

Ethical Recruitment Training

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What we will cover

1. Overview of Ethical practices in International Recruitment and Modern Slavery for Social Care Providers including:
 - Modern Slavery Act
 - Code of Practice Guidance on ethical recruitment
 - Financial exploitation and other modern slavery traps
 - Rules on recruitment from overseas
 - Modern slavery and displaced migrants



Our services for care providers

- Employment and immigration law
- CQC registration
- Challenging CQC inspections and enforcement
- Service user contracts
- Local authority fee negotiations
- Safeguarding and inquests
- Mental capacity and Court of Protection
- Business sales and acquisitions
- Property development , construction and finance

Recruitment issues

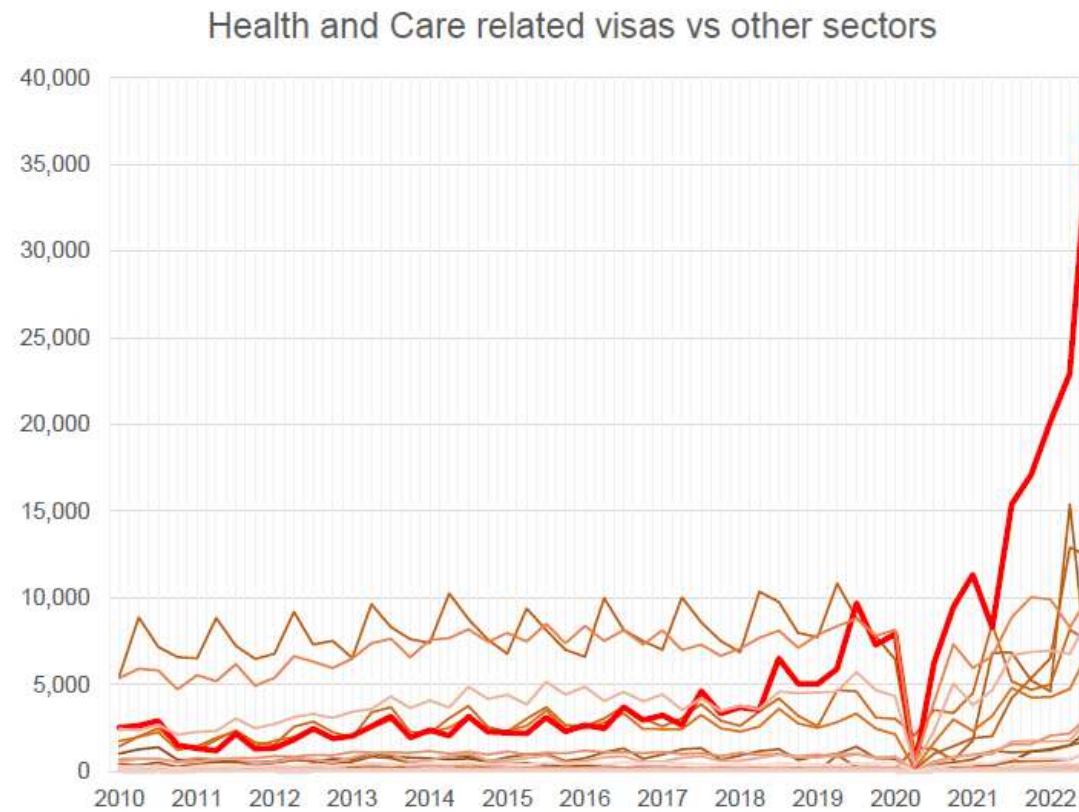
Major shortage of care workers - significant surplus of vacancies within the care sector - 152,000 current vacancies;

International recruitment becoming increasingly common for care workers/senior care workers/nurses

Domestic recruitment market unable to cope with demand;

‘International’ recruitment covers recruitment of foreign workers already in the UK

Health and Care related visas vs other sectors



Ethical International Recruitment

- Ethical recruitment involves protections to both migrant workers themselves and the internal systems of the sending country;
- Safeguards are in place to ensure that existing workforce shortages are not made worse.

Modern Slavery

Unseen UK, one of the UK's leading modern slavery charities, reported that 2022 was the organisation's busiest year in terms of helpline referrals since its inception in 2015, and **labour exploitation was by far the most common form of modern slavery, more than sexual exploitation, domestic servitude and criminal exploitation combined.**

Between 2021-2022 Unseen saw a massive 606% increase of cases in the care sector with a 1,024% increase in potential victims. Almost all victims and potential victims are non-UK nationals **many brought in through purportedly legitimate international recruitment channels.**

Occasionally, employers - through a combination of economic and logistical pressures - may be tempted to cut corners in regard to their recruitment practices. The civil penalty for inadvertently employing an illegal worker is £20,000 per worker; the criminal sanction for wilfully employing an illegal worker is an unlimited fine and/or 5 years in prison. Should an employer be found to breach modern slavery laws, claiming ignorance will be no defence. The maximum sentence on indictment for Human Trafficking is 10 years in prison. Maximum penalty for slavery or servitude for forced labour is life imprisonment.

Modern Slavery Act 2015

1. (1) A person commits an offence if—

(a) the person holds another person in slavery or servitude and the circumstances are such that **the person knows or ought to know** that the other person is held in slavery or servitude, or

(b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

...

(5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.

Modern Slavery Act 2015

2 Human trafficking

- (1) A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.
- (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).
- (3) A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.
- (4) A person arranges or facilitates V's travel with a view to V being exploited only if—
 - (a) the person intends to exploit V (in any part of the world) during or after the travel, or
 - (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.

Code of Practice (CoP)

- **Code of Practice for the International Recruitment of Health and Social Care Personnel in England –**
Guide, not law so optional (but highly recommended);
- **Ethical Recruiters List**
List of Recruiting organisations that have signed up to operate in accordance with CoP - Mandatory for NHS providers, optional (but highly recommended);
- **Red and Amber List of Countries**
List of countries where recruiters must not actively recruit unless there is a government-to-government agreement.

Code of Practice (CoP)

Examples from the Code of Practice for Employers of Social Care Workers:

- Put in place and implement written policies and procedures to deal with dangerous, discriminatory, or exploitative behaviour and practice:
 - Establishing and promoting procedures for social care workers, service users and carers to report dangerous, discriminatory, abusive or exploitative behaviour and practice and dealing with these reports promptly, effectively and openly.
 - *The employer will be fully involved in the recruitment process.*

International health and social care personnel will have the same legal rights and responsibilities as domestically trained staff in all terms of employment and conditions of work. They will have the same access to further education and training, and continuous professional development.

Linked to duty to comply with wider UK law including employment law for sponsor licence holders.

Ethical Recruiters List

Simple way of managing compliance with the Code if using external recruiters

- Health and social care local employers and contracting bodies should only use recruitment organisations, agencies or collaborations who are on the code of practice ethical recruiters list;
- All recruiting organisations who have signed up to adhering to the Code of Practice appear on this list;
- Part of the application process involves passing a knowledge test about the Code of Practice;
- NHS Organisations are told only to use organisations on the ERL –adhering to the Code is a condition of NHS Trust IR funding;
- Helpful way for employers to find out about relevant agencies and other recruiting organisations.

CoP – costs and financial exploitation

It is illegal under section 6(1) of the Employment Agencies Act 1973 for any recruitment organisation, agency or collaboration based in Great Britain to charge a fee for providing a work-finding service to any person seeking a job.

Employers and contracting bodies will not contract recruitment organisations, agencies or collaborations that charge fees to candidates wishing to be considered for recruitment to the UK – check Ethical Recruiters List.

Debt Bondage: “Victims...are tricked into working for little or no money to repay a debt. An employer or controller will use different tactics to trap the victim in an endless cycle of debt which can never be repaid and may even be passed on to their families”. – *Gangmasters and Labour Abuse Authority*.

Debt bondage formally recognised as a breach of Article 4 ECHR prohibiting slavery or servitude (Silaidin v France [2005] ECHR 545)

Home Office will pay particular attention to signs during compliance visits

CoP – costs and financial exploitation

General Costs to employers for sponsorship:

- Sponsor Licence Fee;
- Certificate of Sponsorship fee (if relevant);
- Priority service fee (if relevant)
- **Immigration skills charge**

Non recoverable

Costs to the migrant worker:

- visa fee
- health surcharge (if applicable)
- priority service fee (if applicable)
- Ancillary costs (travel, accommodation etc).

Recoverable (if covered)

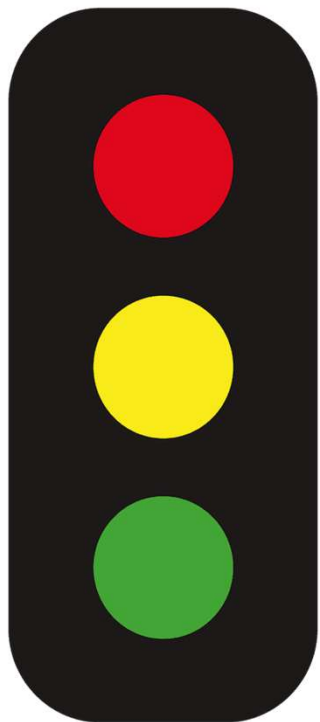
Recovery clauses are permissible within reason: DEBT BONDAGE

Where you can and can't actively recruit from - Red and Amber Lists

- **The WHO identified 55 countries with the most pressing health workforce challenges** and should be: *Prioritised for health system related support and provided with safeguards that discourage active international recruitment of health personnel.*
- **CoP Red list consists of 54 countries** (*exception: Nepal with whom UK has gov-gov agreement*)
- **Two amber list countries: Kenya and Nepal:** Active recruitment is restricted to specific pilots which have been set up under the terms of a Government to Government agreement.

Traffic Lights – Permitted vs Restricted

Recruitment



Active recruitment **not permitted** from these 54 countries
(published annex A of the Code – *Afghanistan, Pakistan, Sudan, Rwanda, Uganda, Zimbabwe*)



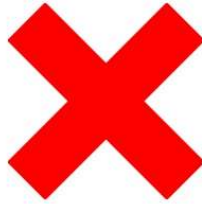
Managed recruitment **only on the terms of a Government to Government agreement** (published annex A of the Code - *Kenya and Nepal*)



Active recruitment **permitted from these countries** – these are all countries not listed as red or amber (*India, Malaysia, Philippines, Sri Lanka*)

Active Recruitment V Direct Applications

Active International Recruitment



UK employment opportunities, with the intention of recruiting to a role in the UK health or social care sector.

- An agency running a recruitment fair in a country on the red list highlighting health and care job opportunities in the UK.
- An employer offering an incentivisation bonus to a candidate if they refer someone from a red country

Direct Applications



When an individual makes an application directly and on their own behalf to an employer. Direct applications do not use a third party.

- An applicant from a country on the red list, applying directly and independently for a job in the UK.
- An agency or other third party recruiter may support an applicant from a country on the red list, after they have received a job offer from an employer via a direct application

Displaced Recruits

What happens when a sponsored worker loses their sponsorship?

If a sponsored employee is dismissed, the employer will have to inform the Home Office within 10 working days. The employee will essentially lose their right to work and live in the UK.

- Usually the employee will be given 60 days to regularise their stay before they will be deemed to be in the UK illegally (may not be the case if dismissed for gross misconduct)
- Current sizeable backlog of curtailment notices needing to be issued
- Options available to sponsored employees under a curtailment notice:
 - Find alternative employment with a licence holding employer;
 - Possibly may qualify for indefinite leave to remain;
 - Other visa routes may be available (spousal/dependent*/student)
- There is a risk that such employees will become vulnerable to exploitation/modern slavery tactics is offered 'sponsorship' from bogus recruiter.

**route not available from April 2024*

Questions?

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