



The Rt Hon Robert Jenrick MP  
Minister for Immigration  
Home Office

cc The Rt Hon Mark Spencer MP  
Minister for Food, Farming and Fisheries  
Department for Environment, Food and Rural Affairs

11 May 2023

Dear Minister,

### **Seasonal Worker visa: UK government's responsibility for ensuring fair recruitment**

We are civil society groups based in the UK, Nepal and Bangladesh, working to promote and protect migrant workers' rights, and academics researching the situation of migrant workers. We are writing to express our concerns at the latest media reports that workers who have travelled to the UK on the Seasonal Worker visa route (SWS) have been left in severe debt - in some cases amounting to debt bondage - having paid thousands of pounds in recruitment fees to secure jobs in the UK. Risks of exploitation on the Seasonal Worker visa route have been highlighted since the 2019 pilot by the former Independent Anti Slavery Commissioner and in NGO research. The government's own review of the pilot identifies a number of areas for improvement. We stress that it is not a sustainable solution for Scheme Operators simply to switch recruitment to alternative countries of origin when evidence of abusive practices emerges, and we wish to instead highlight several elements of the Seasonal Worker visa's design that require adjustment; at present they compare unfavourably with international standards and comparators, and leave workers at heightened risk.

We understand that Scheme Operators have taken the decision to cease recruiting in Nepal this year, and at least one has recently started to recruit workers from Bangladesh. We are deeply concerned that failure to address the underlying issues in the Scheme will simply lead to problems encountered in one country being replicated in another country, with another group of at-risk workers, and without avenues for redress in place for workers who have been left in debt by the scheme. Just as the widespread charging of Nepali migrant workers for jobs has been well-documented for many years, a 2020 Cost of Living survey published by the Bangladesh Bureau of Statistics, with the support of the International Labour Organisation (ILO), found that Bangladeshi migrants pay on average £3,200 to secure jobs overseas. For context, the GDP per capita in Bangladesh is less than US\$2,500 (£2,000). In any migration corridor where the number of jobseekers in origin states is of several orders greater than the number of jobs available in available destination states, the intense competition creates opportunities for unscrupulous recruiters, employers, and intermediaries on both sides of the corridor to exploit jobseekers by charging fees.

These are foreseeable risks that responsible destination governments must address, as identified in the 2021 *Five Corridors* study of the regulation of recruitment of migrant workers in nine countries, including Nepal. The research, anchored in ILO and IOM fair recruitment guidelines, found that it is destination states, not origin states, that have the most levers to ensure fair recruitment, and that under-regulation in destination countries creates demand for unethical recruitment in origin states. It is critical in this regard that the UK government takes proactive steps to address the risk of fee charging and associated exploitation. We note that the Guidance for Scheme Operators and government's statements to Parliament state that it holds Scheme Operators "responsible for managing the recruitment and placement of workers on UK farms, and ensuring their welfare in the UK". It is insufficient to delegate tackling abuse to private sector labour agencies: the government has an obligation to provide effective bilateral relationships, a clear framework for recruiters, and enforcement to ensure compliance. As you know, a cross-sector taskforce is working to develop collective approaches to improve protections for workers, but the effectiveness of this work will be hindered if not accompanied by stronger government action.

### **Requiring Scheme Operator supervision of overseas partners**

The top recommendation to destination state governments in the *Five Corridors* study was that they should create the market conditions for fair and ethical recruitment: a key element of this is holding employers and recruiters based in the destination country accountable for the charging of fees, wherever it takes place. Recruitment fees are not generally paid directly to sponsors/employers in the destination state. In this respect, we note with concern that under SE3.9 of the "Guidance for Sponsors", Scheme Operators are required only to "not place any additional charges on participating workers, beyond the costs of administering the scheme". There are limited legal or other consequences specified for Operators who fail to ensure, through meaningful due diligence and supervision, that their partners in origin countries do not themselves charge workers for their recruitment and related costs. This is a significant gap in the current compliance arrangements. The fact that their origin country partners must not charge fees for work-finding services as a condition of their GLAA licensing does not adequately mitigate risks, particularly in light of well-documented concerns about the GLAA's enforcement capacities and the challenges it faces carrying out its mandate in other jurisdictions. We draw your attention to measures in other jurisdictions that are designed to fill this gap. For example, in the Canadian province of British Columbia, labour recruiters are liable for the actions of their overseas partners and pay a financial security bond as part of their licensing application, which can be drawn upon to repay victims of abuse - a measure designed to incentivise them to properly oversee the activities of partner agencies in origin states.

### **Employer Pays Principle**

An aspect of the SWS design that raises particular concern is the fact that workers are expected to cover all migration costs, including flights and visas. Such a policy sits at odds with the Employer Pays Principle, and the ILO definition of recruitment fees and related costs, which makes clear (para 12) that travel and visa costs are to be considered related to the recruitment process and thus to be borne by the employer. We note that the Home Office is currently making over 100% profit on each individual SWS visa application. The impact of imposing such costs on migrant workers is exacerbated by the SWS's limited six month visa, which means that travel costs comprise an even more significant proportion of workers' potential earnings, with lack of continuity of employment an exacerbating factor.

### **Cooperation with origin states**

The UK government should work far more closely with origin state governments. Bilateral cooperation over recruitment can significantly reduce the risk of abuse: when the Malaysian and Bangladeshi governments worked together between 2012 and 2015 to recruit agricultural workers, this reduced fee payment by about 8 - 10 times, according to the ILO. Mexico and Canada have an established seasonal agricultural worker programme, under the terms of which Mexican consular officials can carry out dedicated visits to check on workers, visiting 300 farms in

2022. The SWS, however, is so designed that scheme operators recruit from where they choose. According to the Independent Chief Inspector of Borders and Immigration (para 9.9), Home Office officials have no powers to influence operators' choices of countries to recruit from. We understand that the FCDO is now working, alongside the IOM, with the Tajik and Kyrgyz labour ministries to drive responsible recruitment into the Scheme, and we encourage any positive measures agreed with these or other governments to be developed into binding, transparent agreements that are monitored for implementation, and contain enforcement mechanisms.

### **Gaps in government compliance programme**

Enforcement is essential to ensure fair conditions, including recruitment, for migrant workers. We have therefore been alarmed by the finding of the Independent Chief Inspector of Borders and Immigration in his report from September 2022, that, "the Home Office has not demonstrated that it has the mechanisms or capabilities in place to assure itself that scheme operators are meeting compliance requirements. When serious concerns have been raised by workers themselves, it did not act promptly or seriously". As the report points out, unless government guidance is "underpinned by policies, resolve and resources, [the guidance] is unlikely to make a material difference". We welcome that the department has accepted all the ICIBI's recommendations, and urge you to take action on the report, upgrading the capability of the Home Office to ensure the protection of seasonal migrant workers. However, we also highlight that a safe reporting environment is also essential to workers feeling comfortable in reporting instances of exploitation so that enforcement agencies can take proper action. In this respect, it is essential that Labour Market Enforcement agencies carry out proactive farm inspections and monitoring, independently of immigration authorities or the Home Office, and that they commit not to share any personal data with the Home Office, including immigration status.

### **Simple and accessible remedy processes**

International standards on fair recruitment call upon destination states to design simple and clear remedy processes, including the introduction of fast-track processing to reflect the particular vulnerability of migrant workers to delay. We are deeply concerned by the fact that according to conservative estimates by experts, migrant workers paid £35 million in 2022 alone for their recruitment to the UK's agriculture sector. In December 2022 investors with £806bn assets under management and advisory called on UK retailers to work with suppliers and all businesses in the UK agricultural supply chain to agree and implement a fair process to repay SWS workers' recruitment fees and related costs. The government should actively support and facilitate this process. Workers must be able to access information and independent advice about their employment rights, including access to legally-aided advice and representation when needed. As workers on the scheme are only in the country for six months, it is not feasible in practice for them to access an employment tribunal in cases of underpayment and wage theft. In addition, a fast-track complaint route and options for compensation should be available.

### **Structure of the Seasonal Worker visa**

We also reiterate concerns raised previously regarding the need for fewer restrictions on the visa, by providing: flexibility for workers to switch sponsor without incurring costs; guaranteed transfers to a different sponsor without incurring costs for the remaining duration of a visa if a Scheme Operator loses their licence; and clarity on the transfer process between employers, including any grounds for refusing a worker's request for a transfer. Visa and related enrolment fees should not be charged at recruitment phase, and clear information about the visas should be provided by the Home Office in the language of the country they operate in. Terms and conditions of employment should be provided to the worker prior to their arrival in the UK, translated into the worker's language. Workers must be guaranteed paid work or the equivalent income for the full six months of the visa, at a minimum of 35 hours per week (given reported labour shortages) and if not, compensation should be paid. The visa should allow access to public funds, and subject to ongoing employment, should be renewable, and should include a route to settlement.

As one of the ILO's founding members, celebrated internationally when it passed the Modern Slavery Act in 2015, we look to the UK to demonstrate international leadership in its recruitment of migrant workers who are making such an important contribution to the UK's economy and society. We hope that you will give consideration to these suggested measures, with the aim of strengthening protections and ensuring compliance. We would be happy to meet with you to discuss these issues in more detail. We look forward to your response.

Yours sincerely,

James Lynch, Co-director, FairSquare

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