



## Rights Lab Research Briefing 6: November 2019

# Modern slavery risk in the adult social care sector

Rights Lab briefing on the findings of two studies by Dr Caroline Emberson and Dr Alex Trautrim, May 2019<sup>i</sup>

*Gaps in existing legislative and regulatory frameworks for the procurement of adult social services leave care-workers at a heightened risk of modern slavery.*

### Key research findings

The devolution of responsibility for adult social care to regional legislatures, combined with local authority budgetary cuts, has led to an increasingly marketised and fragmented care sector. This fragmentation, and the sector's reliance on outsourcing and flexible, 'unskilled' labour, has increased the risk of care-worker exploitation.

Using adult social care services in Nottinghamshire as a case example, researchers found serious risk of forced labour and abuse in the work force. Identified risks included:

- 1. Debt bondage** – migrant workers were found to have borrowed money to travel to the UK for employment and were working in the care sector to pay off their debts.
- 2. Remuneration risks** – such as the withholding of wages, excessive deductions from wages for food and rent, receiving a rate of pay below the national living or minimum wage, or not receiving a wage at all. Migrants, particularly those who have no legal right to work, were found to be especially vulnerable.
- 3. Recruitment and selection risks** – care home managers acknowledged that the use of recruitment agencies left open the possibility of omissions in recruitment and selection checks that fall short of regulation guidelines.
- 4. Occupational risks** – care-workers who received direct payments from the local authority to act as personal assistants were found to be particularly vulnerable to excessive overtime, the threat of physical violence and the risk of sexual abuse.

### Why is this important?

Demand for labour in the care sector is high and is set to increase due to an aging UK population. To date though, regulatory policies have focused on care-workers' role in protecting service-users' human rights, not on the risks to care-workers themselves. Given the high risk of labour exploitation and modern slavery in the adult social care sector, it is of pressing importance that local authorities and adult social care providers take meaningful steps towards ensuring decent labour standards.

At present, public bodies, including local authorities, have no statutory duty to publish an annual modern slavery statement under Section 54 of the 2015 Modern Slavery Act, and few commercial private sector providers in the social care sector meet the £36 million threshold for mandatory disclosure. The absence of a legal obligation on providers to assess and address modern slavery in their supply chains means that worker abuse and exploitation in the adult social care sector may not be identified.

### Recommendations for local authority commissioners

*For support with the below, refer to [this 7 step guide<sup>ii</sup>](#) to responsible recruitment from allianceHR, which provides whitepapers, labour provider audit tools, model policies and access to the Responsible Recruitment Toolkit.<sup>iii</sup>*

- Evaluate the risk of modern slavery and worker exploitation in your adult social care supply chains.
- Embed considerations about modern slavery risk in due diligence processes at the contracting stage, and in performance monitoring.
- Move to lower risk models of service delivery/staff recruitment by, for example, using Direct Payment Support Services to help direct payment recipients with administration and payroll.
- Extend modern slavery training to adult social care providers' employees, including agency staff, e.g. through council workforce development programmes.
- Ensure effective information sharing between council staff, recruitment agencies and care-workers to help reduce occupational risks.

### Recommendations for the UK Government

- Extend Section 54 (Transparency in supply chains) of the 2015 Modern Slavery Act to public authorities.

## Research overview

In 2017, the Rights Lab conducted a pilot evaluation of modern slavery risk in adult social care in Nottinghamshire. Two different labour chains were examined – residential care and nursing homes, and direct payment provision (whereby patients receive cash to spend on the services of personal assistants).

The study examined the relationships between the local authority and the care-workers who delivered the care it financed via, firstly, its residential care and nursing home providers and the agencies that they used for temporary, flexible labour and, secondly, the service providers who provided payroll and administrative support to service-users who used personal assistants.

Ten semi-structured interviews and a survey of 341 residential care and nursing homes were conducted. Fifty survey responses were returned. In 2018, a workshop was also conducted with direct payment staff at the local authority and representatives from their direct payment support service providers.

**The research found that the changing nature of the provision of adult social care - from the employment of care-workers directly by local authorities to more 'flexible' employment relationships involving a range of intermediaries – may jeopardise the safety of care-workers and the employment standards they could expect to enjoy.**

## Changing landscape of adult social care

Adult social care involves supporting individuals with personal care activities, such as eating, washing or getting dressed, and domestic routines, such as cleaning or shopping. Residential care includes the provision of accommodation, while nursing homes, in addition, support individuals with disabilities such as dementia. Direct payments for adult social care can be made under the Health and Social Care Act (2001)<sup>iv</sup> to purchase a range of these and other personalised services, both inside and outside an individual's home.<sup>v</sup>

In 2017-18, local authorities in England spent £17.9 billion on the procurement of essential services related to adult social care.<sup>vi</sup> There has been a decline in local authority-run homes and a corresponding increase in the number of privately owned and run establishments. There has also been a shift from the direct employment of care-workers by local authorities to more 'flexible' employment relationships involving a range of intermediaries, such as recruitment and home care agencies.

The transition to a contracting-out model of procurement and the distancing and dismantling of employment relationships between the local authority and the care-worker have altered

working conditions for care-workers. Such changes may undermine just and effective conditions of employment for carers and jeopardise the dignity and quality of care provided to those who need it.

These emerging sectoral characteristics, including the reliance on outsourcing and flexible, 'unskilled' labour, have been found in other settings, such as the agricultural sector, to increase the risk of modern slavery, and specific concerns about modern slavery in care have been raised by academics and other experts, including the Welsh Anti-Slavery Coordinator<sup>vii</sup>.

## Flexibility v. Risk

Despite potential benefits in terms of organisational efficiency and care personalisation that the marketisation of adult social care can deliver, the study showed how the move to a longer and more complex adult social care labour supply chains has weakened managerial oversight over care-workers and heightened risks associated with forced labour. This may have led to a widespread and serious deterioration in the employment conditions experienced by care-workers.

These findings are of particular concern due to the gap in human rights accountability resulting from the combined effects of:

- 1. The lack of applicability of Section 54 of the 2015 Modern Slavery Act to public sector procurers.**

Local authorities currently have no statutory duty to comply with the 'Transparency in supply chains' (TISC) provision in the Act to publish a slavery and human trafficking statement each year, despite their considerable annual spend.

- 2. A fragmented care industry structure which leaves the majority of firms operating below the MSA's £36 million threshold for transparency in supply chains (TISC) reporting.**

With the exception of the 'Big 4' (BUPA, Barchester, Four Seasons and H-C One), few commercial private sector providers meet the £36 million threshold for mandatory disclosure.

- 3. The controversy surrounding care home providers' accountability under Section 6 of the Human Rights Act 1998.**

The introduction of Direct Payments, where patients receive cash to spend on the services of personal assistants in the community, raise concerns over the gaps in the regulatory protection of workers which may exist in this part of the industry.

<sup>i</sup> Emberson, C. and Trautrim, A. 2019, "How might modern slavery risk in adult social care procurement be reduced?", in Public Procurement Global Revolution IX, June 16-18, University of Nottingham. And, Emberson, C.; Trautrim, A. (2019), "Public procurement and modern slavery risks in the English adult social care sector", in 'Public Procurement and Human Rights: Opportunities, Risks and Dilemmas for the State as Buyer', Corporations, Globalisation and the Law series edited by Olga Martin-Ortega and Claire Methven O'Brien, Edward Elgar.

<sup>ii</sup> <https://responsiblerecruitmenttoolkit.org/download/4064/>

<sup>iii</sup> <https://responsiblerecruitmenttoolkit.org/>

<sup>iv</sup> T. Jarrett "Social Care: Care Home Market – Structure, Issues, and Cross-subsidisation (England)" House of Commons Briefing Paper Number 8003, February 13, 2018 <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8003> accessed April 5, 2019.

<sup>v</sup> Charlotte Pearson and Sheila Riddell, 'Introduction: The Development of Direct Payments in Scotland' in Charlotte Pearson (ed), *Direct Payments and the Personalisation of Care* (Dunedin Academic Press 2006); Joanna Bornat, 'Introduction' in Janet Leece and Joanna Bornat (eds), *Developments in Direct Payments* (The Policy Press 2006)

<sup>vi</sup> NHS Digital, "Adult Social Care Activity and Finance Report England – 2017-2018" NHS Digital, October 23, 2018 <https://digital.nhs.uk/data-and-information/publications/statistical/adult-social-care-activity-and-financereport/2017-18> accessed April 5, 2019; M. Hesselman, A. Hallo de Wolf and B. Toebe (eds.), *Socio-Economic Human Rights for Essential Public Services Provision*, (Routledge, 2016).

<sup>vii</sup> A. Balch, "Understanding and Evaluating UK Efforts to Tackle Forced Labour" in L.Waite, G.Craig, H.Lewis and K.Skrinarkova (eds.), *Vulnerability, Exploitation and Migrants: Insecure Work in a Globalised Economy* (Palgrave Macmillan, 2015); G. LeBaron, "Subcontracting is not Illegal, but is it Unethical? Business Ethics, Forced Labour and Economic Success" (2014) 20 The Brown Journal of World Affairs; G. Craig and S. Clay, "Who is Vulnerable? Adult Social Care and Modern Slavery" (2017) 19 The Journal of Adult Protection 21; C. Emberson and A. Trautrim, "Public Procurement and Modern Slavery Risks in the English Adult Social Care Sector" in Olga Martin-Ortega and Claire Methven-O'Brien (eds), *Public Procurement and Human Rights: Opportunities, Risks and Dilemmas for the State as Buyer* (Edward Elgar 2019); J. Kidd and J. Manthorpe, "Modern Slavery – The Adult Safeguarding Interface" (2017) 19 The Journal of Adult Protection 158.