership</li> </ul>	<p>staff, commit resources to fair employment</p> <ul style="list-style-type: none"> <li>• Use large-scale operations to increase spread of good practice over multi-agency working</li> <li>• Develop Memoranda of Understanding (MOUs) between key agencies over forced labour</li> </ul>
<b><i>Attitudinal</i></b>	Knowledge and <b>attitudes</b> towards the issue in political and public debates	<ul style="list-style-type: none"> <li>• Toleration of certain forms of exploitation</li> <li>• Linkages with conditions in sending countries</li> <li>• Demand for other police priorities (e.g. burglaries, anti-social crime)</li> </ul>	<ul style="list-style-type: none"> <li>• Use all appropriate methods to maximise impact of JRF programme on forced labour</li> <li>• Expand and develop partnerships and collaborations between NGOs and regulatory and enforcement sector</li> </ul>

## Notes

1 Little, Allan (BBC News), 25 April 2007: ‘New evidence of “bonded labour”’,

<http://news.bbc.co.uk/1/hi/uk/6593827.stm>

2 Since the UN Palermo protocols (2000) there has been, inter alia, the creation of the International Labour Organization (ILO)’s Global Alliance Against Forced Labour (launched in 2005), UN Human Rights Council Special Rapporteur on Contemporary Forms of Slavery (established in 2007), UN Global Initiative to Fight Human Trafficking (UN-GIFT) (launched in 2007) and the Council of Europe Convention on Action Against Trafficking in Human Beings (entered into force 2009).

3 A list of those willing to be identified as taking part in this research is provided in the appendix.

4 See, for example, the TUC’s Commission on Vulnerable Employment (COVE) report: ‘Hard Work, Hidden Lives’ (TUC 2007).

5 ILO Forced Labour Convention (No. 29, 1930) Article 2(1); see also ILO Convention No. 105 (1957).

6 Sometimes also referred to as ‘labour trafficking’.

7 Apart from Section 71 of the Coroners and Justice Act 2009, human trafficking offences are covered in the Sexual Offences Act 2003 (Sections 57–60); the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Section 4); the Gangmasters (Licensing) Act 2004; and the Policing and Crime Act 2009 (Section 14). In Scotland there has also recently been a strengthening of provisions via the Criminal Justice and Licensing Act (Scotland) 2010.

8 Article 25, ILO Convention No. 29 (1930).

9 April 2011,

<http://www.coe.int/t/commissioner/News/2011/110413Annualreport.en.asp>

10 Article 3 creates the obligation for the state not to expel a person from their territory when they might face the risk of being subjected to treatment contrary to Article 3 in the receiving country.

11 The HRA came into force in 2000. For more detail see also the proposal for the Human Rights Act in the government white paper *Bringing Rights Home* (HMSO 1997).

12 Lord Chancellor’s Review of the Implementation of the Human Rights Act (2006, pp. 29–30),

[http://www.google.co.uk/url?sa=t&source=web&cd=9&ved=0CFqQFjAI&url=http%3A%2F%2Fwww.justice.gov.uk%2Fguidance%2Fdocs%2Fparts\\_one\\_to\\_six.pdf&ei=7MXDTYOals-2hAfRs-D9Aw&usq=AFQjCNFMipAFdRYpDqGnpwHLmfEmOxOCgg](http://www.google.co.uk/url?sa=t&source=web&cd=9&ved=0CFqQFjAI&url=http%3A%2F%2Fwww.justice.gov.uk%2Fguidance%2Fdocs%2Fparts_one_to_six.pdf&ei=7MXDTYOals-2hAfRs-D9Aw&usq=AFQjCNFMipAFdRYpDqGnpwHLmfEmOxOCgg)

13 Case brought by Ms Siwa-Akofa Siliadin, a Togolese national, who claimed that the criminal justice system in France did not protect her against ‘servitude’ or ‘forced and compulsory labour’.

See *Siliadin v. France*, 73316/01, Council of Europe: European Court of Human Rights, 26 July 2005, available at

<http://www.unhcr.org/refworld/docid/4406f0df4.html>

14 The case of *Rantsev v. Cyprus and Russia* concerned the death of Oxana Rantseva (20), from Russia. She was trafficked from Russia to Cyprus and later died. Her father, Nikolay Rantsev, brought the case arguing there was no adequate investigation or protection by the Cypriot police. See

<http://www.interights.org/rantsev/index.htm>

15 Rantsev was recently applied, approved and followed by the High Court in the case of *OOO & Ors v. The Commissioner of Police for the Metropolis* [2011] EWHC 1246 (QB) (20 May 2011), <http://www.bailii.org/ew/cases/EWHC/QB/2011/1246.html>. In that case, the High Court found that the Metropolitan Police had failed to investigate the claims of four victims of trafficking from Nigeria who had been trafficked to the UK as children and had each been exploited for forced labour (domestic servitude), and awarded each of the victims £5,000 in damages against the police for failing to comply with their positive obligations to investigate.

16 The 2010 report produced by the Anti-Trafficking Monitoring Group is required reading for all those involved in the fight against human trafficking in the UK. It should be welcomed not just for the comprehensive nature of its analysis, but also for the priority it attaches to issues around effective implementation.

17 Notable exceptions are Bulgaria and Romania (the 'A-2') – nationals from these countries are still subject to immigration rules through the transitional arrangements.

18 Home Office guidance on trafficking for front-line staff:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/trafficking-guidance?view=Binary>

Home Office guidance on trafficking for competent authorities:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance>

19 CPS guidance on 'Slavery, Servitude and Forced or Compulsory Labour':

[http://www.cps.gov.uk/legal/s\\_to\\_u/slavery\\_servitude\\_and\\_forced\\_or\\_compulsory\\_labour/](http://www.cps.gov.uk/legal/s_to_u/slavery_servitude_and_forced_or_compulsory_labour/)

20 Quoted in Anti-Slavery International press release (19 July 2011): 'Focus of government's new trafficking strategy will not help victims, say charities'

[http://www.antislavery.org/english/press\\_and\\_news/news\\_and\\_press\\_releases\\_2009/190711\\_response\\_to\\_new\\_trafficking\\_strategy.aspx](http://www.antislavery.org/english/press_and_news/news_and_press_releases_2009/190711_response_to_new_trafficking_strategy.aspx)

21 Quoted from interview with author.

22 <http://www.homeoffice.gov.uk/publications/about-us/parliamentary-business/written-ministerial-statement/eu-directive-human-trafficking-wms/>

23 <http://www.homeoffice.gov.uk/publications/about-us/parliamentary-business/written-ministerial-statement/directive-illegally-staying-wms/?view=Standard&pubID=890768>

24 The TAWD was proposed in 2002 but only agreed in 2008 due to the reservations of several member states, including the UK. The directive is implemented in the UK via the Agency Worker Regulations 2010.

25

[http://www.rcn.org.uk/newsevents/congress/2010/congress\\_2010\\_resolutions\\_and\\_matters\\_for\\_discussion/12\\_putting\\_it\\_right\\_for\\_agency\\_workers](http://www.rcn.org.uk/newsevents/congress/2010/congress_2010_resolutions_and_matters_for_discussion/12_putting_it_right_for_agency_workers)

26 Dermot Egan, *The Guardian* 9 August 2011

[http://www.guardian.co.uk/social-enterprise-network/2011/aug/09/shared-value-csr-social-enterprise?CMP=tw\\_t\\_gu](http://www.guardian.co.uk/social-enterprise-network/2011/aug/09/shared-value-csr-social-enterprise?CMP=tw_t_gu)

27 <http://www.csrandthelaw.com/tags/trafficking/>

28 See EC (2011)

29 The Employment Tribunal System is currently under review as part of the Coalition government's plans to reform employment rights. See consultation on BIS website:

<http://www.bis.gov.uk/Consultations/resolving-workplace-disputes?cat=open>

30 The Hampton report (2005) set out a programme of reform of the UK's regulatory systems, guided by a reduction in burden on business, with effective inspection and enforcement informed by business-friendly risk assessment.

31 The 63 organisations listed in the Hampton report (2005) include all kinds of regulators. Examples include the Environment Agency, Food Standards Agency, Civil Aviation Authority, and Financial Services Authority. In 2004 the Environment Agency alone employed 11,296 full-time equivalent staff.

32 See Patrick Wintour, *The Guardian*, 21 March 2011:

<http://www.guardian.co.uk/politics/2011/mar/21/health-safety-inspections-cut-third>

33 For more information on this review, see the European Industrial Relations Observatory Online (EIRO), Mark Carley (2011):

<http://www.eurofound.europa.eu/eiro/2011/05/articles/uk1105019i.htm>

34 See, for example, Nottinghamshire Police:

[http://www.nottinghamshire.police.uk/crime\\_statistics/crime\\_categories/](http://www.nottinghamshire.police.uk/crime_statistics/crime_categories/)

35 See, for example, BBC news, 7 October 2009: 'Keep trafficking unit, Met urged';

<http://news.bbc.co.uk/1/hi/england/london/8293936.stm>

36 In September 2011, a raid at the Green Acres traveller site involving more than 200 police officers led to a number of arrests over alleged cases of forced labour; <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-14878181>

37 Cases relating to Operation Ruby – see Box 3.

38 Correspondence with Human Trafficking Policy Team, 12 August 2011

39 Taken from statement on partnership about the UKHTC on the SOCA website, <http://www.soca.gov.uk/about-soca/about-the-ukhtc/partnership>

40 At the time of writing (July 2011), many operations that had been carried out around forced labour also had prosecutions outstanding or awaiting trial, making them subject to the usual rules of sub-judice.

41 SOLACE (Society of Local Authority Chief Executives and Senior Managers), the representative body for senior strategic managers working in the public sector.

42 <http://www.thisisnottingham.co.uk/Extra-charges-migrant-worker-gang-dropped/story-12243573-detail/story.html>

43

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110322/text/110322w0002.htm#11032311001023>

44 <http://www.dailymail.co.uk/news/article-2044294/Theresa-May-Id-like-axe-Human-Rights-Act-declares-Home-Secretary.html?ito=feeds-newsxml>

45 <http://www.guardian.co.uk/law/2011/may/14/human-trafficking-fears-key-staff-lost>

46 The Vulnerable Worker Enforcement Forum led by BERR (Department for Business, Enterprise and Regulatory Reform – now BIS, Department for Business, Innovation and Skills) and the Commission on Vulnerable Employment led by the TUC (Trades Union Congress).

47 The inspection was of an Arrest Team operation in Croydon. Between April 2010 and January 2011, there were 11,913 visits and 6,388 arrests by the UK Border Agency's Arrest Teams.

48 According to the Council of Europe Convention, GRETA 'will regularly publish reports evaluating the measures taken by the Parties and those Parties which do not fully respect the measures contained in the Convention will be required to step up their action'. [http://www.coe.int/t/dghl/monitoring/trafficking/docs/monitoring/greta\\_EN.asp](http://www.coe.int/t/dghl/monitoring/trafficking/docs/monitoring/greta_EN.asp)

49 This table, and the paper on which it is based, is intended to be a framework for discussion among stakeholders and interested

parties, rather than a definitive prescription. There is unlikely to be a consensus over these ideas between and within all the organisations, agencies and first responders that could potentially deal with cases of forced labour. It should be expected that there will be disagreements regarding the existence of gaps, their importance and their relative weight among other priorities.

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## **About the author**

**Dr Alex Balch** is a Lecturer in International Politics and European Integration at the Department of Politics, University of Liverpool. His research interests focus on immigration and the international politics of security and mobility.

# **Appendix 1**

## **List of interviewees**

Darryl Dixon – Director of Strategy, Gangmasters Licensing Authority (GLA)

Chris Foster – London immigration crime team, UK Border Agency

Paula Lovitt – Head of Employment Agency Standards Inspectorate, Department for Business, Innovation and Skills

Tracy Manners – Anti-Slavery International

Nick Sumner – Chief Inspector, Metropolitan Police Human Exploitation Unit

Glynn Rankin – Kinsella and Rankin Associates (formerly head of legal services, United Kingdom Human Trafficking Centre, UKHTC)

Tricia Kirk – Retired Senior Investigating Officer, Northamptonshire Police

Klara Skrivankova – Trafficking Programme Co-ordinator, Anti-Slavery International

Liam Vernon – Head of the United Kingdom Human Trafficking Centre (UKHTC)

Mike Emberson – Chief Executive, Migrant Helpline

Pam Bowen – Policy Adviser on Trafficking, Crown Prosecution Service (CPS)

Sean Bamford – Migrant Worker Policy Officer, Trades Union Congress (TUC)

Neill Wilkins – Programme Officer, Institute for Human Rights and Business (IHRB)

NOTE: Some police officers interviewed as part of this research preferred to remain anonymous and are referred to in the text as Officer A, Officer B etc.

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