

Joint Briefing Note – 14th November 2024

Updated Terminology – Labour Exploitation and Abuse, and Debt

Background

1. Discussions around the introduction of a Fair Work Agency (FWA) have highlighted some variation in categorising severity in the abuse and exploitation of workers. As discussions continue to influence the policies underpinning the FWA, the importance of common agreed language and definitions was agreed.
2. Furthermore, the Modern Slavery and Human Trafficking (MSHT) Strategic Governance Group (SGG) on the 16th October 2024 identified inconsistencies in the application of terminology to debt and debt bondage. As debt is a common feature in both regular and irregular migration, but also acts as a key form of control within cases of MSHT – including labour exploitation – common language should also be sought in this area to ensure that a mutual strategic understanding can be reflected in developing policy, and operational decisions can be made based on an accurate articulation of threat.
3. The National Crime Agency (NCA), Gangmasters and Labour Abuse Authority (GLAA) and Modern Slavery and Organised Immigration Crime Unit (MSOICU) on behalf of UK Policing, held a series of discussions and workshops to review existing terminology and definitions. This briefing note provides clarifications and updated definitions to ensure consistency in communicating the UK threat picture concerning labour exploitation and associated offending and noncompliance.
4. Providing rigid definitions is difficult – operationally, each case should be considered individually using the outline principles that the recommended definitions offered within this document. These definitions should be adopted at a strategic and policy level as soon as possible to ensure consistency.

Labour Exploitation and Abuse

Recommended Definitions

5. **Labour exploitation** should be used exclusively to refer to criminality under the Modern Slavery Act, preventing confusion between noncompliance or exploitative practices and legally defined 'exploitation'.
6. **Criminal labour abuse** should be used to refer to other deliberate illegal workplace practice where the worker is the primary aggrieved or endangered party. Examples include charging of illegal work-finding fees, deliberate underpayment of NMW, or fraud affecting workers' pay or other benefits.
7. **Labour market noncompliance** may refer to any illegal practices affecting workers. However, outside of contexts where criminal labour abuse or exploitation may be used, this should represent a category of offence that is not criminal, covering breaches of regulatory requirements or contracts. Varying severity can be reflected with additional descriptors, such as 'severe' to cover instances that are deliberate or systemic, or 'low-level' to describe administrative errors or small-scale negligence.

Background

8. 'Labour exploitation' is not specifically defined in law, although exploitation is, under s3 of the Modern Slavery Act 2015. Exploitation is defined as:

s.3(2)	Slavery, servitude and forced or compulsory labour;
s.3(3)	Sexual exploitation;
s.3(4)	Removal of organs etc.;
s.3(5)	Securing services etc. by force, threats or deception; or
s.3(6)	Securing services etc. from children or vulnerable persons
9. Crucially, within the context of defining forced and compulsory labour, *low wages and poor conditions* do not in isolation amount to the crime of modern slavery, and neither does *a situation of economic necessity, such as where a worker feels unable to leave a job because of a real or perceived absence of alternatives.*ⁱ This means that care must be taken to ensure that exploitative practices such as low wages and poor conditions are not conflated with legal definitions of exploitation.

10. 'Labour abuse' has been in use within the NCA, GLAA and wider SOC system, including policing, since at least 2018 to prevent confusion. Terminology was established mutually through the Joint Slavery and Trafficking Analysis Centreⁱⁱ NAC(18)029, providing 'labour abuses' as a collective term for abusive forms of noncompliance not captured under the Modern Slavery Act, including underpayment of national minimum wage (NMW) and health and safety breaches.
11. Inclusion of 'criminal' within this terminology, and a separation from 'noncompliance' makes the varying levels of severity concerned, and reflect the common crossovers of severe labour abuse with other criminality, such as fraud and illegal money lending. This also reflect an intent to consider new criminal offences under the Employment Rights Bill.

Debt and Debt Bondage

Recommended Definitions

12. The National Assessments Centre have been commissioned to assess the impact of debt and other factors on workers' perception and experience of control. While definitions may develop as a result of this work, the below guidelines should be followed in the interim to prevent confusion, and mitigate the risk of conflation in migration- or employment- linked debt.
13. **External debt** may influence a worker's decisions over their employment and economic matters, and in severe cases, be a factor in a person's vulnerability. However, this should not be considered a form of labour abuse or exploitation. This terminology refers to debt owed to a third-party lender in either the regulated sector or an unconnected illegal money lender.
14. **Work-linked debt** provides a clear term for use in cases where a worker owes debt to an employer (or associate thereof), including those in the grey or criminal economies (e.g. working within a cannabis cultivation). Importantly, the migrant/worker would ultimately have the right to leave if they have the funds to repay the agreed amount, and that agreement was given in absence of additional force, threat or coercion. A worker's own economic circumstances may prevent them from doing so, but will not in itself result in the commission of a modern slavery offence.
15. **Debt bondage, bonded labour** and their derivative terms should be reserved for cases in which debt is used to control a victim, constituting a modern slavery offence. However, these terms should not be used to describe instances of debt in the absence of force, coercion, deception or perpetual inflation created by an exploiter or associate thereof. It is possible for a work-linked debt to develop into debt bondage, if the victim's economic circumstances are further manipulated by an offender or employer.

Background

16. Debt is common within both regular and irregular migration, with economically vulnerable migrants often taking on significant debts to pay for transport, visas, accommodation, or other costs. This debt may be agreed with employers, their associates, or individuals unconnected to the migrants' occupation.
17. Debt can also be a feature in employment, with contractual arrangements used to ensure a return on employers' investment in training costs, loans for season tickets, and other reasonably incurred costs. This can be an entirely legal arrangement, except for where deductions take workers' final pay below NMW, in cases in which the worker has the right to work and is entitled to NMW.
18. The impact that debt has on the choices a migrant, worker, or victim makes is complex. Even in wholly compliant arrangements - where an employer has not placed the worker under the menace of any further penalty - a worker's economic circumstances may prevent them from leaving an employer, as a lack of savings may prevent them from repaying debts either to their employer or externally.
19. In isolation, the size of a debt cannot be reasonably used to indicate whether or not an MSHT offence has been committed, particularly where a criminal service, such as facilitation of irregular migration to the UK, has been obtained by the migrant, as a comparison to the genuine cost is difficult to determine.

ⁱ Home Office - Modern Slavery Statutory Guidance for England and Wales - v3.11 (October 2024) - Paragraph 2.42

ⁱⁱ Consisting of analysts from Border Force, GLAA, HMRC, Immigration Enforcement, NCA and Policing - 2017-2021