

DIGNITY, NOT DESTITUTION

THE IMPACT OF DIFFERENTIAL RIGHTS OF WORK
FOR MIGRANT DOMESTIC WORKERS REFERRED
TO THE NATIONAL REFERRAL MECHANISM

KALAYAAN

Justice for migrant domestic workers



ACKNOWLEDGEMENTS

Kalayaan wishes to thank the 21 survivors who gave their time to share their experiences with us in order to improve the conditions for other migrant domestic workers in the UK. Their views have helped guide and shape the recommendations we have made in this report. Direct quotes have been used from their interviews to ensure their voices are heard and their needs understood.

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FOREWORD

Domestic workers in the UK are one of the most hidden and voiceless vulnerable groups. These women come to the UK completely legally and legitimately to work hard and raise money for their families at home. Hidden in people's homes working directly for families these workers are extremely isolated and often are not aware of their rights in the UK.

I have met and worked with many domestic workers before and since I was elected, all told me accounts of being abused by their employer and many had stories of harrowing exploitation and sexual harassment and abuse. Many felt that they could not escape because they would have no where to turn and also were worried about their rights. These concerns are compounded by the current visa regime for these workers, who have a time limited window in which they can raise an alarm about exploitation without it affecting their status in the UK.

Campaigners and policy makers over the years have fought hard to try to create protections for this vulnerable group, amendments to modern slavery legislation has made small allowances for the issues faced by domestic workers and has recognised their unique vulnerabilities, but as this report and the evidence gathered by those women who were interviewed shows, the current regime is still leaving too many destitute and without proper recourse to justice and rights that they should be expected to have as legitimate UK workers, but should certainly have when they are identified as being victims of human trafficking.

The report lays bear the complexities in the lives of domestic workers and highlights how the current visa regime for this category of worker is not fit for purpose to protect victims of exploitation. Anyone who has ever had to interact with the UK Immigration system will know how complicated, difficult and slow it can be. When you layer on top of this a worker who may be completely alone, have little understanding of their rights or the dwindling systems for support in our country, as well as the trauma they may be suffering because of abuses they have endured, it is clear that currently we are not doing enough to empower and enable this vulnerable group to break free of abuse and be safe in their workplaces.

The recommendations in this report must be heard by policy makers in the UK. These women are not criminals, they are workers and deserve the rights and respect afforded to any worker in the UK. We can no longer have a beggars cant be choosers attitude to citizens living and working legitimately in our country and should take on our duty to protect vulnerable people.

The UK rightly is proud of its record on blazing the trail with legislation on modern slavery, however still in practice the good intentions of that legislation does not yet achieve its aims. This report highlights this and gives clear recommendations of how we can and should improve that.

JESS PHILLIPS
MP FOR BIRMINGHAM YARDLEY



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EXECUTIVE SUMMARY

"I am upset about the whole thing, because I'm, I'm not doing anything criminal, I really would like to support my children and my brother who is jobless"

- JOANA¹

Migrant domestic workers remain a vulnerable group in need of rights in the UK so they are protected and not made vulnerable to exploitation. These workers seek opportunities abroad in the hope they will be able to provide for their relatives who depend on their remittances for essentials including food, shelter, medicines and education. Many workers endure abuse and exploitation if it means they can at least send some money home to their struggling families.

Coming from outside the EU, these migrant domestic workers must be granted an **Overseas Domestic Worker ('ODW') visa** to accompany or join their employer in the UK. The visa is granted for a maximum of six months with no right to renewal beyond this time.² As of 2016, workers on an ODW visa can change employers but only during the six-month period for which they were originally admitted. This right was introduced to safeguard against abuse and provide workers a route out of exploitation although is ineffective in practice given workers have little or no time left on their visa to find work. The only exception that allows for workers to be granted an extension of their leave and right to work applies to those workers identified as potential victims of trafficking or modern slavery. It is this group of particularly vulnerable workers that our research addresses.

The UK framework for identifying and supporting victims of trafficking and modern slavery in the UK is called the **National Referral Mechanism (NRM)**. As of April 2019, decisions are made by a single case working unit within the Home Office. There are two stages to the identification process: first, the 'reasonable grounds decision', which is supposed to be made within five working days from receipt of a referral where possible. The next stage is for a 'conclusive grounds decision' to be made, for which there is no set time limit and which can see victims wait months, sometimes years.

For workers identified as potential victims of trafficking or modern slavery by a positive reasonable grounds decision, there is a crucial distinction depending on their visa status at the date this decision was made, which is key to the issue addressed by this report:

- **If the worker's initial six-month visa is still valid at the date of the reasonable grounds decision, they will have the right to work until 28 days after a conclusive grounds decision is made³**
- **If the worker's initial six-month visa has expired by the date of the reasonable grounds decision, they do not have the right to work whilst they wait for a conclusive grounds decision**

Kalayaan is a first responder to the NRM. In 2017-2018, Kalayaan identified 72% of workers who registered for advice and support as presenting with indicators of trafficking. Despite suffering abuse at the hands of their initial employer, workers tell us they want to find another employer who will offer decent work and a workplace free from violence and

¹ All names have been changed to protect workers' identities. Quotations are taken exactly from the transcripts – in some cases filler words have been removed.

² Different rules apply to migrant domestic workers who enter the UK on the Tier 5 (Temporary Worker International Agreement) visa to work for diplomats. All workers interviewed for this report entered the UK on the ODW visa to work for private individuals.

³ The right to work for workers in this category continues beyond 28 days if they are granted Discretionary Leave to Remain or make a valid application for further leave to remain – see Diagram 2

harassment. For many, their focus remains on being able to provide for their families and remit money home.

This report looks at the experiences of 21 workers who have been identified as potential victims of trafficking and modern slavery and referred into the NRM by Kalayaan since October 2016. It addresses the impact of their employment status on their lives in the UK, and their families back home whilst they await a final decision on their trafficking claim. All these workers were, at the time of interview, waiting for a conclusive grounds decision to be made. Of the 21 workers interviewed, 10 do not have permission to work in the UK as a result of their ODW visa having expired at the date of their reasonable grounds decision.

The research identified a number of barriers workers face in being able to seek advice on a referral to the NRM whilst they still have valid leave. Many explained they had no or limited control over when they were able to flee their abusive employer and escaped with only a few months or weeks remaining on their visa. This issue is compounded as workers are still not routinely being issued with information on their rights as part of the visa application process or after they arrive in the UK so do not know where or who to get help from after they escape. Many report that they are too fearful to approach the authorities and have been lied to by their employer that they will not be helped or believed should they report what has happened to them.

Many also escape without possession of their passport and do not know when their visa expires. Prior to and after escaping abuse, workers often approached strangers and community members to avoid becoming homeless and destitute. A combination of factors, including the time spent in exploitation in the UK, the need to find safe accommodation and re-employment and not knowing who to contact for advice and support, meant that for 10 workers their visas had already expired by the time they sought advice on a referral to the NRM and received a positive reasonable grounds decision.

From our interviews it emerged that without permission to work, workers in the NRM are drawn into destitution and left vulnerable to further harm and exploitation. Limited financial assistance is provided by the Salvation Army who run the government contract to provide support to victims of trafficking and modern slavery whilst their claim is being considered. Those in receipt of outreach services, where victims are supported in their local communities, receive £35 a week. Given the low amount, workers are made reliant on their community to survive. Relatives back home also suffer, exacerbating the vulnerabilities workers have and which led them to look for work abroad to begin with. The restriction on working also affected the mental health of workers, with those without permission reporting that they felt **worthless, subservient and punished by a system meant to protect them**. In contrast, workers with permission to work were financially independent and able to provide for their families. Issues they experienced resulted from a lack of clarity about their right to work.

All interviewees in this research told us they want to use their skills and work and not be made reliant on government support. In this report we argue that extending the right to work to all migrant domestic workers in the NRM would allow them to **live in dignity** as they could support themselves and their families, prevent them falling into destitution and at risk of exploitation and improve their mental health.

POLICY AND PRACTICE

The Overseas Domestic Worker ('ODW') visa is applied for online and a worker invited to attend a Visa Application Centre to submit their documents in person and provide their biometrics. If the application is successful, the visa is endorsed in a worker's passport which they then use to enter the UK.

The visa is issued for a maximum of six months on the basis that the worker will be accompanying or joining their employer in the UK. The visa only permits an individual to work as a domestic worker (this work includes child care, elderly care, cooking and cleaning). The ODW visa is issued without recourse to public funds, which means that workers are not entitled to claim any benefits, tax credits or housing assistance.

Many workers report to Kalayaan that they have no control over their application and do not know what information was provided as it was handled by their employer or an agency they instruct. Workers also routinely tell Kalayaan that they do not have possession of their passport whilst working abroad, during their journey to the UK or after they arrive. As a result, workers often do not know what visa they entered the UK on or the terms, including when it expires.

UK Visas and Immigration has stated that commercial partners at Visa Application Centres issue all workers with an information leaflet⁴ when they attend the visa centre and enrol their biometrics however reports made to Kalayaan by workers confirm this does not happen systematically. The leaflet has information on their immigration status in the UK, their employment rights and the NRM framework. It also provides details of organisations who can provide confidential advice and assistance to a worker if they experience any abuse or exploitation in the UK. This includes details of Kalayaan, The Modern Slavery Helpline and The Salvation Army.

The National Referral Mechanism (NRM), was introduced in 2009 to meet the UK's obligations under the Council of Europe Convention on Action

against Trafficking in Human Beings. The mechanism is used to ensure potential victims of trafficking and modern slavery are protected and provided with support whilst their claims are considered by the UK authorities.

To be referred to the NRM, a survivor must first be referred by an authorised body called a first responder. These are a mixture of statutory and non-statutory agencies who are trained to spot signs of exploitation. Kalayaan has been a first responder since 2009 when the NRM was first introduced. Since April 2019, decisions on victim identification are made by a single case working unit in the Home Office.

The NRM is a two stage process. The expectation is that the first decision - called the 'reasonable grounds decision' - is made within five working days. The decision maker has to be satisfied at this stage they 'suspect but cannot prove' a person is a victim.

If a positive reasonable grounds decision is made, a survivor is given a 45 day 'recovery and reflection period' whilst further enquiries are made to determine whether there are 'conclusive grounds' the individual is a victim.

During this time, survivors are entitled to support including access to safe accommodation and financial subsistence. Support services in England and Wales are provided by The Salvation Army under the Victim Care Contract and their sub-contractors. Survivors who access 'outreach services' who do not opt for accommodation receive £35 a week.

Home Office policy states there is no target to make a conclusive grounds decision but the expectation is it will be made as soon as possible following day 45 of the recovery and reflection period.

On average, workers referred to the NRM by Kalayaan who received decisions in 2018 were waiting 24 months for a decision whether there were conclusive grounds they were a victim of trafficking or modern slavery. **The longest wait was 37 months.**

⁴ Current version of information leaflet at time of report's publication: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730783/Overseas_Domestic_Worker_applicant_leaflet_2018_V2.1.pdf



BACKGROUND

Changes introduced in 2012 led to the Overseas Domestic Worker visa being tied to a specific employer. Parliamentary debates during the passage of the Modern Slavery Act 2015 prompted the government to commission an independent review into the terms of the Overseas Domestic Worker visa.⁵ The review's remit was to consider whether the introduction of the tied visa regime in April 2012 increased the vulnerability of workers to abuse and exploitation in the UK which is at **odds with the government's commitment to prevent and combat trafficking and modern slavery.**

The evidence based review looked at the full spectrum of abuse and concluded that 'the existence of a tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa (were) incompatible with the reasonable protection of overseas domestic workers while in the UK'. The review made two key recommendations: firstly, that all migrant domestic workers have the right to change employer and apply for annual extensions as a domestic worker for up to 2 years. This unconditional right was deemed the minimum required to give effective protection to those suffering abuse in the UK as such victims need the freedom to change employment, which in turn requires that they stay long enough to be able to find safe alternative employment.

The review also identified procedural failings in providing workers with information on their rights at work before they arrived in the UK so the second key recommendation was the introduction of group information sessions in a neutral space for workers who remain in the UK for more than 42 days. The review recommended attendance be mandatory and set out why a voluntary system would be wholly inadequate.

In response to the review, the government conceded that workers need an immediate escape route from abuse and allowed them to change employer but only to work for the remaining term of their visa. Their concern was that permitting all workers to change employers and renew their visa without reporting abuse would lead to fewer reports to the police. This would mean a revolving door of abuse where employers remain undetected and are free to recycle abuse onto the next worker.⁶ This response was deeply disappointing given that the review directly addressed this concern by recommending any change of employer be registered with the Home Office who could pass this information to the police to consider commencing an investigation. This would have alleviated the evidential burden placed on victims entering the NRM and at the same time acknowledged that not all abuse meets the legal definition of having been trafficked or enslaved.

Whilst appearing to untie workers, in reality this has not reinstated meaningful protections for workers as they now face trying to find a new employer with limited or no time remaining on their visa. This does not enable abused workers to safely enter into a new working relationship and leaves them with the choice of remaining in an exploitative situation, risking entering into new, potentially precarious employment, or being unemployed without recourse to public funds. Faced with these choices, migrant domestic workers will not feel safe and secure to initiate complaints against their abusers.

Changes to the terms of the Overseas Domestic Worker visa were implemented in April 2016, which included increasing the period for which further leave is granted to a migrant domestic worker accepted as a victim of trafficking or modern slavery from 6 months to 2 years.⁷ The government also committed to delivering the information sessions,

⁵ James Ewins, Independent Review of the Overseas Domestic Worker Visa, 16 December 2015

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf

⁶ James Brokenshire, then Minister of State for Immigration, Written Statement, HCWS583, 7 March 2016 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-07/HCWS583/>

⁷ An application for further leave to remain is in addition to the provisions under which Discretionary Leave may be granted to those on account of their personal circumstances - see Diagram 2

although have since confirmed they will not be mandatory. A procurement exercise to identify a provider to run the information sessions was launched in 2018. At the time of this report's publication, the results have not been officially announced but plans look set to be abandoned.⁸ Kalayaan further understands that no procedural changes have been made to ensure the delivery of information as part of the visa application process despite recommendations made in the independent review⁹ and by Kalayaan,¹⁰ as well as evidence from workers that safeguards are still not operating effectively.¹¹

As part of the changes to the visa regime, the government said the following with regards to the employment rights for migrant domestic workers referred to the NRM:

'We have already amended the immigration rules so that overseas domestic workers are admitted on conditions of stay that permit them, during the six-month period for which they are admitted, to change employer. They do not need to apply to the Home Office to do so. We have also already amended the immigration rules so that overseas domestic workers who obtain a positive conclusive grounds decision can obtain a two-year extension of stay. We have considered the concern that overseas domestic workers may not readily be able to secure alternative employment as a domestic worker if, even when they are referred into the national referral mechanism, their permission to work ends when the six-month period of their admission expires.

*We will make a further change to address that, using the powers in section 4(1) of the Immigration Act 1971 to ensure that when an overseas domestic worker has been referred into the national referral mechanism during their initial six-month stay, their permission to take employment will continue while their case is assessed, and without the worker having to make an application. With that additional change, the measures will ensure that, when a worker arrives in an abusive employment relationship, they can leave it with the certainty that they will be able to continue working, while also ensuring that they are encouraged to report the abuse early.'*¹²

In implementing the above, the government seemingly chose to restrict this right further in October 2016 by requiring workers to have a **positive reasonable grounds decision within the currency of their six month visa** (meaning workers have even less time to get advice on and pursue a referral to the NRM after they flee an abusive employer). This right is contained in the **Immigration (Variation of Leave) Order 2016**.¹³

The effect of this order is that a worker issued with a positive reasonable grounds decision whilst their visa remains valid, has their leave automatically extended and their right to work as a domestic worker preserved whilst they are in the NRM awaiting a conclusive grounds decision.

Workers issued a positive reasonable grounds decision after their domestic worker visa has expired cannot work and are limited to receiving £35 a week if they receive outreach services under the Victim Care Contract.

⁸ Robert Wright, Ministers set to drop plan to safeguard domestic workers, Financial Times, 12 July 2019 <https://www.ft.com/content/c17b0812-a419-11e9-974c-ad1c6ab5efd1>

⁹ Independent Review of the Overseas Domestic Worker Visa, paragraph 62:

¹⁰ Kalayaan, Information Meetings Home Office Pilot – Proposed Minimum Standards, 15 March 2018 <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Minimum-standards-for-ODW-information-meetings-15-03-2018.pdf>

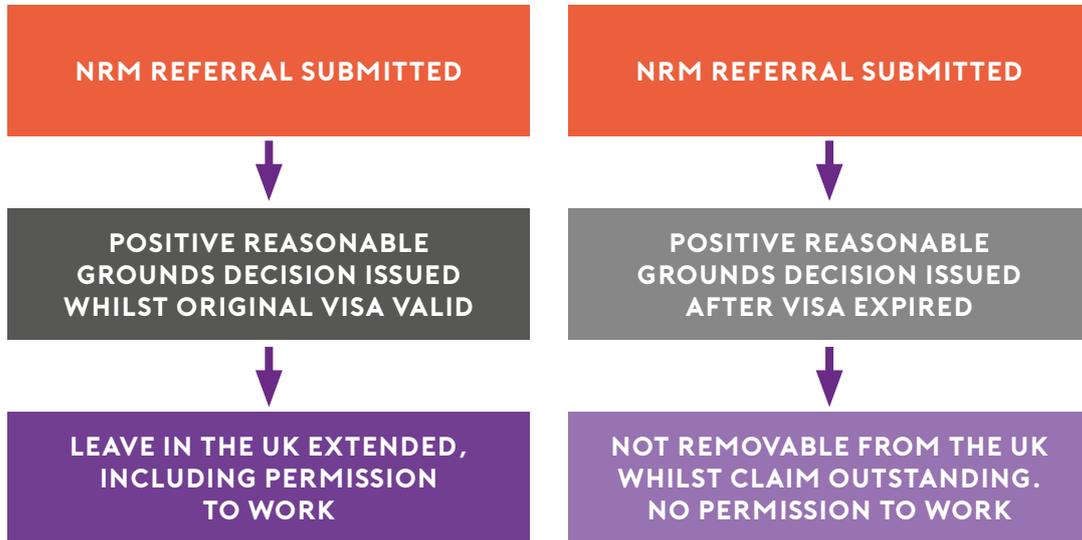
¹¹ Kalayaan and Anti-Slavery International, Submission for the UN Special Rapporteur: Domestic Servitude of Migrant Domestic Workers, May 2018 http://www.kalayaan.org.uk/wp-content/uploads/2018/05/QuestionnaireNGOs_EN-17-05-2018-K-ASI.pdf

65% of workers registering at Kalayaan between 1 April 2016 and 31 March 2017 were accompanied to an interview for their visa with their employer. 94% of workers registering at Kalayaan between 1 April 2016 and 31 March 2017 were issued no information regarding their rights in the UK.

¹² James Brokenshire, then Minister of State for Immigration, Written Statement, HCWS583, 7 March 2016 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-07/HCWS583/>

¹³ Full text of order accessed here: <http://www.legislation.gov.uk/uksi/2016/948/contents/made>

DIAGRAM 1: EFFECT OF THE IMMIGRATION (VARIATION OF LEAVE) ORDER 2016 ON ENTITLEMENT TO WORK IN THE NRM



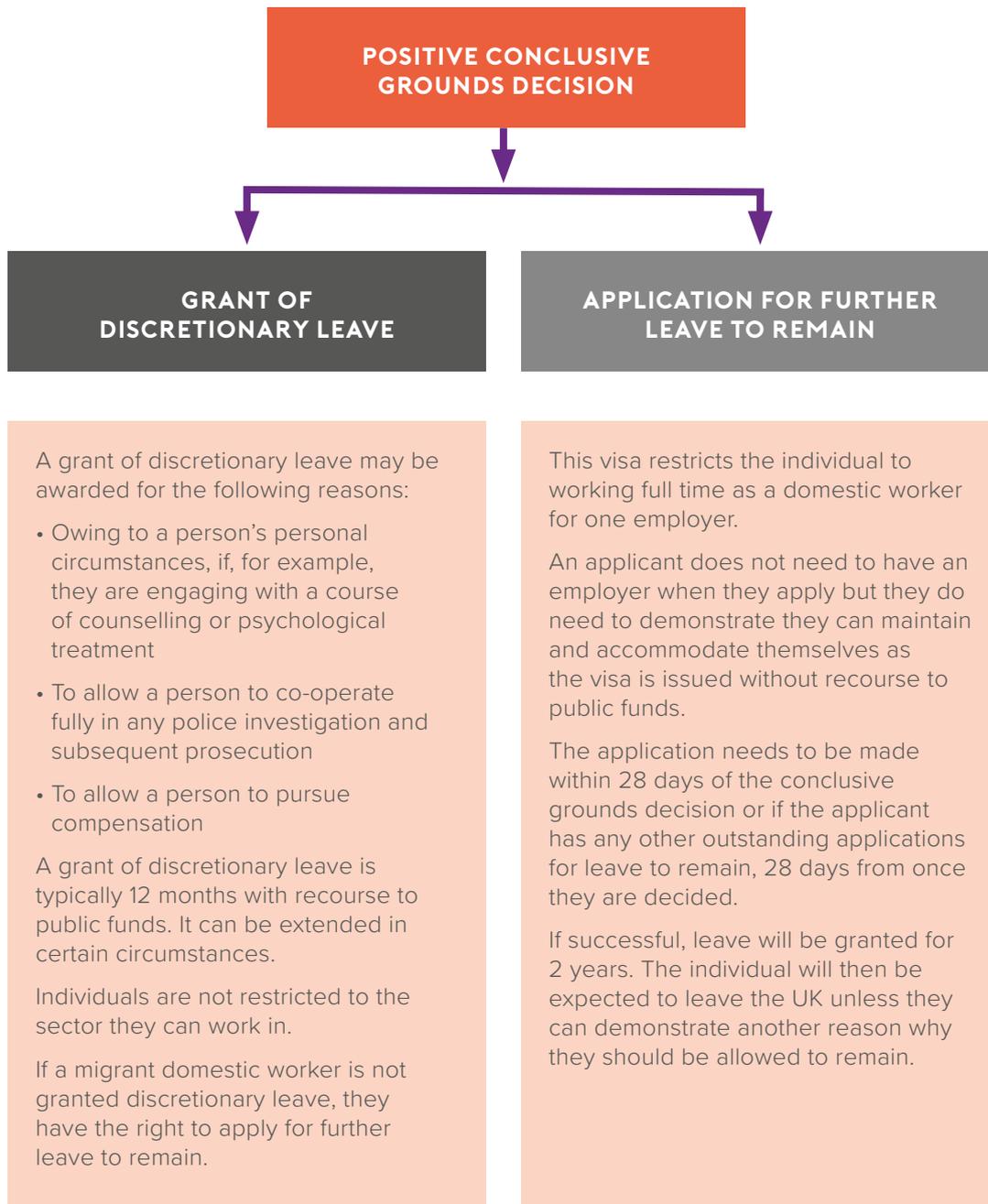
On average, workers referred to the NRM by Kalayaan who received decisions in 2018 were waiting **24 months** for a decision whether there were conclusive grounds they were a victim of trafficking or modern slavery. The longest wait was **37 months**.

A migrant domestic worker who has been recognised as a victim of trafficking or modern slavery but not **granted** discretionary leave has the **right to apply** for further leave to remain as a domestic worker under provisions in the Modern Slavery Act 2015¹⁴.

¹⁴ Modern Slavery Act, Section 53



DIAGRAM 2: OUTCOMES FOR MIGRANT DOMESTIC WORKERS REFERRED TO THE NRM



Workers who have had permission to work in the NRM will be able to demonstrate their self-sufficiency through their employment if they have to apply for further leave. Those workers denied permission to work will struggle if they have been supported under the Victim Care Contract and will be made reliant on their communities when they exit the NRM.¹⁵

Only workers with permission to work in the NRM under the terms of the 2016 Order who make a valid application within 28 days can continue working whilst their applications for further leave are being processed. **For those workers who do not have the right to work in the NRM, this represents a further wait before they can resume work and support themselves and their families.** Kalayaan has supported several workers in this position, including some who have had to wait in excess of 9 months before they received their visas. These workers have been entirely reliant on charitable grants and support from their communities to prevent them becoming destitute as they have had no entitlement or access to support after exiting the NRM.¹⁶

Kalayaan understands no impact assessment was produced when the 2016 Order was made.¹⁷ We have produced this report to examine whether this instrument and government policy in denying some workers permission to work whilst in the NRM is exacerbating their vulnerability to further exploitation and harm.

¹⁵ Prior to a High Court challenge in 2019, recognised survivors were provided with just 45 days after receiving a positive conclusive grounds decision to exit the NRM and access mainstream services. This left many homeless and destitute. The Home Office has now conceded this policy is unlawful and support will continue beyond 45 days based on individual need:

[https://www.duncanlewis.co.uk/news/Home_Office_concedes_that_their_45_day_policy_for_providing_support_for_victims_of_trafficking_is_unsatisfactory__\(28_June_2019\).html](https://www.duncanlewis.co.uk/news/Home_Office_concedes_that_their_45_day_policy_for_providing_support_for_victims_of_trafficking_is_unsatisfactory__(28_June_2019).html)

It is unclear if or how this case will affect the requirement for migrant domestic workers to demonstrate they will be self-sufficient when applying for further leave within 28 days.

¹⁶ Ibid

¹⁷ See explanatory note to the order: <http://www.legislation.gov.uk/uksi/2016/948/note/made>

THE OBJECTIVES

This report seeks to capture the experiences of migrant domestic workers - both those who do and do not have permission to work in the UK as a domestic worker - whilst they are in the NRM waiting a final decision on their trafficking claim. The objectives were to understand from workers what impact, if any, their employment status has on their own lives in the UK and those of their families abroad.

METHODOLOGY

34 workers were identified as eligible to participate in the research project. Kalayaan staff considered in the case of five workers, it would not be ethical to ask the worker to take part given their individual circumstances.

The remaining 29 workers were contacted and invited to participate. Of those, 21 interviews were completed face to face at Kalayaan's offices. A Tagalog interpreter was provided when requested.

Interviews were completed between May and September 2018 by Natalie Sedacca, with a staff member from Kalayaan also present where requested by the worker.

WORKER PROFILES

All of the interviewees for the research were female Filipino workers who had sought work abroad in order that they could provide financially for their families, **8 of whom are solely financially responsible**. Workers spoke of supporting their children (17 responses); parents (12); siblings (9); partners (3) and other relatives (3). Workers explained they hoped their wages would help pay for education (12 responses); medicines and operations (10); rent and household bills including paying for food (10); alleviating the poverty faced by their relatives (8) and paying off debts (2).

'For the bills in our house in Philippines and for the expenses for the school yes and sometimes my father gets sick I need to send him money to buy some medicine and to pay the bills in the hospital'

- ELENA

'I am financially responsible for my only daughter and for my disabled sister and for my sick parents. They are my dependents... for family support, for education, also I have one sister sending to university for education, for medication, for food and clothing, for house maintenance and bill payment. Of course there are some other debts payments and some other emergency purposes'

- JULIANA

'I just want to help my family, especially my parents... [my wages are] used for the medication for my mum and my dad. My mum is diabetic and my dad has prostate cancer'

- JOSEFINA

'I am a widow and I had my son that I was supporting him with his study and financially and I had my mum who was looking after my son so I had to support her financially and some of her health issues'

- RACHEL

'I've been paying some of the debt that we have. Last time when my husband had, had his head surgery'

- SAM

'I started work abroad because I have 3 children and um my husband is ill and I also help support my family on my husband's side and my side... [My husband] have er hepa (sic) B and then now she have a undergo operation with her eyes...My in law's mother, they have a sick kidney stone and then my in law's father he has asthma, every Monday they have medication for asthma... [Wages] pay the rent, electricity, the water, and foods, medicines and then my eldest they have operation'

- KATALINA

Eleven workers were issued positive reasonable grounds decisions whilst their original six month domestic worker visa was valid so have their leave and their permission to work in the UK extended whilst they are in the NRM.

Ten workers do not have permission to work as they were issued a positive reasonable grounds decision after their visa had expired. They must wait until they are conclusively recognised as a victim and either granted discretionary leave or apply for further leave to remain as a domestic worker.

One of the ten workers denied permission to work was initially issued a negative reasonable grounds decision which was successfully challenged, however by the time she was later issued a positive reasonable grounds decision, her visa had expired. Despite accepting their original decision was flawed, the Home Office have continued to deny this worker the right to work.

ESCAPING ABUSE AND FINDING HELP: CONFUSION AND UNCERTAINTY

Workers were asked their reasons for escaping their employers. The specific themes mentioned in response were: psychological abuse (13); lack of food and drink (13); lack of sleep and / or rest breaks (12); physical abuse (8); being forced to work excessive hours (7); excessive work demands (5); reductions, delays or non-payment of wages (6); lack of privacy or inadequate living arrangements (3); lack of freedom (2); threats of sexual abuse (1) and work not being in line with what was stated in contract (1). Accounts given of experiences with previous employers included:

'I only get to sleep between two to three hours a day and I, I only get to eat one meal a day'
- CHRISTINA

'Sometimes they spit on my face, they kick me, sometimes they grab me by the hair'
- STEPHANIE

'Based on my experiences I felt that they weren't – I wasn't being treated like a human being, I was treated like an animal. All my, the things that I used – plates, glasses – they're all um, they're all like separate, they're all segregated'

- MARINA

'They'd say things like you have no brains, you don't know anything, er you have no use, you're worthless'
- NICKY

On average, **workers escaped 29 days after they arrived in the UK**. The lowest was 3 days and longest was 110.¹⁸

TIME BEFORE WORKS ESCAPE AFTER ARRIVING IN THE UK

LONGEST	110 DAYS
AVERAGE	29 DAYS
SHORTEST	3 DAYS

In only two cases, workers reported knowing where to get advice and assistance on their situation in the UK when they decided to escape. Of these, one reported being issued the information leaflet when she applied for her visa abroad but this was only issued to her when she arrived in the UK on her second trip.

¹⁸ Average of dates known

'Because actually here in the UK I came here first, I didn't have any knowledge. I don't know anything. I'm not familiar with the place. I don't have relatives and I was so isolated from the outside. And then the second year we came, I got information from a sheet from the Home Office which I got the, what's that, visa processing centre. The person handed it to me and that's I know everything, that coming to the UK I have the right to change employer. That information freed me from being a slave'

- JULIANA

Nine workers approached strangers or relied on community members not known to them before they fled their trafficker.

'Because I walked in the street and I meet one person in the street, a Filipina and I talked to her that I run away and that I have I don't have nothing to place to stay. She said if you want you stay with me and you look after my kid because she has work as well. Then I agreed that. Because I have nothing to stay I don't have place to stay that'

- ELENA

Six workers relied on contacts they had made in person after they had arrived in the UK and before they fled.

'When I was in the UK there was a Filipino worker who, who witnessed how I was being treated by my employers, um and he gave me a number to say that if you wanted to escape just give me a call, because he, he saw, um, how badly they treated me'

- CHRISTINA

Three workers relied on contacts they had made with people they had met online after they had arrived in the UK and before they fled.

'I hadn't met him personally then, I just took a chance. I was so, because I was so scared about, after that incident when I was slapped by my employer'

- SARA¹⁹

Two workers already knew of people in the UK when they arrived.

'My sister has a friend here in the UK and um she contacted this friend and that's where I went to when I escaped'

- EVA

One worker stayed in a hotel before coming to Kalayaan direct. This was the worker who had been issued the information sheet the second time she applied for a visa.

'The first place I stayed was in a hotel. And then I take out the information sheet that I took from the visa processing centre, I read and I search the contact number of Kalayaan, from there from the hotel room I called Kalayaan and proceeded here in this office'

- JULIANA

¹⁹ This interviewee was referring to a man who became her boyfriend

19 workers learnt of Kalayaan through individuals supporting them or community groups they later became members of. One worker was already aware of Kalayaan from the information leaflet she was issued when she attended the visa application centre abroad and one worker was brought to Kalayaan by her new employer. Arguably this demonstrates that the failure to provide information to workers prior to their arrival in the UK directly contributes to the delay in seeking a referral to the NRM whilst their visa remains valid.

On average, **workers registered at Kalayaan for advice and support 88 days after they escaped.** The lowest was two days and the longest was 251.²⁰



16 of the 21 workers did not have possession of their passport when they fled their trafficker and later registered at Kalayaan.²¹

‘Since I’ve been in Jeddah up to present, I have not taken possession of my passport because they have been hiding it from me. They took my passport in other words’
- VICKY

Four workers not in possession of their passport had details of their entry clearance to the UK as they had taken a photocopy of their visa.

‘I don’t have like anything, I just had a copy on my phone’
- RACHEL

12 workers did not know when their visa expired when they registered at Kalayaan. Confirmation of their expiry date was confirmed by the following sources:

DISCLOSURE REQUEST MADE TO UK VISAS & IMMIGRATION UNDER THE DATA PROTECTION ACT 1998	6
REASONABLE GROUNDS DECISION NOTIFICATION	2
OTHER CORRESPONDENCE WITH THE HOME OFFICE	1
STILL UNCONFIRMED	3

For these 12 workers, on average it took **48 days after they registered at Kalayaan to receive confirmation of when their visa expired.** The lowest was 14 days and the longest was 129 days.²²

²⁰ Average of dates known

²¹ This does not mean that the other five interviewees had access to their passports whilst in the UK. Some described how they were able to retrieve their passports after they arrived without their trafficker knowing

²² Average of dates known



WAITING IN THE NRM

All workers have positive reasonable grounds decisions. The below table shows how long they had been in the NRM waiting for a conclusive grounds decision at the time they were interviewed.

	PERMISSION TO WORK	NO PERMISSION TO WORK
0 – 3 MONTHS	3	1
3 – 6 MONTHS	2	3
6 – 12 MONTHS	4	5
OVER 12 MONTHS	2	1

Seven workers with permission to work had no financial support from any agency, friends or community members as their wages were enough to support themselves in the UK and ensure remittances could be sent home to their families

‘Nothing aside from my salary per week, that is all the financial support, only my weekly salary’
- JULIANA

13 workers were in receipt of outreach support from sub-contractors of the Salvation Army, including four with permission to work. One of these four experienced difficulty in finding work as her reasonable grounds notification failed to confirm she did in fact have permission to work in the UK. Another was incorrectly told that she did not have permission to work when in fact she did.

‘So when I was told by the Salvation Army that I couldn’t work, um my family told me to just come home because there was no point me staying here’
- EVA

Despite having the right in law, six workers with permission to work did report confusion over details of their status, rights and entitlements including in one case whether she still had permission to work after applying for asylum:

‘I went for an assessment, an interview for asylum and then though I have this positive reasonable grounds, I am allowed to work and I am allowed to stay in the UK – the last thing they told me is no more working for you, and also we will send a letter to the employer. I was so shocked... Just to the other day before I was kicked out, you know I was supposed to be kicked out, and then I called my solicitor and then I explain and to my employer my solicitor is challenging the Home Office as its mistake. So I was almost jobless you know. But it was Home Office mistake because it is the hostile environment maybe...’
- JULIANA

One worker explained that their reasonable grounds notification was confusing to employment agencies as it listed two different timeframes: on the first page it gives the end date of the 45 day ‘recovery and reflection period’ and overleaf it states their existing leave

would continue beyond their visa expiration date until 28 days after a conclusive grounds decision was made.

'They been thinking that I have only 45 days to, er, extension of my visa. But er, they didn't really understand'

- SAM

Employers were also not willing to hire given the confusion, for example because they were not satisfied that workers did have permission to work in the absence of a biometric card or immigration status document.

'Sometimes when I apply the work, sometimes I'm rejection for the employer because of my situation. The employers are all so afraid that they might incur a penalty if they take me on'

- KATALINA

'They just like not giving you the proper wages because they said you don't have visa and then like this or you are like Home Office, so it seems they are illegal. So we don't have any proof of that yes, I had to show everything like I had the permission to work, the letter of the Home Office and some sort of things that still like they don't understand about that.'

- RACHEL

This indicates that even in cases where the individual has permission to work, the lack of clarity on the documents can lead employers to be doubtful about their status.

CONFIRMING ELIGIBILITY TO WORK

For those workers with permission to work in the NRM, their reasonable grounds notification should explicitly state on the first page that their existing leave and permission to work will continue beyond their visa expiry date and not end until 28 days after the date they receive a conclusive grounds decision. The notifications are misleading as they state that a conclusive grounds decision will be made at the end of the 45 day period, which suggests that workers only have permission to work during their recovery and reflection period and then for a further 28 days.

The notification further states any prospective employer that wishes to establish a defence under illegal working rules can verify a person's right to work by obtaining a Positive Verification Notice issued by the **Home Office Employer Checking Service**. The online service tasks prospective employers with having to correctly identify and understand complex immigration laws and procedures which many are not able to do without seeking specialist legal advice. Given the confusing nature of the current notification letter it would be difficult for an employer to progress past the first page of the checking service.

Workers routinely tell Kalayaan their employers do not accept their reasonable grounds notification as proof of their right to work and do not want to risk an unlimited fine or prison sentence for employing an individual who may be disqualified from working. Given the difficulties in navigating the Employer Checking Service, many employers are too fearful to offer employment to workers in the NRM.

Apart from the lack of clarity surrounding their permission to work in the UK, those with the right to work also reported difficulties as a result of uncertainty as to how long they would be in the NRM for and what the outcome would be. This is not desirable to employers looking for someone to take care of their children or elderly relatives, and who need to know how long they will be able to have the person work for them for.

While the uncertainty faced in awaiting a conclusive grounds decision featured in responses from both workers with and without permission to work, the situation was clearly made worse for those denied permission to work who are unable to support themselves and their families in the interim period. Conversely, it was clear that having permission to work brought a number of advantages. None of the workers with permission to work revealed in their responses being unable to meet their essential living needs or indicated that their families had suffered. This is in sharp contrast to those denied permission to work.



THE IMPACT OF NOT HAVING THE RIGHT TO WORK

All ten workers denied permission to work were receiving external support from sub-contractors of the Salvation Army such as Hestia. Some explained that the money received under the Victim Care Contract is not enough so they approach others for help:

'£35 a week. It's not enough for if I'm only taking from the Hestia, it's not enough, but because in the church every Monday they give the contribute to us, that's why we can survive'

- MARIA

Five of the workers denied permission to work disclosed they are working informally, sometimes on an ad hoc basis, in order they can support themselves in the UK and their families back home.

'Some Filipinos, some friends want me to do their nails, clean their nails and do for them and then give me a little bit tip so I can survive like that.'

- AMY

'When some of my friends you know have work, I do ask them that you know I'm – I really feel useless with nothing to do, so could I help that um, and yes they allow me to help, and sometimes they give me £20 and free food'

- JOANA

'No the money is not enough. The £35 is not enough and the £100 that I get every week I save that I could help my family in the Philippines'

- NATASHA

All ten workers denied permission to work reported problems for themselves in the UK.

FINANCIAL ISSUES

Themes raised included money problems including debt (7) and worry about supporting family (8). One worker explained her family were having to borrow money as she was not able to send remittances home and she herself was using food banks so that she could save the money she received under the Victim Care Contract and send this to her family.

'If um Hestia give me £70 every two weeks I will er keep it and then next week again, two weeks they give us £70 again and then I send it to them, I will a little bit help. Then because sometimes I will, I have er food er, food bank. [Name of centre] refer that, give me a voucher and then I will come there to get the food bank.'

- AMY

Others reported having to rely on their friends and community networks as the subsistence they received was not enough to meet their essential needs:

'It's, it's very difficult, I have to rely on er my friends help and and the money that I get from Hestia I budget it very carefully. My friend er knows my situation so um my friends are willing to help... It's very difficult, um, ever ever er personal um even personal goods um of a woman. If I had an income then I wouldn't have to keep asking for things like food'

- MARINA

'Because I need even in myself, my support £35 is not enough, even my food. But I thanks god that some, some of my comm, Filipino community can help me'

- MARIA

This indicates that individuals denied permission to work are being drawn into destitution and made reliant on food banks and community members for support as the subsistence they receive is not enough to support themselves in the UK or their families abroad. This inevitably undermines their recovery time and increases their vulnerability to being re-exploited, as further discussed below.

ACTIVITIES UNDERTAKEN

Workers were asked how they spend their time in the UK whilst waiting for a conclusive grounds decision. Those without permission to work tried to use the time to participate in other activities but the utility of these activities was mixed. Responses included attending English and vocational classes, meeting with a mentor, counsellor or women's therapist, spending time with their church / community group and with friends and community members.

'English classes, IT class, yeah, and there's a something, there is a handicrafts, that we are doing handicrafts, doing something there [specific name of centre] and just, I'm happy with them, I have a classmates. And the Friday doing the yoga. And I have a mentor as well. I feel confident and not same before, I must say that before, I feel, it is like after the counselling I feel little light than before. Before I felt like I am carrying very heavy things in my life. Yeah. But there is some worry that because of my situation, it is like I don't know where I go, here, there, like that, but I feel a little better than before'

- ELSA

Some workers reported that it was difficult to engage in any activities given the lack of funds and others that there was limited benefit given their need to work to support their families:

'Sometimes I cannot attend because I don't, my oyster don't have top up, money to go, because you know London is – you need to go by tube, everything's paid. So sometimes I'm just staying home'

- AMY

'It's so long – when at night it's like very long and the day's very long... like you're wake up you sleep you are nothing you know? Like I'm useless person in this world you know? That's what I feel, like I'm nothing in this world, I can't move...One year, almost two years in this August I feel like I'm nothing in this world, your life is useless you know'

- MARIA

PSYCHOLOGICAL IMPACT

Responses indicated that the mental health of those without permission to work was very low given the helplessness they felt at not being able to help their families back home and that the NRM had institutionalised their poverty by making them survive on £35 a week when they could be working.

Workers in this situation disclosed feelings of being upset and sad (6); frustrated and bored (6); being worried, stressed and anxious (4); feeling hopeless (1); feeling jealous of others who were working (1) and being unable to afford basic items (1).

'I feel umm hopeless. Because you know you're here, you're already here, but you're wasting time, you know. And jealous to the other working'

- AMY

'I am upset about the whole thing, because I'm, I'm not doing anything criminal, I really would like to support my children and my brother who is jobless'

- JOANA

'Of course I feel so worried, and sometimes I feel sad like that. I want to work, definitely yeah. I'm just worried, I feel sad like that, and hoping the result is good like that, all the time. I just pray to god. I don't have any bad intention here in this country, just to earn money so that I can go back to the Philippines, so that I have children depending on me'

- ELSA

'It's very difficult because I feel embarrassed when I'm with my other friends.'

- STEFANIE

'I feel like I'm good for nothing, erm, I can't help my family'

- NATASHA

'I'm really sad because we're already here in the UK where we could really achieve our, our burning potential if we're, we're allowed to. Especially my children they, they have their dreams and I would like to be able to help them achieve those dreams'

- MIAN

'Of course so bad I'm always crying, praying, what can I do? Praying that lord, please let them the government allowed me to work... It's not easy, it make me always thinking, make me sick you know'

- MARIA

The portrayal of emotions such as frustration, sadness and anxiety demonstrate the broader impact of denying the right to work, beyond its financial consequences. It is also notable that some workers felt punished for seeking a referral to the NRM, denied permission to work, and prevented from supporting themselves and their families.

CONCERNS FOR FAMILY

All workers without permission to work were concerned about the impact on their families abroad as they were unable to send remittances to pay for health costs, their children's education, rent and household bills, including one worker who was fearful of returning home without having repaid her family's debts. Workers said it was important they have permission to work whilst awaiting the outcome of their trafficking claims due to their finances and the difficulties faced by their families (12).

'Because I would like to provide for my children and make sure they are able to finish school and also to provide medical treatment for my parents'

- NICKY

'If I had permission to work, I mean I can't be, I don't know how much I can earn but I feel happy, comfortable, and to be relaxed because, even food or I can send to my family to buy food, to buy them, even to rent a house, you know because evacuation is very hard. I can't help them for them everyday life, needs, everyday needs. It's very hard for me and sometime I'm thinking why will be happen this for me'

- MARIA

Specific problems mentioned were money problems including debt (7); being unable to afford education and related costs (6); being unable to afford health costs (3); and being unable to afford housing and / or bills (1).

'Like now this coming June it's like the starting of the school. They need some stuff for school, uniforms, and they need to pay the bills last year but I don't have'

- ELENA

'It's been extremely difficult for them, er as my parents are ill, er, my children are not in school because I haven't been able to send money... If there is money then yes they can go to a doctor but if there is no money, then er they just have to – they, because we live in the mountains, in the mountains, so it's very hard, very expensive to seek medical treatment'

- NICKY

'Too much, because, one year now, from May, from May, last year May we have a war in my place... all the house down because of the ISIS war and the government military and the ISIS war. So my family all of them, all the people will go in evacuation and my family staying in evacuation in how many months... When I talk with them, they need help but what that I do you know'

- MARIA

One response said they felt they were wasting time in the UK by not being able to work but hoped for a positive outcome so that in future she could earn and provide for her family.

'So I would have the opportunity to save money, er so whatever the decision of the Home Office, that if we are sent back then at least I have something, some money to bring with me when I go back'

- MIAN

One worker said that government policy in denying her permission to work was increasing the danger she and her family faced:

'It is very necessary that I work, because my husband and I owe a lot of money, and they are now exerting pressure on us, specially (sic) now they know I'm abroad... That is the reason why I do not want to go home without money because my life is in danger.... Yeah, they forcing me to pay my debt... They believe, they think that because I've been abroad for two years I have money'

- JOANA

MADE DESTITUTE AND AT RISK OF EXPLOITATION

The responses reveal that denying the right to work to migrant domestic workers in the NRM exacerbates their vulnerability to being re-exploited on account of their inability to meet their essential needs in the UK and reduce the debt their families incur whilst they are abroad and not able to send remittances home.

Five of the workers denied permission to work disclosed they are working informally in order they can support themselves and provide for their families. One reported working as a manicurist and the other four as domestic workers. Three of these four reported working every day for people they were living with and one reported working occasional days, depending on when she was offered work by her friends. Of the three working every day, two reported being paid £100 - £120 a week, which (although the hours were not fixed) is realistically likely to be well below the National Living Wage, and the other was not paid at all for her work and just received free meals and accommodation. Of the three interviewees working every day, all reported they would be too afraid to complain if they did experience any abuse given they were working without permission.

In contrast, workers with permission to work reported having at least one day off a week. Two were live-in domestic workers and nine were living out and paying rent. Seven reported they were paid £10 per hour or more and two were paid under £7²³ – both of these were in receipt of outreach support given the difficulties they had experienced in finding work, including one who had no proof of her right to work as this had not been stated on her reasonable grounds notification. None reported abuse with their current employer but one worker did report being threatened by the employer she immediately worked for after she escaped:

'Because I'm scared, you know that guy because every time he want to talk to me in the room and he closed the door and he asking me do you have AIDS, do you have like you know infection, like sex infection'

- EVA

²³ Where an interviewee was not able to state a fixed hourly rate, this was calculated using their weekly or monthly pay and number of hours worked. It was not possible to calculate the hourly rate for the 2 other interviewees given the changing hours of their work.

Having decided it was best for her to leave and asked to be paid for her week's work, her employer threatened to take her to a police station because he said she was in the UK illegally. The fact that this worker was able to leave this employer after being threatened demonstrates the importance of having permission to work and therefore the right to change employers when issues arise.

Overall, therefore, those with the right to work were more likely to have work with pay at or above living wage levels, while the pay of those without the right to work was lower if they were paid / had work at all. Likewise, those with the right to work had some restriction on their hours, whereas those without the right to work suffered from very irregular / occasional hours and / or an expectation that they work every day, if they had work at all, with others entirely reliant on community support and facing destitution.

BENEFITS TO WORKING

Workers with permission to work were grateful for the opportunity to provide for their families and pay off debts that had led them to look for work abroad:

'It's really big er opportunity working here while waiting about the decision, because while waiting I can still work and I can still have, can still continue helping with my, with my family, especially the needs of my parents'

- JOSEFINA

'It's a big, it's a blessing for me that I can work. Because er, that means, that can give me opportunity to find a, find a nicer job and the opportunity to earn a little bit more, so that I can, er, support my, er family at the same time, at the same time I can be slowly slowly pay all the debt that we had and save a little amount of money and, and able for me to support myself as well'

- SAM

'The decision of the Home Office that I am allowed to work, so, still being, helped me to find, earn the money, and I sent to my daughter in the Philippines, so I can er, support the studying until now, that is, I thankful for that'

- LISA

Six workers with permission to work reported being in a better financial position and able to support their dependants. Their wages meant they were able to help pay for health costs, rent and household bills, education fees and help with setting up a business to support the family. One worker reported that having permission to work meant that she would be able to return and be with her family sooner.

Additionally, five workers reported that their families felt less worried and one referred to feeling safer:

'When I told them that I have a paper that I am allowed to work here, so now the fear I felt before is just like turned, it's just like they don't feel any worry, and they are comfortable now that I am secure'

- JOSEFINA

'At first my family worried about me because I have no, er, identification here, so I'm illegal because I'm run away. And then when I received the decision of Home Office, so, my family is not too much worry. But I said this is not permanent, because if, I waiting for the second decision of Home Office'

- LISA

It is therefore evident that permission to work brings a number of benefits including a greater opportunity for decent-paid work with regulated hours and continued capacity for supporting family members – which, for all workers interviewed, was the reason for migrating in the first place.



KEY FINDINGS AND RECOMMENDATIONS

1. Government policy to deny the right to work is arbitrary and unfair and fails to consider the barriers migrant domestic workers face in seeking a referral to the NRM whilst their six month visa is still valid.

Workers reported they had no or limited control over when they could escape their abusive employer and did not know who to contact for advice or assistance as they were provided with no information during the visa application process or after they arrived in the UK. As a result they sought support from strangers and community members to avoid becoming homeless and destitute. It is only through this support that workers learned of Kalayaan and were identified as victims.

RECOMMENDATION: Claimed safeguards during the visa application process must be rigorously enforced. It must be universal practice for all migrant domestic workers attending the visa application centre to be seen physically apart from their employer and to receive verbal and written information in a language they can understand informing them of their rights in the UK, including where to get assistance from should they suffer abuse. These terms must be expressly referenced in the contract between UK Visas and Immigration and commercial partners providing services at Visa Application Centres.²⁴

RECOMMENDATION: Information sessions must be implemented without further delay and be made mandatory for all workers to attend to ensure their fundamental rights are protected.²⁵

2. Migrant domestic workers denied permission to work in the NRM are made to survive on destitution-based levels of subsistence. Given that they cannot provide for themselves or their dependent relatives, this makes workers vulnerable to further harm and exploitation by forcing them into informal and exploitative work. This issue is compounded by the extensive delays to conclusive grounds decisions and workers not knowing when a decision can be expected.

This is in sharp contrast to those with the right to work who reported feeling more secure and self-sufficient. These workers will be able to demonstrate they can maintain and accommodate themselves without recourse to public funds if they are not granted discretionary leave and have to apply for further leave to remain.

RECOMMENDATION: All migrant domestic workers referred to the NRM, irrespective of their visa status, must be granted permission to work. This would prevent them falling into destitution and at risk of exploitation, enable them to support themselves and their families, improve their mental health and assist in their recovery. Further, it would also ensure workers are not pressurised in to having to exit support services under the NRM and enter exploitative work in order to meet the requirement to be self-sufficient should they have to apply for further leave to remain.

²⁴ Independent Review of the Overseas Domestic Worker Visa, paragraph 62 and Kalayaan, Information Meetings Home Office Pilot – Proposed Minimum Standards, 15 March 2018 <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Minimum-standards-for-ODW-information-meetings-15-03-2018.pdf>

²⁵ Ibid

3. Reasonable grounds notifications are not accepted by prospective employers or employment agencies as proof of an individual's right to work whilst they are in the NRM and the Employer Checking Service is too difficult to navigate. Employers want to be presented with documents which clearly demonstrate a right to work or they will not offer work for fear of hiring an individual disqualified from working.

Reasonable grounds notifications refer to two different timeframes which leads to confusion and uncertainty. The letter states that at the end of the 45 day recovery and reflection period, a decision will be made whether there are conclusive grounds to believe the individual is a victim. The letter also records that a worker's leave and their permission to work in the UK will be extended until 28 days after a conclusive grounds decision is made but does not provide the authority for this. This makes many employers justly assume that workers can only work up until 28 days from the end of their 45 day recovery and reflection period.

RECOMMENDATION: Reasonable grounds notifications must say in clear and unambiguous language at the outset that a worker's permission to work in the NRM extends beyond the 45 day recovery and reflection period and continues until they receive a conclusive grounds decision.

RECOMMENDATION: Reasonable grounds notifications must expressly state that workers who entered the UK on the ODW visa (and under the Tier 5 visa category) have the right to apply for further leave to remain if they are not granted discretionary leave on account of their individual circumstances. Kalayaan has had sight of a significant number of notifications that only refer to discretionary leave.

RECOMMENDATION: Migrant domestic workers in the NRM should be issued with an Application Registration Card endorsed with their right to work. This would act as their form of ID in the UK which they can show to prospective employers together with their reasonable grounds notification.

4. Migrant domestic workers are not able to tell prospective employers how long they will be in the NRM for which is not desirable for employers looking for someone to work in their private household. Many victims in the NRM report feeling in limbo with the uncertainty of not knowing when a conclusive grounds decision will be made. Much stability would be provided to all victims if they were given realistic timescales beyond the 45 day recovery and reflection period when they can expect a decision and periodically kept updated and informed if this timescale cannot be kept to.

RECOMMENDATION: The Home Office should update workers of the status of their claims under the NRM every 6 months and provide them with a letter which they can then show to their current or prospective employers together with their Application Registration Card.

²⁶ Section 26A of the Immigration Act 1971 provides that an Application Registration Card can be amended to include people other than asylum claimants.

KALAYAAN
Justice for migrant domestic workers

