

**RESEARCH
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WORKER-DRIVEN SOCIAL RESPONSIBILITY: EXPLORING A NEW MODEL FOR TACKLING LABOUR ABUSE IN SUPPLY CHAINS



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Worker-Driven Social Responsibility: Exploring a New Model for Tackling Labour Abuse in Supply Chains

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ACRONYMS

ACAS	The Advisory, Conciliation and Arbitration Service
The Agreement	Lesotho Agreement to Combat Gender-Based Violence in the Apparel Sector
The Accord	Bangladesh Accord on Fire and Building Safety
2018 Transition Accord	The second iteration of the Bangladesh Accord on Fire and Building Safety
The EU Trafficking Directive	The European Union Anti-Trafficking Directive 2011/36/EU
CBA	Collective Bargaining Agreement
CSR	Corporate Social Responsibility
EASI	Employment Agencies Standards Inspectorate
FFP	Fair Food Programme
FFCC	Fair Food Code of Conduct
FFSC	Fair Food Standards Council
FLSA	Fair Labour Standards Act
FLEX	Focus on Labour Exploitation
GLAA	Gangmasters and Labour Abuse Authority
HMRC	Her Majesty's Revenue and Customs
HRDD	Human Rights Due Diligence
HSE	Health and Safety Executive
IWGB	Independent Workers Union of Great Britain
MDSC	Milk with Dignity Standards Council
MWD	Milk with Dignity
OLSE	San Francisco Office of Labour Standards Enforcement
UK	United Kingdom
US	United States of America
WSR	Worker-driven Social Responsibility
WSR-	Worker-driven Social Responsibility Network

EXECUTIVE SUMMARY AND OVERVIEW

This scoping report explores a new model for tackling workplace abuse and exploitation in corporate supply chains, called 'Worker-driven Social Responsibility' (WSR). It aims to increase understanding and knowledge of the model and why it is needed. It recognises the successes of WSR in protecting workers in highly challenging contexts and builds on this to scope the adaptability of the model to the UK context. In doing so, the report provides useful insights on the transferability of WSR to new contexts and sectors, using the UK as a case study.

WHAT IS WSR, WHY IS IT NEEDED AND WHERE HAS IT BEEN SUCCESSFUL?

The report starts by identifying why current mechanisms for protecting workers' rights, from collective bargaining to state labour market enforcement and corporate-led initiatives, are struggling and why there may be a need for a new approach. In particular, it discusses the fracturing of employment relationships through the increased use of outsourcing and subcontracting, both domestically and internationally, and the impacts of this on workers' wages and conditions. It goes on to summarise the key features of WSR, specifically how it is different to other private sector initiatives that seek to regulate corporations – namely corporate social responsibility and multi-stakeholder initiatives – and the mechanisms that make it an exciting new tool worth exploring. These mechanisms are considered in practice through an analysis of the existing WSR programmes and the ways in which the model has adapted to, and been shaped by, the specific contexts and sectors in which it has been implemented to date.

KEY FEATURES OF WSR

1. **Standards for suppliers** developed by experts, usually but not always workers and their representative organisations;
2. **A legally binding contract** between the lead company in a supply chain and a workers' organisation obliging the lead company to only buy from suppliers who are compliant with the agreed standards;
3. **Support from the lead company to suppliers** to help them comply with the standards;
4. Tangible economic **consequences for non-compliant suppliers**;
5. **Education for workers** on their rights so they can act as monitors;
6. **A complaints mechanism** for workers to report violations without fear of retaliation;
7. **An independent monitoring body** that conducts regular inspections, responds to worker complaints and determines whether breaches of standards have occurred and whether the lead company can continue to source from a supplier; and
8. **Consumer pressure** to force lead companies to the negotiating table with workers.

HOW MIGHT TRADE UNIONS INTERACT WITH WSR?

Trade union density and collective bargaining coverage in the UK have declined. This combined with and linked to increased outsourcing in the private and public sectors has impaired trade unions' ability to challenge workplace abuses and raise standards. The report finds that the UK has experienced a particularly steep decline in trade union power compared to other European countries due to a combination of outsourcing, anti-union legislation, deregulation of the the labour market, and a lack of state-level support for collective bargaining agreements.

FINDINGS

WSR can be a useful tool for overcoming the challenges UK trade unions are facing. It has the potential to act as a means of negotiating with, and gaining official recognition from, the lead company in a supply chain, in addition to the direct employer, which is where union demands have usually been located. WSR agreements are legally enforceable in ways that collective bargaining agreements in the UK today are not, which could also aid trade unions. This could mean faster and more accessible enforcement that could be undertaken across multiple workplaces, because claims would not be reliant on individuals bringing them in employment tribunals or unions maintaining constant pressure on employers. In addition, the WSR model provides easy and appropriate routes for reporting abuse and non-compliance that are anonymous and intended to lead to a quick result.

Notwithstanding these positive potential uses of the model, some research participants interviewed for this report noted concerns. It was recognised that the effectiveness of any WSR programme will depend on the concessions workers are able to win from employers and how meaningful they are, which in turn is linked to the sector and context in which they operate and the pressure that it is possible to apply. Additionally, there are legal protections and rights for trade union members in the UK, such as protection from blacklisting, that would not be available for workers under WSR, which could have negative repercussions. In sum, then, the report finds that WSR agreements are highly context dependent. In some situations, other means, such as campaigning to bring workers in-house, may be more effective than turning to WSR, but the model provides a useful tool for when those means are not an option.

HOW MIGHT STATE LABOUR MARKET ENFORCEMENT INTERACT WITH WSR?

WSR has developed in contexts where state labour market enforcement is significantly failing to protect certain groups of workers, leading workers' organisations to seek out and implement private sector solutions for tackling labour abuse. FLEX wanted to explore how a WSR model might interact with state labour market enforcement in the UK, where some of the same governance gaps around labour market enforcement exist, but where they are perhaps less extreme compared to the contexts where WSR currently operates.

FINDINGS

It was recognised that enforcement is not working well enough in the UK today, especially for marginalised workers in low-paid and precarious sectors, and therefore alternative measures might be needed. However, as UK state labour market enforcement bodies can only enforce the law, not best practice, the option of them implementing a WSR model did not seem

feasible. Instead, the research explored to what extent aspects of the WSR model could be beneficial to state enforcement.

Several key opportunities for labour market enforcement bodies in all country contexts were identified from the research, including that they should:

1. Recognise the role that lead companies play in driving exploitation through their contracting and purchasing practices and make them liable for non-compliance in their supply chains through, for example, joint and several liability or mandatory due diligence legislation.
2. Recognise the importance of worker intelligence for labour market enforcement and create mechanisms for workers to report non-compliance in ways that protect them against retaliation, including in the form of immigration enforcement, and which will produce tangible and timely results.
3. Address worker precarity, for example by regulating zero-hour contracts and reducing the period during which workers cannot challenge unfair dismissal. Addressing worker precarity would enable more workers to report and stand up to employer non-compliance.
4. Invest in making sure all workers know their rights. There are numerous mechanisms for doing so, such as granting trade unions and other workers' organisations access to workplaces; doing outreach through workers' organisations and community groups; or providing pre-departure and on-arrival training for migrant workers on temporary migration programmes.
5. Involve and consult with workers and their representatives when developing legislation, standards and regulations that affect them.
6. Taking an example from the Health and Safety Executive, which has a tripartite governance board, have worker representatives on the governance boards of all UK labour market enforcement bodies.
7. Strengthen and support collective bargaining in the UK.
8. Give employment tribunals the power to make recommendations for the benefit of the whole workplace, not just the individual claimant.
9. Regulate outsourced companies and labour suppliers (agencies and gangmasters) through, for example, extending the GLAA licensing system to more high-risk sectors.

In summary, this report finds that WSR has been highly successful in some contexts and thus is important to consider in the context of today's increasingly fractured labour market. No model is a panacea and there will be contexts and sectors in which alternative strategies are needed to improve labour conditions, such as actions to bring workers in-house or improve collective bargaining coverage. However, it is evident that in many contexts, the WSR model provides important opportunities for enhancing workers' terms and conditions. In particular, and whether or not WSR agreements are introduced, there are several opportunities for labour market enforcement to learn from the success of WSR and implement aspects of the model for enhanced enforcement.

“

WHERE TRADITIONAL MEANS OF PROTECTING WORKERS' RIGHTS ARE STRUGGLING TO KEEP UP WITH CHANGES IN THE WAY WORK IS STRUCTURED, WSR PROVIDES A POTENTIAL SOLUTION TO WIN PRACTICAL GAINS FOR WORKERS AND PROTECT THEM AGAINST EXPLOITATION

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Fissuring creates longer and more complex supply chains and allows lead companies – brands at the top of the chain – to avoid liability for labour rights violations while retaining much of the power to influence, if not determine, the wages and conditions of workers”

1. INTRODUCTION: FISSURED WORKPLACES, OUTDATED RESPONSES

This report examines a new model for tackling labour abuse and exploitation in company supply chains, called worker-driven social responsibility (WSR). It explores how this model works and asks key questions about its applicability to help inform trade unions, labour inspectorates, businesses and civil society as we collectively search for ways to improve working conditions in the twenty-first century.

FRACTURED WORKPLACES AND A VACUUM OF LIABILITY

There is a growing need for a better response to workplace abuse and exploitation because of the profound changes that have taken place over recent decades, with which labour market enforcement mechanisms have not kept pace. Employment relationships have become increasingly fissured¹, i.e. broken into pieces, through practices such as offshoring, outsourcing and subcontracting. This is true for sectors that have long involved extensive subcontracting networks, such as apparel and agriculture, as well as for a variety of service industries that have more recently fissured.²

Fissuring creates longer and more complex supply chains and allows lead companies – brands at the top of the chain – to avoid liability for labour rights violations while retaining much of the power to influence, if not determine, the wages and conditions of workers employed by their suppliers and contractors. Lead companies across various sectors are shifting what are considered non-core activities – everything from cleaning and catering to manufacturing and accounting – onto other businesses at home and abroad to focus on creating a brand recognisable to consumers and investors.³

BOX 1. DEFINITIONS

Outsourcing – When a company hires another company to perform services that would traditionally have been performed in-house by directly employed staff.

Subcontracting – When a company hires an outside firm or person to do work as part of a larger project. An outsourced cleaning company may, for example, subcontract another cleaning company to perform a specialised task, such as window cleaning.

Offshoring – When a company moves its operations or part of its operations to another country to benefit from, for example, lower labour costs, fewer regulations or a more specialised labour force.

“Those who do not conform to pressures created by lead companies are put at a disadvantage relative to competitors willing to adopt poor practices to win lead firm business”

“The downward pressure on wages and working conditions is compounded by the fact that outsourcing, subcontracting and offshoring also make it harder for workers, consumers and the state to hold businesses to account”

“Unions must now negotiate with multiple smaller employers who are under pressure from their client companies to deliver services at the lowest possible cost”

Lead companies shape the conditions of work in their supply chains through, for example, demands for lower costs, tight delivery deadlines, fluctuating order volumes and unstable sourcing relationships. This leads to lower pay and poorer conditions for workers, as suppliers and supplier country governments compete for work on price and flexibility by reducing workers' pay and benefits and using increasingly casual, temporary or low-hour contracts.⁴ Those who do not conform to pressures created by lead companies are put at a disadvantage relative to competitors willing to adopt poor practices to win lead firm business.⁵

By shifting non-core activities to other companies and countries, brands at the top of the supply chain can reduce costs to their business. In addition to cost reduction, this practice also shifts risk because lead companies are not legally responsible for labour rights violations that workers in their supply chains may experience, as they are not directly employed by them. Instead, suppliers and subcontractors are legally responsible. Responsible lead companies often make efforts to address this by enhancing supplier standards. They may, for example, sign up to ethical trading principles, develop supplier codes of conduct, or employ auditing firms. However, these initiatives tend not to address the companies' own business models and practices that may inadvertently drive labour abuse and exploitation.

UNDERMINING WORKER PROTECTIONS AND UNION BARGAINING

The downward pressure on wages and working conditions is compounded by the fact that outsourcing, subcontracting and offshoring also make it harder for workers, consumers and the state to hold businesses to account. The speed at which supply chains have grown and workplaces have fissured, both domestically and internationally, has outpaced efforts to ensure decent working conditions and prevent labour abuse and exploitation.⁶

Changes to the structures of work have complicated trade unions' ability to organise workers and collectively bargain. Instead of dealing with one large employer with direct control and responsibility for workers' pay and conditions, unions must now negotiate with multiple smaller employers who are under pressure from their client companies to deliver services at the lowest possible cost.⁷ For example, the reception, security, kitchen, cleaning, housekeeping and catering staff working in one hotel may all have different employers and different employment terms, making collective action more difficult. The workers that trade unions are trying to organise are also increasingly precariously employed. The job insecurity created by part-time, temporary, fixed-term, casual and other precarious work arrangements, which are more common as a result of fissured workplaces, discourages workers from bargaining with their employer due to fear of retaliation.⁸ This can take the form of being dismissed or, for workers on casual or zero-hour contracts, simply not being allocated shifts on the following week's rota.

This uphill battle trade unions are facing has been further frustrated in contexts like the UK, where there have been concerted efforts to deregulate the labour market in response to employers' demands for flexibility and

⁴ LeBaron, G. et al. 2019. [Confronting Root Causes: Forced Labour in Global Supply Chains](#).

⁵ Blasi, J. and Bair, J. 2019. [An Analysis of Multiparty Bargaining Models for Global Supply Chains](#). Conditions of Work and Employment Working Paper No.105. Geneva: International Labour Office. p.1.

⁶ Blasi, J. and Bair, J. 2019. [An Analysis of Multiparty Bargaining Models for Global Supply Chains](#). Conditions of Work and Employment Working Paper No.105. Geneva: International Labour Office. p.1.

⁷ Huws, U. and Podro, S. 2012. [Outsourcing and the Fragmentation of Employment Relations: The Challenges Ahead](#). ACAS Future of Workplace Relations Discussion Paper.

⁸ Bornstein, J. 2019. Employees are Losing: Have Workplace Laws Gone too Far? *Journal of Industrial Relations*. Vol. 61(3): 438-456.

“Labour inspectorates are under-resourced and lead companies are let off the hook by national labour laws designed to regulate direct employment relationships”

“However, corporate self-regulation, and the emphasis on consumers and civil society scrutinising its efficacy, is not working”

reduced 'red tape'.⁹ There has arguably been a failure by the state to respond effectively to the changes brought about by the fissuring of workplaces and lengthening of supply chains. Labour inspectorates are under-resourced and lead companies are let off the hook by national labour laws designed to regulate direct employment relationships, not the multi-tiered labour supply chains created by outsourcing and subcontracting.¹⁰ Offshoring further complicates the picture due to the difficulty of regulating companies across borders and jurisdictions.

LOTS OF NOISE, TOO LITTLE IMPACT

Instead of introducing new regulations that would make lead companies liable for labour abuse and exploitation in their supply chains, such as joint and several liability¹¹ or mandatory due diligence¹², most states have left companies to regulate themselves. In the UK, Section 54 of the Modern Slavery Act 2015 provides a key example of this corporate self-regulation. It requires businesses over a certain size to report on what steps they are taking, if any, to tackle human trafficking and forced labour in their supply chains. It relies on companies to set the agenda against which they report and, with no current state-level monitoring of the quality of company reports nor sanctions for non-compliance¹³, consumers and civil society are expected to act as the main watchdogs to ensure meaningful corporate action.

In response to this legislation, the UK's corporate social responsibility (CSR) industry is booming. Industry-led initiatives are growing their clientele, with programmes, toolkits and auditing schemes presented as solutions for companies to tackle abuses in their supply chains. However, corporate self-regulation, and the emphasis on consumers and civil society scrutinising its efficacy, is not working. Research by FLEX and others has shown that current corporate accountability initiatives are not serving to bring about change for workers on the ground.¹⁴ This is because they are largely based on voluntary commitments by companies and their suppliers, broad standards that rarely go further than local labour law, and ineffective or non-existent monitoring and enforcement. In addition, industry-led initiatives rarely address companies' own business models and purchasing practices that have been shown to drive poor employment practices among their suppliers.¹⁵ These issues combined have led to significant frustration with corporate accountability measures: “CSR departments are trained to making very fluffy commitments and then do nothing; that's happening everywhere and in every sector.”¹⁶

CSR approaches also tend not to engage meaningfully with workers themselves or to recognise the importance of worker organising and collective bargaining in preventing labour abuses. Companies may include 'worker voice' provisions in industry initiatives, while simultaneously refusing to recognise trade unions or operating in countries or contexts where freedom of

⁹ Rigby, E. 2015. [Javid to Continue Business 'red tape challenge' with £10bn cuts](#). Financial Times. [Accessed: 26 February 2020]

¹⁰ FLEX. 2017. [Risky Business: Tackling Exploitation in the UK Labour Market](#)

¹¹ Trades Union Congress. 2018. [TUC Calls for Employers to be Made Liable for Abuses in UK Supply Chains](#).

¹² European Coalition for Corporate Justice. 2018. [Key Features of Mandatory Human Rights Due Diligence Legislation](#).

¹³ The UK government has recently undertaken a welcome [consultation](#) to explore how to enhance this part of the law, such as by introducing sanctions. FLEX has long called for such changes and has provided advice and input to the consultation. We hope to see firm commitments soon.

¹⁴ FLEX. 2018. [Seeing Through Transparency: Making Corporate Accountability Work for Workers](#); FLEX and ICAR. 2019. [Full Disclosure: Towards Better Modern Slavery Reporting](#); LeBaron, G. 2018. [The Global Business of Forced Labour: Report Findings](#).

¹⁵ LeBaron, G. et al. 2019. [Confronting Root Causes: Forced Labour in Global Supply Chains](#).

¹⁶ FLEX interview with WSR expert, 27 June 2019.

“The more businesses are required to regulate themselves, the less the state regulates businesses”

“Companies are no longer producing things, just branding things [...] so the majority of human rights violations are now in the supply chains of brands, not in the brand itself”

“WSR aims to make lead companies liable for conditions in their supply chains and put workers and their representative organisations rather than corporations in the driving seat of efforts to improve workplace practices”

association and the right to collective bargaining are systematically denied to all or some groups of workers. The ineffectiveness of corporate self-regulation is being compounded by ‘light-touch’ state labour inspection, including limited monitoring and enforcement of labour standards. The more businesses are required to regulate themselves, the less the state regulates businesses.

IS WORKER-DRIVEN SOCIAL RESPONSIBILITY THE ANSWER?

Where traditional means of protecting workers’ rights are struggling to keep up with changes in the way work is structured, WSR provides a potential solution to win practical gains for workers and protect them against exploitation. It seeks to address the fact that “capitalism has restructured itself so completely that companies are no longer producing things, just branding things [...] so the majority of human rights violations are now in the supply chains of brands, not in the brand itself”¹⁷. Increasingly this applies not only to productions supply chains, such as agriculture and garment manufacturing, but also to service sectors such as cleaning and catering. As one respondent summarised it, “the soup makers [caterers] at H&M are not employed by H&M – they are outsourced and the companies they work for are paying them within the margins of what H&M are paying”¹⁸.

WSR is not concerned with directly employed workers, who are more likely to have stable contracts, benefits and union representation, but rather with outsourced or offshored workers i.e. those in the “secondary labour market, where it is all about statutory minimums and you see much more immigrants and women and people who are not seen as part of the ‘prime workforce’”¹⁹. To effectively address poor working conditions and ensure decent work for these workers, it is crucial to address the power relationship not only between workers and their direct employers – the suppliers – but between the suppliers and the lead company as well. This is because wages and conditions for outsourced workers are ultimately set by the company at the top of the supply chain.

WSR seeks to address exactly these power dynamics. It is often defined in contrast or opposition to corporate social responsibility, because it turns key features of CSR and its sister mechanism, multi-stakeholder initiatives (MSIs), on their head. Section 2 will explain the model in detail but, in essence, WSR aims to make lead companies liable for conditions in their supply chains and put workers and their representative organisations rather than corporations in the driving seat of efforts to improve workplace practices. As Section 2.2. will explain, WSR grew out of the agricultural sector in Florida, where unionisation is low to non-existent due to legal barriers, and in the garment sector in Bangladesh, where unions organising workers face violence and repression.

In this report, FLEX examines the WSR model and its applicability to the UK context to understand how it might address the clear gaps in current protections for workers, particularly in outsourced, low-paid and precarious sectors like cleaning and hospitality. While WSR has been applied previously to both domestic and international product supply chains, it has yet to be applied to the outsourcing of services. Therefore, this report mainly considers WSR in the context of the outsourced service sector.

To do so, we have conducted desk-based research on the existing WSR programmes and carried out in-depth interviews with organisations and individuals involved in implementing WSR in the USA and Bangladesh (5), UK trade

¹⁷ FLEX interview with WSR expert, 27 June 2019.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

“What lessons can be learned from the WSR model and how it has been applied in different contexts?”

“How do UK trade unions and state labour inspectorates view the model and its suitability to the UK context?”

“Evidently, a system that enables workers to play a key role in articulating their needs, improving their conditions and protecting their workplaces from risk – i.e. WSR – would benefit companies seeking to implement HRDD”

unions representing workers in service sectors (3), UK state labour market enforcement bodies (5) and UK hotel sector stakeholders (2). As this was a small scoping study, we were only able to speak to limited number of stakeholders at the policy and operational level, and not to workers. Further interviews may have uncovered other perspectives to those presented here. There is little existing research on the transferability of WSR, making it difficult to triangulate our findings, but we hope this report provides a useful starting point for further exploration.

We have used the hotel sector, specifically hotel housekeeping, as a hypothetical case study on which to focus the interviews, as it is a high-risk sector known in the UK for significant levels of outsourcing and atypical (temporary, casual and part-time) work, low trade union density, a workforce made up primarily of women and migrants, and significant levels of non-compliance with labour laws.²⁰ The aim of this study is not, however, to go into specifics on how the WSR model could be applied to the hotel sector in practice. Instead, its purpose is to contribute to conversations around tackling labour abuse and exploitation in an increasingly fissured and globalised labour market. It does so by examining how the WSR model has been applied in different contexts and identifying lessons and mechanisms that can support workers’ organisations and state labour market enforcement in the UK. Key questions examined by this scoping report are: 1) What lessons can be learned from the WSR model and how it has been applied in different contexts? and 2) How do UK trade unions and state labour inspectorates view the model and its suitability to the UK context?

Whilst this research scopes these specific questions, it begs wider consideration of the context and trajectory of expectations regarding corporate behaviour and worker treatment. The introduction of the French ‘duty of vigilance’ law in 2017 marked a new era of corporate responsibility, which sees focus shifting from mere transparency measures towards mandatory human rights due diligence (HRDD). Attempts to introduce and promote such legislation are now live in Austria, Belgium, Denmark, Finland, Germany, Italy, Luxemburg, Norway, Sweden and Switzerland.²¹ Mandatory human rights due diligence requires companies to take specific actions, rather than to solely report on self-defined actions that may be taken. It requires companies to go through four stages of work to: 1) assess human rights risks; 2) take action to prevent those risks occurring or increasing; 3) mitigate harms they cause; and 4) account for these actions in transparency reports. It must include access to justice mechanisms, such that when harms occur and a company did not take reasonable preventative steps, they can be held legally liable. As companies increasingly recognise the inefficacy of traditional corporate responsibility mechanisms, and as governments move towards introducing mandatory human rights due diligence, forward-thinking businesses will need to prepare for a more comprehensive approach to preventing risk and harm. Evidently, a system that enables workers to play a key role in articulating their needs, improving their conditions and protecting their workplaces from risk – i.e. WSR – would benefit companies seeking to implement HRDD. Further scoping is needed to assess the potential role of WSR in the human rights due diligence process.

²⁰ Balch, A. and Rankin, G. 2014. ‘Facilitating corporate social responsibility in the field of human trafficking: The hotel sector in the UK’. p.6; Ball, M. et al. 2017. [Agency workers and zero hours – the story of hidden exploitation](#); Jasiewicz, E. 2017. [At your service? Migrant women workers in the UK hospitality sector.](#); López-Andreu, M., Papadopolous, O. and Hamedani, M. 2019. [How Has the UK Hotels Sector Been Affected by the Fissuring of the Worker-Employer Relationship in the Last 10 Years?](#); Low Pay Commission. 2019. [Minimum wage underpayment on the rise. Low Pay Commission finds.](#); Office for National Statistics. 2018. [Contracts that do not guarantee a minimum number of hours: April 2018](#)

²¹ Business & Human Rights Resource Centre. 2019. [National Movements for Mandatory Human Rights Due Diligence in European Countries.](#)

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The defining feature of WSR, compared to other models for tackling labour abuse and exploitation in corporate supply chains, is that it provides a way of addressing the power imbalance not only between workers and their direct employers, but also between buyers and suppliers”

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Having experts with contextual knowledge involved in designing standards means they are more likely to have real, on the ground impacts, leading to measurable and timely gains for workers”

2. WHAT IS WSR AND HOW DOES IT WORK?

2.1 THE DEFINING FEATURES OF WSR

The defining feature of WSR, compared to other models for tackling labour abuse and exploitation in corporate supply chains, is that it provides a way of addressing the power imbalance not only between workers and their direct employers, but also between buyers and suppliers. As one research participant put it: “the essence of WSR is that you contract with the party that has much more power to also be responsible”²². The WSR model does so through a legally binding contract between workers’ organisations and the company at the top of the supply chain (the ‘lead company’). The contract obliges the lead company to source only from suppliers or contractors who are compliant with standards developed by experts, which in most contexts means workers and their representative organisations. Rather than being one-size-fits-all, standards are tailored to the sector or workplace they are regulating, making them more effective at addressing the specific types of issues experienced by workers in that context. In agriculture, this might include access to drinking water and mobile shade structures in fields, whereas in hotel housekeeping it might be about setting realistic targets for how long it takes to clean a hotel room. Having experts with contextual knowledge involved in designing standards means they are more likely to have real, on the ground impacts, leading to measurable and timely gains for workers.

BOX 2. KEY FEATURES OF WSR

1. **Standards for suppliers** developed by experts, usually but not always workers and their representative organisations;
2. **A legally binding contract** between the lead company in a supply chain and a workers’ organisation obliging the lead company to only buy from suppliers who are compliant with the agreed standards;
3. **Support from the lead company to suppliers** to help them comply with the standards;
4. Tangible economic **consequences for non-compliant suppliers**;
5. **Education for workers** on their rights so they can act as monitors;
6. **A complaints mechanism** for workers to report violations without fear of retaliation;
7. **An independent monitoring body** that conducts regular inspections, responds to worker complaints and determines whether breaches of standards have occurred and whether the lead company can continue to source from a supplier; and
8. **Consumer pressure** to force lead companies to the negotiating table with workers.

²² FLEX interview with WSR Expert, 8 August 2019.

Suppliers and other intermediaries are central to the WSR model because “you need an intermediary between the workers and the brand, otherwise WSR cannot work”²³. In other words, there needs to be a three tier supply chain for WSR to work: 1) the lead company; 2) the suppliers or contractors; and 3) the workers. However, suppliers are not part of negotiating the WSR agreement or the standards:

“In [a WSR initiative on the dairy industry] we had the co-ops [representing the suppliers] in the middle...but we don’t have any contract with them. And that’s the power of the model, because the middlemen lose the power. The co-op wanted to be around the table representing the farmers, but they weren’t allowed.”²⁴

Furthermore, there are real economic consequences for non-compliant suppliers: if they do not comply with the worker-driven standards, the lead company stops buying from them. However, **suppliers also benefit, as lead companies must help them comply**, for example through direct financial incentives or improved purchasing practices. As one research participant involved in implementing WSR in the US sees it:

It’s a win, win, win situation: Workers win because they are treated like human beings; Suppliers win for several reasons – they get to sell to multi-billion dollar corporations who have agreed to only buy from suppliers in the programme and because the conditions are so improved that a) they get better workers, b) they have less turnover, c) they are not being sued for treating workers badly, and d) training costs and losses from training and having untrained workers go down; and Buyers win through an insurance policy against finding they have slave labour in their supply chain.²⁵

WSR also increases workers’ power through **peer-to-peer education** on their rights and what to do if they experience problems or know their employer is in violation of the standards. There are clear pathways for workers to report abuses, which “makes every worker a potential enforcer”²⁶. Though not all workers will complain, the complaints mechanism should act as an effective deterrent: “only 4% of people will complain, but that’s ok because the people doing the abusing don’t know which 4% it is”²⁷. Proponents of WSR say workers can report violations without fear of reprisal and in the knowledge that their complaint will trigger an immediate investigation. The complaints mechanism is run by an **independent monitoring body** that carries out regular and thorough inspections, responds to worker complaints, and determines whether suppliers have breached standards and whether lead companies must stop sourcing from them.

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There are real economic consequences for non-compliant suppliers: if they do not comply with the worker-driven standards, the lead company stops buying from them”

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There are clear pathways for workers to report abuses, which “makes every worker a potential enforcer”

²³ *Ibid.*

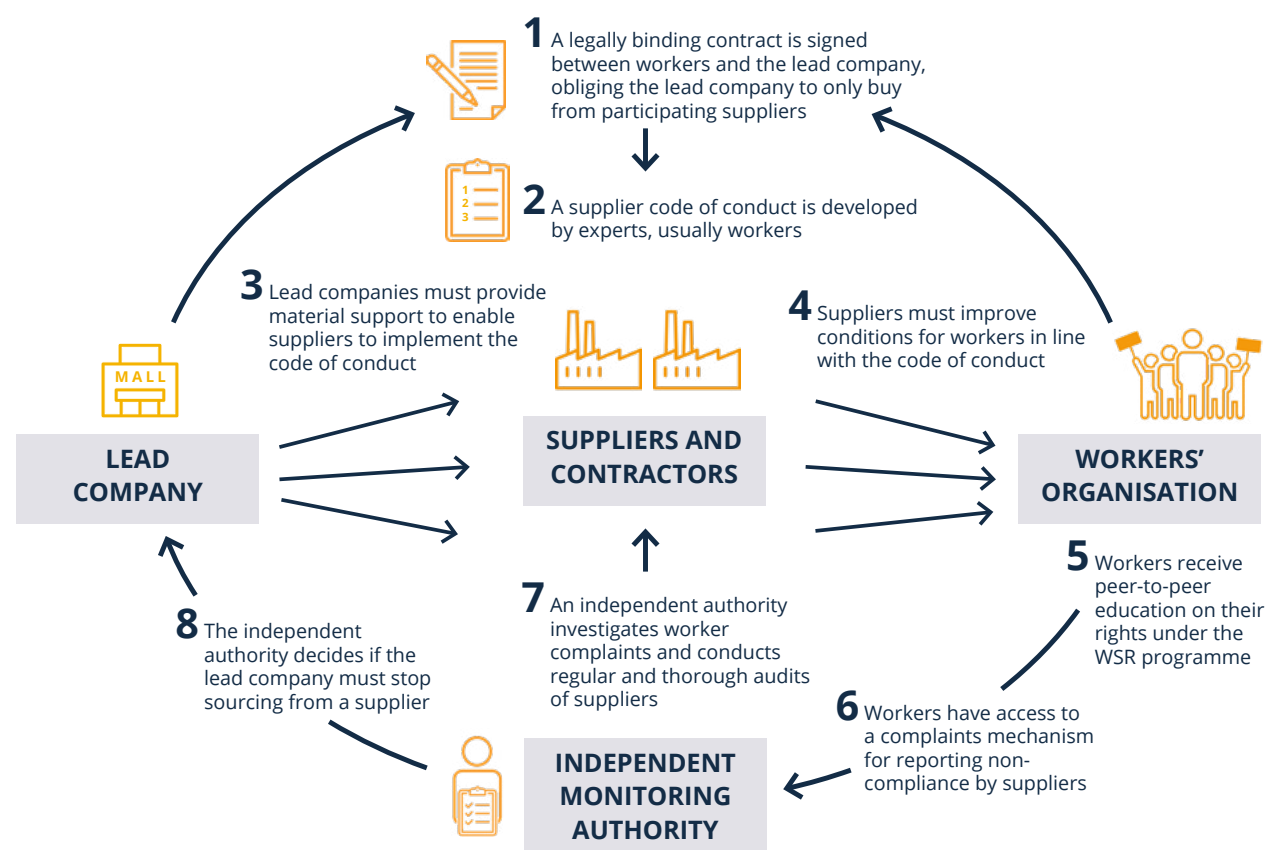
²⁴ FLEX interview with WSR expert, 28 June 2019.

²⁵ FLEX interview with WSR expert, 21 June 2019.

²⁶ *Ibid.*

²⁷ *Ibid.*

FLOWCHART: THE KEY STEPS OF WORKER-DRIVEN SOCIAL RESPONSIBILITY



The final key element of WSR is consumer pressure: “This model, the engine that drives it, is the market itself, and that means consumers. Even Walmart, with \$600bn revenue, even they’re not the top of the supply chain; the consumers are”²⁸. Consumer pressure, often in combination with worker-led actions, cause lead companies to fear damage to their reputation and so are crucial for pressuring brands to sign an agreement with workers.

REAL RISK, REAL REPERCUSSIONS

All the components detailed above are central to the design of WSR programmes, but perhaps the component that sets it apart the most from other types of private sector models is the inclusion of real market consequences for failure to adhere to the standards required. This is crucial because, as one interviewee explained, “it’s the repercussions that are attached to being non-compliant that matter”²⁹. Virtually all CSR initiatives and MSIs (see box 3 below) lack effective enforcement because participation in them is voluntary and those who are found to be non-compliant can simply cut ties and disengage. Non-compliance has few if any meaningful consequences. Under most MSIs, if a company starts using new suppliers that aren’t compliant, they simply lose their accreditation, which is unlikely to have much of an impact in most contexts.³⁰ With WSR, the lead company signs a legally binding agreement with worker organisations, meaning they cannot quit the programme while the contract is in force and worker representatives can use legal mechanisms, such as national or international judicial systems or private arbitration, to force companies to comply and remedy violations.

²⁸ FLEX interview with WSR expert, 21 June 2019

²⁹ FLEX interview with UK labour market enforcement body, 7 August 2019.

³⁰ *Ibid*

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CSR initiatives tend to produce outputs and outcomes that fail to tackle deepseated issues such as business models and power imbalances”

BOX 3. CORPORATE SOCIAL RESPONSIBILITY AND MULTI-STAKEHOLDER INITIATIVES

Corporate Social Responsibility (CSR) is a means of business self-regulation aimed at making companies more socially accountable and ethical in their practices. Most CSR initiatives involve voluntary commitments by lead companies to ensure their and their suppliers’ operations meet certain standards. CSR initiatives have been criticised for their lack of effective enforcement and transparency; companies rarely measure the effectiveness of their interventions or report cases of non-compliance. They are broadly seen as offering generic, one-size-fits-all solutions that are not tailored to the specific sectors or contexts they are meant to regulate. Another key criticism levied at CSR is that companies themselves design the solutions to the problems they are causing; thus, CSR initiatives tend to produce outputs and outcomes that fail to tackle deepseated issues such as business models and power imbalances.³¹

Multi-stakeholder initiatives (MSIs) have sought to address the limitations of CSR by bringing in civil society and other stakeholders to set and monitor standards. MSIs exist in almost every major global industry and have arguably succeeded in establishing higher standards than CSR initiatives. However, they have generally not been any more successful in achieving meaningful and sustainable changes for affected communities on the ground.³² This has been put down to poor monitoring and enforcement, which has resulted in a number of tragedies in workplaces declared safe by MSI monitors.³³ For example, factories involved in fires in Pakistan, which killed over 200 garment workers in 2012, had been certified as compliant, including fire safe, by inspectors under an MSI. The same was true of Rana Plaza in Bangladesh.³⁴ As a result, some stakeholders have become disillusioned with MSIs: “ten years ago we would have spent time criticising multi-stakeholder agreements, now we would say they’re so ineffective that we won’t even engage with them”³⁵.

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Suppliers know that abusive labour practices will mean the loss of business and, when the cost of non-compliance is higher than the potential gains, it makes sense for them to comply”

Non-compliant suppliers also face tangible consequences through the loss of lead company business, i.e. the brand signed up to the WSR programme simply will not buy future products or services from them. As one respondent remarked: “Unlike any of the other models, this one derives its power from the market; it works because of the market and the market is not complicated”³⁶. Specifically, suppliers know that abusive labour practices will mean the loss of business and, when the cost of non-compliance is higher than the potential gains, it makes sense for them to comply. However, it is not only about using a stick: recognising that there is a cost associated with improving standards, lead companies are required to provide “financial incentives for suppliers and the insurance that there’s financial capacity to comply”³⁷. This support can take the form of higher prices, direct payment for the costs of improvements, low cost loans, wage premiums paid directly to workers, or up-front payment for goods.³⁸

³¹ FLEX and ICAR. 2019. [Full Disclosure: Towards Better Modern Slavery Reporting.](#)

³² WSRN. 2019. [Comparison of Critical Elements of WSR v. CSR and MSIs.](#)

³³ WSRN. 2019. [Comparison of Critical Elements of WSR v. CSR and MSIs.](#)

³⁴ Gordon, J. 2014. [The Problem with Multi-stakeholder Initiatives: A Conversation with Greg Asbed and Jennifer Gordon.](#) Transcript. Open Society Foundations.

³⁵ FLEX interview with WSR expert, 27 June 2019.

³⁶ FLEX interview with WSR expert, 21 June 2019.

³⁷ FLEX interview with WSR expert, 11 September 2019.

³⁸ WSRN. 2019. [Comparison of Critical Elements of WSR v. CSR and MSIs.](#)

BETTER DETECTION OF ABUSES

Proponents of WSR hold that non-compliance by suppliers is more likely to be identified under WSR than under programmes that rely on periodic (and often pre-announced) audits by inspectors hired by, and therefore beholden to, the company whose supply chain they are evaluating. Under WSR, inspections are frequent, in-depth and conducted by well-trained investigators who operate independently of the industry. Monitors prioritise worker interviews, which are done with an awareness of the power dynamics within a workplace i.e. workers are interviewed without managers present and, whenever possible, outside the workplace. WSR practitioners recognise that even with these precautions, periodic inspections are not sufficient for ensuring compliance:

Auditing just won't do it. Our auditing system is the best: we speak to at least half of the workers or all of them if it's a small group (less than 100) and we have a right to look at the growers' records etc. But all that means is we have a really good camera; it takes a good picture, but it doesn't tell us what happens right after or right before.³⁹

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Workers themselves can become frontline defenders of their own rights”

To address the limitations of periodic audits and inspections, WSR ensures that workers are aware of the agreed standards and are able to report violations anonymously and without repercussions to an independent body dedicated to protecting workers' interest. In this way, workers themselves can become frontline defenders of their own rights. This is often the main way for identifying bad practices and non-compliant suppliers. Once workers see that their complaints are taken seriously and acted upon, they gain confidence in the system, which acts as a “video feed; you know what is going on constantly in the workplace”⁴⁰.

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However, what makes WSR effective also makes it much more difficult to implement”

For many of the participants in this research study, including UK stakeholders, there are clear advantages to WSR over CSR and MSIs: “I think the strongest part is the enforcement and the market consequences, which in other models doesn't happen”⁴¹. However, what makes WSR effective also makes it much more difficult to implement. Getting companies to sit at the negotiation table, let alone agree to binding and enforceable standards designed to be effective, instead of purely convenient, requires significant and concerted worker, civil society and consumer action. As the next section will show, WSR programmes have resulted from years of organising and effort from trade unions and other workers' organisations, community groups and non-governmental organisations.

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As the model has been applied to different sectors and contexts, it has been tailored and adapted, leading to variance across WSR programmes in practice”

2.2 EXISTING WORKER-DRIVEN SOCIAL RESPONSIBILITY PROGRAMMES

The above section highlights the key mechanisms and features that must be present for a programme to function effectively and be considered WSR. However, as the model has been applied to different sectors and contexts, it has been tailored and adapted, leading to variance across WSR programmes in practice. This section explores the contexts in which WSR has developed and the differences between the existing applications of the model.

³⁹ FLEX interview with WSR expert, 21 June 2019.

⁴⁰ *Ibid.*

⁴¹ FLEX interview with WSR expert, 28 June 2019.

THE FAIR FOOD PROGRAM

The first iteration of WSR, the Fair Food Program (FFP, see box 4 below), was the result of sustained campaigning and organising by the Coalition of Immokalee Workers (CIW), a human rights organisation, in the Florida tomato farming sector. The original Fair Food Agreement was signed in 2005 by Yum! Brands after a four-year public campaign by CIW boycotting Taco Bell, which the brand operates. The company agreed to work with CIW to improve conditions in Florida's tomato fields and pay a premium (a “penny more per pound”) to growers, which was passed on to farmworkers as a wage bonus. The FFP has since developed new mechanisms for holding growers and brands to account and expanded to cover new buyers, crops and states.

BOX 4. THE FAIR FOOD PROGRAM

Location: USA (Florida, Georgia, Maryland, New Jersey, North Carolina, South Carolina, and Virginia)

Sector: Agriculture (mainly tomatoes, bell peppers and strawberries)

Scale: 30,000 workers at any given time, with 80,000-100,000 over the course of a season, and 19 growers with multiple farms

Signatories: The Coalition of Immokalee Workers (CIW) and 13 companies/buyers

Mechanisms:

1. **A Fair Food Code of Conduct**, shaped by ongoing negotiation between workers, growers and buyers, sets out the principles and practices that participating growers must follow.
2. Legally binding **Fair Food Agreements** between CIW and the participating buyers, which include two key provisions:
 - i) the **Fair Food Premium**, a small but important premium paid to growers on top of the regular price of produce and passed on to workers as an additional line in their payslips; and
 - ii) **Market Enforcement** of the Fair Food Code of Conduct, requiring buyers to suspend sourcing from growers that have failed to comply with the Code.
3. **Peer-to-peer worker education** on workers' rights under the FFP, conducted by CIW farmworker staff at the farms of all participating growers throughout the season.
4. **The Fair Food Standards Council (FFSC)**, which oversees the implementation of the FFP. It operates a Complaint Mechanism where workers can call a free, 24/7 multilingual complaints line. All complaints are investigated and resolved by the FFSC and often include meetings between the relevant supervisors and teams to show workers that complaints are heard and resolved without retaliation. The FFSC also carries out in-depth audits on growers' farms (264 between 2011-18), which include reviewing records, observing operations, interviewing all levels of management and a significant proportion of workers, normally over half a company's workforce.

Key issues covered:

1. Forced labour, child labour, violence and sexual assault;
2. Wages, hours and pay practices;

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The prevalence of worker abuse in the sector has been linked to the fact that purchasing power is concentrated among just a few large brands”

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As a legacy from slavery, farmworkers are not covered by the federal law that prohibits employers from firing workers for joining, organising or supporting a trade union”

“

An additional source of power inequality within the supply chain is linked to workers’ immigration status”

3. Sexual harassment and discrimination;
4. Health and safety, including safe transportation and shade, bathrooms and water in the fields;
5. Hiring and registration practices;
6. Education and training.

For more information, see: <https://www.fairfoodprogram.org/>

The FFP developed in a context where farmworkers, the majority of whom are migrants from Mexico, experience high levels of poverty, violence, sexual violence, labour abuse, forced labour and trafficking for labour exploitation.⁴² The prevalence of worker abuse in the sector has been linked to the fact that purchasing power is concentrated among just a few large brands, giving them the leverage to drive down growers’ prices.⁴³ Growers then pass this price pressure on to farmworkers, pushing them to work faster and for less pay in order to maintain profit margins.

Workers have very few mechanisms available for pushing back against poor treatment, as there are serious gaps in legal protections for farmworkers. As a legacy from slavery, farmworkers are not covered by the federal law that prohibits employers from firing workers for joining, organising or supporting a trade union.⁴⁴ They are also not covered by certain provisions in the 1938 Fair Labour Standards Act (FLSA), such as overtime pay. Workers on farms employing fewer than seven workers in a calendar quarter are exempt from all FLSA provisions, including minimum wage.⁴⁵ Most farmworkers also lack basic protections such as workers’ compensation, health insurance and disability insurance. Only a few states, most notably California, have enacted legislation to cover some of these gaps in labour protections.

An additional source of power inequality within the supply chain is linked to workers’ immigration status. According to the National Agricultural Workers Survey of the US Department of Labor, 73% of farmworkers in the US are migrants and 47% are migrants without work authorisation (this is likely an underestimation – other sources estimate that more than 70% are undocumented).⁴⁶ A significant minority of migrant farmworkers (243,000 in 2018⁴⁷) are working under the H-2A Temporary Agricultural Visa Program, a short-term work visa that ties workers to an employer who can send them home at will. Being undocumented or on a H-2A visa puts people at even higher risk of experiencing human rights and labour violations, as employers can use the vulnerability stemming from workers’ immigration status to exploit them with impunity. Workers are unable to complain, organise or seek help for fear of arrest, deportation, losing the investment they have made to migrate and obtain their job or, in the case of H-2A workers, being black-listed from participating in the programme in future.⁴⁸

⁴² CIW. 2018. [Slavery in the Fields and the Food We Eat](#). [accessed 07 February 2019]; Human Rights Watch. 2012. [Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment](#); US Department of State. 2019. [2019 Trafficking in Persons Report: United States](#).

⁴³ WSRN. 2019. [Fair Food Program](#).

⁴⁴ PBS. 2016. [When Labor Laws Left Farm Workers Behind – and Vulnerable to Abuse](#).

⁴⁵ National Farm Worker Ministry. 2018. [Farm Worker Issues: US Labor Laws for Farm Workers](#).

⁴⁶ Farmworker Justice. 2018. [Selected Statistics on Farmworkers](#).

⁴⁷ United States Department of Agriculture Economic Research Service. 2019. [Farm Labor: H-2A Temporary Agricultural Visa Program](#).

⁴⁸ Southern Poverty Law Centre. 2013. [Close to Slavery: Guestworker Programs in the United States](#).

“

The programme has been so successful that it has been called the “one of the great human rights success stories of our day”

“

There has been a significant decrease in the number of severe accidents since the introduction of the Accord”

It is in this challenging context that the FFP has filled a role neglected for decades by the state and which trade unions have struggled to fill, due to the lack of legal protection for farmworkers’ freedom of association. The programme has been so successful that it has been called the “one of the great human rights success stories of our day”⁴⁹ and the “best workplace-monitoring program”⁵⁰ in the US. The FFP not only makes sure that farmworkers’ statutory rights are protected, it enforces standards that go beyond the labour law.

THE BANGLADESH ACCORD ON FIRE AND BUILDING SAFETY

The second iteration of WSR developed in a very different context: the Bangladesh ready-made garment sector. The Bangladesh Accord on Fire and Building Safety (the Accord, see box 5 below) was signed in May 2013 in the immediate aftermath of the collapse of the Rana Plaza building, which killed over 1,100 workers and critically injured thousands more. It was a five-year agreement between over 220 global brands and two international trade unions, plus eight of their affiliated national unions, designed to build a safe and healthy Bangladesh garment industry. Unlike already existent MSIs and CSR programmes, the Accord was legally binding and enforceable. It built on work by a group of trade unions and human rights organisations who first proposed a similarly binding, enforceable programme in 2010 to address the dangerously high levels of factory fires and building collapses that had killed more than 2,000 workers in Bangladeshi factories since 2005.⁵¹ Though the risks were well known, companies sourcing from Bangladesh refused to acknowledge or address them until the global outrage at the Rana Plaza building fire and collapse forced them to do so. In 2018, at the end of the Accord’s five-year commitment, a follow-up Transition Accord was negotiated and signed by a range of companies, including the majority of the original signatories.⁵² The Transition Accord ensures the continuation of the joint health and safety efforts until 2021, after which it has been agreed that the work will be handed over to a Bangladesh government agency, supported by the ILO. There has been a significant decrease in the number of severe accidents since the introduction of the Accord.⁵³ However, workers organisations report that there have been few changes on other labour rights issues, with many workers still on poverty wages and at risk of labour exploitation.⁵⁴

BOX 5. THE 2013 BANGLADESH ACCORD ON FIRE AND BUILDING SAFETY AND THE 2018 TRANSITION ACCORD

Location: Bangladesh

Sector: Ready-made garments

Scale: Over two million workers at 1,600 factories

Signatories:

Workers: Two global union federations (IndustriALL Global Union and UNI Global Union) and eight Bangladeshi union federations;

⁴⁹ Burkhalter, H. 2012. [Fair Food Program Helps end the Use of Slavery in the Tomato Fields](#).

⁵⁰ Greenhouse, S. 2014. [In Florida Tomato Fields, a Penny Buys Progress](#). The New York Times.

⁵¹ WSRN. 2019. [Fact Sheet: Accord on Fire and Building Safety in Bangladesh](#).

⁵² Butler, S. 2018. [M&S One of UK Retailers Yet to Renew Safety Deal in Bangladesh Factories](#). The Guardian. [Accessed: 21 February 2020].

⁵³ Barrett, P.M. et al. 2018. [Five Years After Rana Plaza: The Way Forward](#). NYU Stern Centre for Business and Human Rights.

⁵⁴ FLEX. 2018. [Seeing Through Transparency: Making Corporate Accountability Work for Workers](#). p.17.

Buyers: 222 companies for the 2013 Accord and 190 companies for the 2018 Transition Accord;

Witnesses: Clean Clothes Campaign, International Labor Rights Forum, Maquila Solidarity Network and Worker Rights Consortium.

Mechanisms:

1. A **legally binding and enforceable agreement** between brands and trade unions to ensure a safe working environment in the Bangladeshi ready-made garment industry. Brands agree to:
 - i) **Stop sourcing from factories deemed non-compliant** by the Accord;
 - ii) Provide remediation support to factory owners in the form of increased prices, low-cost loans or direct payments to enable them to make the necessary renovations and repairs; and
 - iii) Maintain **long-term sourcing relationships** with Bangladesh.
2. Governance by a **Steering Committee** with equal representation of companies and trade unions and a neutral chairperson appointed by the International Labour Organization (ILO). The Committee oversees the Accord's budget, hires and manages the Safety Inspector and Training Coordinator, and resolves disputes. Dispute decisions can be appealed to a final and binding arbitration process.
3. An **independent inspection programme** paid for by brands in which workers and trade unions are involved. All factories are inspected by qualified fire, building and electrical safety engineers. Brands and factories then develop and implement **Corrective Action Plans**, which must be implemented by a specific deadline. Progress is monitored and verified through follow-up inspections.
4. **Public disclosure** of all factories, inspection reports and corrective action plans.
5. **Ongoing monitoring** by democratically elected factory Safety Committees with worker and management representation. Safety Committees hold **all-employee meetings to inform workers** of workplace safety, safe evacuation and their rights under the Accord.
6. A **Safety and Health Complaints Mechanism** that allows workers, as individuals, groups or through their representatives, to register complaints about safety concerns with the Accord. The Accord investigates, with results communicated to all workers.

Key issues covered:

1. Fire and building safety;
2. Right to refuse unsafe work;
3. Right to participate in factory Safety Committees;
4. Right to file a complaint regarding safety problems in factories;
5. Protection against reprisal for reporting safety-related matters; and
6. Freedom of Association in relation to advancing safety.

For more information see: <https://bangladeshaccord.org/>

Similarly to US agriculture, the ready-made garment industry has a buyer-driven supply chain, meaning large companies at the top of the chain determine where production happens, what is produced, at what prices

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Accord has developed in a context of significant governance gaps where the lack of state capacity to ensure decent conditions of work has led stakeholders to look for other regulatory mechanisms”

“

Consumers are more likely to care and take action over labour abuses happening in their own backyard than those occurring thousands of kilometres away”

“

Hopefully more workers don't need to die for the model to be implemented elsewhere”

and within what timeframes.⁵⁵ To keep costs low and production levels high, brands in high-income countries have offshored manufacturing to the Global South, moving within and between countries to find the cheapest options. Developing countries hoping to secure investment and employment in their garment sector must compete by providing the cheapest workers and the most flexible (unregulated) conditions.⁵⁶ Arguably this is the case in Bangladesh, which has attracted global brands because of its extraordinarily low garment production prices which, over time, brands have driven even lower.⁵⁷ Though garment production has contributed to a significant drop in the proportion of the population living below the poverty line, extremely low prices have led to a race to the bottom on labour standards as factory owners squeeze labour costs and save on safety measures in order to maintain profit margins.⁵⁸ Additionally, there have been failures in the enforcement of national labour standards and continued violence against trade union leaders and members.⁵⁹ Therefore, similarly to the FFP, the Accord has developed in a context of significant governance gaps where the lack of state capacity to ensure decent conditions of work has led stakeholders to look for other regulatory mechanisms.⁶⁰

However, there are some important differences between these contexts. First, because of the geographic distance that exists between most garment workers and companies at the top of the apparel supply chain, there may be additional challenges in bringing sufficient pressure to bear on corporations to compel them to sign WSR agreements. Consumers are more likely to care and take action over labour abuses happening in their own backyard than those occurring thousands of kilometres away. Unions and human rights organizations had, for years, been drawing attention to the risks to workers' lives in the Bangladesh garment sector and it was only when unparalleled disaster struck that change could be pushed through. As one research participant noted: “Hopefully more workers don't need to die for the model to be implemented elsewhere”⁶¹.

Possibly as a result of this challenge, the scope of the Accord is much narrower than that of the FFP, focusing on the relatively uncontroversial issue of health and safety over more comprehensive or systemic workers' rights issues. The technical focus of the Accord means that the bulk of the program's standards for suppliers were designed by engineers, which has implications for workers' ability to fully monitor all possible instances of non-compliance. The importance of independent and expert-led audits is therefore heightened in the Accord. Workers are, however, involved in overseeing those aspects of the Accord that do not require engineering expertise and research participants emphasized that the programme is still worker-centred: “Workers sit on the governing body and they are signatories to the agreements, so even though they might not have developed the standards, they are integral to the establishment and running of the Accord”⁶².

⁵⁵ Gross, T. 2013. *Raising the Voice of Workers in Global Supply Chains*. p.9.

⁵⁶ Delahanty, J. 1999. *A Common Thread: Issues for Women Workers in the Garment Sector*. Women in Informal Employment: Globalizing and Organizing (WIEGO) Working Paper.

⁵⁷ Barrett, P.M. et al. 2018. *Five Years After Rana Plaza: The Way Forward*. NYU Stern Centre for Business and Human Rights. p.7.

⁵⁸ *Ibid.* p.7.

⁵⁹ Human Rights Watch. 2015. “Whoever Raises their Head Suffers the Most” – Workers' Rights in Bangladesh's Garment Factories; University of Liverpool and FLEX. 2019. *Respect, Dignity, That's What We Want: Lessons from the Bangladesh and Myanmar Garment Sectors on Working Conditions*.

⁶⁰ FLEX interview with WSR expert, 27 June 2019.

⁶¹ FLEX interview with WSR expert, 11 September 2019.

⁶² FLEX interview with WSR expert, 11 September 2019.

“Trade unions have had a central role in the Accord”

“MWD and the FFP share several characteristics: they are both in the US agriculture sector, deal with a domestic supply chain, and have a broad focus on rights that go beyond existing legal protections”

Though the focus of the Accord is relatively narrow, its scale – covering over two million workers and 1,600 suppliers – is unparalleled: “What the Accord offers is scale; it’s at a different scale entirely. [...] The FFP is much more comprehensive, and the scale is significant, but covers much less than the Accord”⁶³. Whether it would be possible to combine the scale of the Accord with the comprehensiveness of the FFP is yet to be seen:

WSR really does require a lot of public mobilisation to get brands to agree, so to arrive at the scale and comprehensiveness blended, it would require extensive public mobilisation – not a small undertaking.⁶⁴

Like the FFP, the Accord developed in a context of significant hostility towards worker organising. However, unlike the FFP, trade unions have had a central role in the Accord. The 2018 Transition Accord has seen some expansion in remit by including the right to freedom of association, at least in relation to advancing safety. Some participants also raised the fact that the involvement of Bangladeshi trade unions in the Accord has increased their visibility and credibility and opened a door for furthering workers’ rights outside of the remit of the Accord. The potential for the Accord and other WSR programmes to act as a steppingstone towards stronger worker organising and bargaining is discussed in the following chapter.

MILK WITH DIGNITY AND THE LESOTHO AGREEMENT

The two further applications of the WSR model include Milk with Dignity (MWD, see box 6 below) and the Agreement to Combat Gender-based Violence in the Lesotho Apparel Sector (Lesotho Agreement, see box 7). MWD and the FFP share several characteristics: they are both in the US agriculture sector, deal with a domestic supply chain, and have a broad focus on rights that go beyond existing legal protections. The key differences are in scale (300 workers under MWD compared to 30,000 under FFP) and the traceability of the product: milk from different suppliers is mixed together before being sold and processed, making it harder to trace the supply chain and therefore enforce the WSR agreement. One of the reasons MWD was able to work with Ben & Jerry’s is because they already had a programme to trace their supply chain.⁶⁵ In addition, unlike tomatoes, milk is not seasonal, meaning it requires the same level of monitoring all year round.

BOX 6. MILK WITH DIGNITY

Location: USA (Vermont and New York)

Sector: Agriculture (dairy farming)

Scale: Over 70 farms and more than 300 workers

Signatories: Migrant Justice and Ben & Jerry’s

Mechanisms:

1. A **legally binding agreement** between Ben & Jerry’s and Migrant Justice defining the programme as a long-term contract enforceable under law.
2. A **Code of Conduct** for dairy farmers set by workers, which all suppliers must meet.

⁶³ FLEX interview with WSR expert, 8 August 2019.

⁶⁴ *Ibid.*

⁶⁵ FLEX interview with WSR expert, 28 June 2019.

3. A **premium paid to all participating farms** by Ben & Jerry’s, which provides workers with a bonus in each payslip and serves to offset farmers’ cost of compliance with the Code of Conduct, such as improved housing standards and paid holiday leave.
4. **Peer-to-peer worker education** on their rights under the Code of Conduct and how to enforce them.
5. A **Third-Party Monitoring Body**, the Milk with Dignity Standards Council (MDSC), which enforces the agreement by auditing farmers’ compliance with the Code of Conduct; receiving, investigating and resolving worker grievances; and creating improvement plans to address violations. MDSCs may suspend a farm from the Program if the farm is unwilling to meet the standards in the Code of Conduct, creating strong market incentives to improve workplace conditions.

Key issues covered:

1. Wages, with all workers being paid at least the prevailing minimum (regardless of whether agricultural workers are excluded from the state minimum wage) and a bonus in each payslip passed on from buyers;
2. Working time, including paid holidays (minimum five days of leave) and adequate rest time for meals and sleep (at least one 24-hour period of consecutive rest each week);
3. Housing, with conditions in compliance with the law and at a cost that does not reduce workers’ wages to below the prevailing minimum;
4. Health and Safety standards, including workers’ compensation, five paid sick days per year, protective equipment and training.

For more information see: <https://milkwithdignity.org/>

“The Lesotho Agreement on the other hand shares many similarities with the Bangladesh Accord: it is based in the garment sector, deals with a cross-jurisdictional supply chain, has strong trade union involvement and a narrow thematic focus”

The Lesotho Agreement on the other hand shares many similarities with the Bangladesh Accord: it is based in the garment sector, deals with a cross-jurisdictional supply chain, has strong trade union involvement and a narrow thematic focus. Unlike the other programmes however, the Lesotho Agreement includes a legally binding agreement not only between the workers’ organisations and the brands, but also between the workers’ organisations and the supplier.

BOX 7. AGREEMENT TO COMBAT GENDER-BASED VIOLENCE IN LESOTHO’S GARMENT SECTOR

Location: Lesotho

Sector: Garment

Scale: Over 10,000 workers at five factories

Signatories:

Brands: Levi Strauss & Co., The Children’s Place and Kontoor Brands;

Supplier: Nien Hsing Textile Co.;

Lesotho Unions: The Independent Union of Lesotho, the United Textile Employees Union and the National Clothing, Textile and Allied Workers Union;

“

The Lesotho Agreement developed in a context where women workers in garment factories were experiencing high levels of sexual harassment and gender-based violence”

Lesotho Women’s Rights Organisations: The Federation of Women Lawyers in Lesotho and Women (FIDA) and Law in Southern African Research and Education Trust-Lesotho (WLSA);

US-based Organisations: Worker Rights Consortium, Solidarity Centre and Workers United;

Non-Signatory Advisors: The Fair Food Standards Council, the Coalition of Immokalee Workers and the Worker-driven Social Responsibility Network.

Mechanisms:

1. **Four legally binding agreements** – one between the workers’ organisations and each of the three brands, and one between the workers’ organisations and the employer, Nien Hsing. The essential function of the brand agreements is to enforce the employer agreement: if Nien Hsing does not comply, each brand must reduce orders in a manner sufficient to convince Nien Hsing to return to compliance.

2. Enforcement via **economic sanctions**. Each of the Lesotho organizations, as well as the Workers’ Rights Consortium, has the power to bring a case against any of the brands.

The agreements include a broad and robust definition of gender-based violence in the workplace, adapted from the recently adopted ILO Convention concerning the Elimination of Violence and Harassment in the World of Work (C190).

3. **Complaint intake and counselling**, led by the Lesotho women’s rights organizations.

4. Complaint investigation and the determination and implementation of punishments, and remedies and monitoring and improvement of employer practices, led by the **independent oversight body**, the Office for the Prevention of Gender-Based Violence. This has the power to investigate complaints, with full access to the factory and necessary personnel; reach independent determinations; and decide appropriate sanctions, including dismissal. The decisions of the body are binding on Nien Hsing, which must carry them out.

5. **Worker and management training**, led jointly by the Lesotho unions and women’s rights organizations.

Key issues covered:

1. Reporting of gender-based violence and sexual harassment without fear of retaliation;
2. Freedom of association;
3. Counselling for workers;
4. Strong protections to prevent retaliation against complainants or witnesses.

For more information see: <https://wsr-network.org/success-stories/gender-justice-in-lesotho-apparel>

The Lesotho Agreement developed in a context where women workers in garment factories were experiencing high levels of sexual harassment and gender-based violence, including being coerced into sexual relationships by

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The employer, Nien Hsing, also suppressed workers’ right to unionise and act collectively to address these abuses, in violation of Lesotho’s laws, international standards and buyer codes of conduct”

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The differences between the existing applications of WSR demonstrate that it is more challenging to implement WSR in some contexts and sectors than in others”

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The concessions workers will succeed in negotiating with brands depend on the leverage they have”

managers and supervisors.⁶⁶ Employment, promotion and improved conditions were made dependent on women workers’ willingness to engage in such relationships. Women who experienced these abuses did not report it in fear of retaliation and due to a culture of tolerance for harassment that meant management often failed to take disciplinary action against offenders. The employer, Nien Hsing, also suppressed workers’ right to unionise and act collectively to address these abuses, in violation of Lesotho’s laws, international standards and buyer codes of conduct. The issues women workers faced were documented by Lesotho trade unions and women’s organisations who, together with the Worker Rights Consortium, made the conditions public and pressured the buyers to negotiate a WSR agreement.⁶⁷ The programme has a complaints mechanism modelled after the one in the FFP and has also drawn lessons from the Bangladesh Accord.⁶⁸ The buyers, likely aware of the reputational risks they faced especially in the context of the global #MeToo movement, have agreed to fund the programme for two years.⁶⁹

A VERSATILE FRAMEWORK FOR CHANGE

The way in which the model has been adapted to different contexts shows that there is no single blueprint for a WSR programme. While there are clear mechanisms that repeat across the different applications and define a programme as WSR (see box 3 at the start of this chapter), the issues the model has been used to address are diverse, and can include anything from preventing gender-based violence to ensuring workers are paid the minimum wage. The differences between the existing applications of WSR demonstrate that it is more challenging to implement WSR in some contexts and sectors than in others. This depends on various factors, including: how easy it is for buyers to source products from elsewhere; how easy it is for suppliers to move their businesses; and whether the supply chain is domestic or international. In all contexts, the concessions workers will succeed in negotiating with brands depend on the leverage they have, whether that takes the form of more traditional worker power (e.g. strikes) or relies more heavily on mobilising consumer pressure and reputational risk.

⁶⁶ WRC. 2019. [Worker Rights Consortium Assessment re: Gender-based Violence and Harassment at Nien Hsing Textile Co., LTD \(Lesotho\) – Findings, Recommendations, and Status](#).

⁶⁷ *Ibid.*

⁶⁸ WSRN. 2020. [Gender Justice in Lesotho Apparel](#).

⁶⁹ Human Rights Watch. 2019. [Global Clothing Brands Should Respond to the #MeToo Mandate](#).

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Having institutional players involved with resources, campaign experience, strategy negotiation experience [...] helps speed up the process”

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WSR has provided trade unions in Bangladesh with new tools for tackling worker exploitation in a context where they have been fighting an uphill battle”

3. WSR: A STRATEGY FOR TRADE UNIONS?

One of the aims of this scoping research is to assess how UK trade unions could be involved in implementing WSR and whether they would want to be. WSR has grown out of two contexts that are highly hostile to trade unions. In the US agriculture sector, very few unions exist due to lack of legal protections for farmworkers’ freedom of association – something workers’ organisations in the US have been fighting to change⁷⁰. – while in Bangladesh, unions organising garment workers have faced violence and repression. In the UK, trade unions have historically struggled with organising outsourced workers, especially migrants,⁷¹ though new unions have formed in the last decade for precisely this purpose, and some established unions are also diversifying their methods.⁷² This scoping research presents an opportunity to consider UK trade unions and their attitudes to WSR to see if they might be logical bedfellows in the UK context, with a focus on outsourced service sectors.

Recognition of the history and role of trade unions when considering the application of WSR to the UK context is important in order to avoid replicating or undermining existing efforts to tackle labour abuse and ensure decent work. As one respondent noted, “from a social movement structure perspective, it would be awkward not to engage with the unions – it can’t just be a bunch of NGOs sitting in offices [...], you need to engage on the ground”⁷³. Engaging with unions also makes sense on a practical level, as they are more likely to have the experience and capacity to negotiate with employers than community groups: “having institutional players involved with resources, campaign experience, strategy negotiation experience [...] helps speed up the process”⁷⁴.

Trade unions have been central to WSR models in Lesotho and Bangladesh, where they have provided a way of documenting the experiences of workers, organising workplaces and pressuring brands into participating in the agreement. As will be shown later in this chapter, WSR has provided trade unions in Bangladesh with new tools for tackling worker exploitation in a context where they have been fighting an uphill battle against hostile employers and a hostile government for decades. We therefore want to assess whether WSR could similarly provide UK trade unions with new tools and methods in a context of increasingly fissured workplaces and declining union density.

3.1 UNION DECLINE AND HOSTILE POLICIES

Trade unions have historically been a core part of the fight for workers’ rights and are key actors in well-functioning democracies. However, as outsourcing has grown and workplaces have fissured, trade unions have struggled to retain membership levels – a struggle that has been further frustrated by more restrictive trade union legislation introduced from the 1980s onwards, including most recently by the Trade Unions Act 2016.

⁷⁰ Gray, M. and Heffernan, O. 2019. [Buying Local Won't Help Exploited Farmworkers](#). *Jacobin*. [Accessed: 21 February 2020]

⁷¹ Martínez Lucio, M. and Perrett, R. 2009. The Diversity and Politics of Trade Unions’ Responses to Minority Ethnic and Migrant Workers: The Context of the UK. *Economic and Industrial Democracy*. Vol. 30(3): 324-347.; Però, D. 2019. [Indie Unions, Organizing and Labour Renewal: Learning from Precarious Migrant Workers](#). *Work, Employment and Society*.

⁷² Financial Times. 2020. [The Upstart Unions Taking on the Gig Economy and Outsourcing](#). [Accessed: 31 January 2020]

⁷³ FLEX interview with WSR expert, 27 June 2019.

⁷⁴ FLEX interview with WSR expert, 8 August 2019.

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Trade union membership and collective bargaining coverage in the UK are in long-term decline”

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The extent to which extension mechanism are used in a country is the single most powerful determinant of the level of collective bargaining coverage, which tends to increase significantly with the use of extension practices”

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Outsourcing presents a significant challenge for trade unions in the UK”

Trade union membership and collective bargaining coverage in the UK are in long-term decline. According to data from BEIS, the total UK trade union membership in 2018 was 6.35 million and trade union density – the number of employees who are union members as a percentage of all those in employment – was 23.4%.⁷⁵ This is a significant drop from peak levels in 1979, when membership was at 13 million and density was 56.3%⁷⁶, and represents a larger decline than in most advanced economies.⁷⁷ Collective bargaining coverage, where a person’s pay and conditions are directly affected by an agreement between their employer and a trade union, has similarly declined from 80% in the 1980s to around 26%.⁷⁸

A key reason for why trade union density and collective bargaining coverage have declined so rapidly in the UK is that there is little or no support for collective bargaining by the state through, for example, extension regulations.⁷⁹ These are used in other countries to extend collective bargaining agreements (CBAs) from the employer-level to cover entire sectors. Extension regulations help level the playing field for employers as well as workers by preventing undercutting by non-unionised companies. They also help prevent a squeeze on workers caused by competition between contractors when work is outsourced. The extent to which extension mechanism are used in a country is the single most powerful determinant of the level of collective bargaining coverage, which tends to increase significantly with the use of extension practices.⁸⁰ The closest mechanism the UK has to extension regulations is the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as TUPE for short).⁸¹ Among other things, TUPE ensures that CBAs in place before outsourcing continue to apply after an organisation or service transfers to a new employer. However, new contractors do not have to implement changes agreed to the CBA after the transfer, meaning the agreement remains “static” for outsourced workers. The CBA also does not apply to new hires, leading to divergence in pay and conditions over time.⁸²

The lack of effective mechanisms for extending existing CBAs to outsourced workers and maintaining them over time, combined with the difficulty of organising outsourced workers outlined in the introductory chapter, means that outsourcing presents a significant challenge for trade unions in the UK. In the private sector, where outsourcing has become the norm⁸³, union density is much lower (13.2%) compared to the public sector (52.5%).⁸⁴ Union density in the public sector has also decreased due to increasing outsourcing of public sectors jobs, accelerated by successive governments’ austerity

⁷⁵ Department for Business, Energy and Industrial Strategy. 2019. [Trade Union Membership: Statistical Bulletin](#). p.5

⁷⁶ Department for Business, Energy and Industrial Strategy. 2019. [Trade Union Membership: Statistical Bulletin](#). p.5.

⁷⁷ Dromey, J. 2018. [Power to the People: How Stronger Unions Can Deliver Economic Justice](#). Institute for Public Policy Research Discussion Paper. p.15

⁷⁸ Brandl, B. and Kildunne, A. 2018. [Outsourcing and Collective Bargaining in the UK](#). Recover Country Report. p.11

⁷⁹ Brandl, B. and Kildunne, A. 2018. [Outsourcing and Collective Bargaining in the UK](#). Recover Country Report. p.12

⁸⁰ Eurofund. 2002. [Collective Bargaining Coverage and Extension Procedures](#).

⁸¹ Smith Institute. 2014. [Outsourcing the Cuts: Pay and Employment Effects of Contracting Out](#).

⁸² Smith Institute. 2014. [Outsourcing the Cuts: Pay and Employment Effects of Contracting Out](#).

⁸³ Godino, A. and Molina, O. 2019. [The Impact of Outsourcing on Collective Bargaining Coverage: A Comparative Analysis in Six Countries](#). RECOVER Comparative Report. p.12

⁸⁴ Department for Business, Energy and Industrial Strategy. 2019. [Trade Union Membership: Statistical Bulletin](#). p.12

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Trade unions are using numerous methods to address the challenges of outsourcing, including campaigning for better legislation to protect outsourced workers, bringing legal challenges, and calling for workers to be brought back in-house”

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WSR programmes enable workers’ organisations, such as trade unions, to negotiate with and gain official recognition from the lead company in a supply chain”

policies.⁸⁵ As a result, pay and conditions have deteriorated and workers now employed in the private sector are more likely to have short-term contracts or be agency workers or self-employed.⁸⁶

Workers that would most benefit from union membership and collective bargaining coverage are the least likely to be union members.⁸⁷ Membership is lowest among low-paid workers and in low-paid industries like accommodation and food services, where union density is only 2.9%. Membership is also weighted towards people in permanent, full-time, professional jobs; people in non-standard jobs, including those on fixed-term contracts or temporary workers, are 50% less likely to be union members than other workers.⁸⁸

Tightened regulations for how trade unions function, introduced from the 1980s onwards, present a further problem for UK trade unions. These changes have increased the cost and difficulty of industrial action and were purposefully designed to weaken the influence of unions on the economy.⁸⁹ Labour governments have since reversed some of these measures, but not enough to revive union density or collective bargaining coverage. Further steps were taken to limit the power of trade unions in 2016 with the passing of the Trade Union Act, which introduced stricter rules for strike ballots and industrial action.⁹⁰

3.2 NEW TOOLS AND STRATEGIES FOR ORGANISING OUTSOURCED WORKERS

It is in this difficult environment that UK trade unions are trying to organise outsourced workers. Trade unions are using numerous methods to address the challenges of outsourcing, including campaigning for better legislation to protect outsourced workers, bringing legal challenges, and calling for workers to be brought back in-house. Bringing workers in-house would cut out the middle-man suppliers and contractors, making lead companies the direct employers responsible for the wages and working conditions. Though many of these campaigns have been successful⁹¹, bringing workers in-house may not always be an option, for example in sectors like hotel housekeeping, where there are high levels of variation in demand.

WSR offers another tool: legally, trade unions in the UK can only bargain collectively with direct employers, not de facto employers, i.e. the lead companies setting many of the terms that affect workers lower down. This is one of the key differences between WSR and collective bargaining: “Collective bargaining is between workers and direct employers, whereas WSR is between workers and the head of the supply chain”⁹². WSR programmes enable workers’ organisations, such as trade unions, to negotiate with and gain official recognition from the lead company in a supply chain. Many

⁸⁵ Godino, A. and Molina, O. 2019. [The Impact of Outsourcing on Collective Bargaining Coverage: A Comparative Analysis in Six Countries](#). RECOVER Comparative Report. p.12; Brandl, B. and Kildunne, A. 2018. [Outsourcing and Collective Bargaining in the UK](#). Recover Country Report.

⁸⁶ Trades Union Congress. 2015. [Outsourcing Public Services](#). p.9

⁸⁷ Dromey, J. 2018. [Power to the People: How Stronger Unions Can Deliver Economic Justice](#). Institute for Public Policy Research Discussion Paper. p.14

⁸⁸ Financial Times. 2020. [The Upstart Unions Taking on the Gig Economy and Outsourcing](#). [Accessed: 31 January 2020]

⁸⁹ Dromey, J. 2018. [Power to the People: How Stronger Unions Can Deliver Economic Justice](#). Institute for Public Policy Research Discussion Paper. p.23

⁹⁰ Eurofound. 2016. [United Kingdom: Tighter Statutory Regulation of Trade Union Activities Approved by Parliament](#).

⁹¹ Staton, B. 2020. [NHS Trust Brings Workers In-House After Industrial Action](#). Financial Times. [Accessed: 28 February 2020]

⁹² FLEX interview with WSR expert, 8 August 2019.

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We target the client because the client is the one that is outsourcing and allowing the exploitation to happen”

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WSR programmes enable workers’ organisations, such as trade unions, to negotiate with and gain official recognition from the lead company in a supply chain”

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Trade unions could get employers to sign a WSR agreement instead, which is essentially a private contract enforceable under contract law. This could also address another problem, which is that collective bargaining agreements in the UK are not legally enforceable between the union and the employer”

trade unions in the UK, including those interviewed for this research, are already targeting campaigns at lead companies in recognition of the power they have over the wages and conditions of outsourced workers. In 2019, the Independent Workers Union of Great Britain (IWGB) brought a landmark case to the UK High Court on behalf of 75 outsourced workers at the University of London, saying that they should be able to negotiate pay and conditions directly with the University as their de facto employer, as well as the security firm officially employing them. Had IWGB won the case, 3.3 million workers in the UK would have won the right to negotiate directly with their de facto employer. However, the High Court dismissed the case, saying there are “relevant and sufficient reasons for limiting the right to compulsory collective bargaining to workers and their employers”.⁹³

The fact that trade unions cannot sign a CBA with a lead company, also known as the client company, has not stopped them from successfully targeting lead companies: “We target the client because the client is the one that is outsourcing and allowing the exploitation to happen”⁹⁴. One of the trade unions interviewed for this study has, for instance, won the right to sick pay and pension for outsourced workers and it is the lead company, not the direct employer, who is paying for it.⁹⁵ However, because the lead company is refusing to recognise them voluntarily, and they cannot force recognition, they end up having to keep up constant pressure, especially as contracts are re-tendered:

They tender the contract every four years and, even if [the workers] have good sick pay and other conditions, the new company will come in and try to take away those conditions and introduce more and more precarious contracts [...] they will give new contracts to new employees and that contract won’t include the sick pay and holiday pay that the other workers have already won. So we need to keep fighting with them all the time [...] The problem never ends.⁹⁶

In cases where bringing workers back in-house is not feasible, WSR could offer a way around the need to keep up constant pressure. In addition to seeking a recognition agreement – a formal agreement with an employer for a union to bargain collectively on behalf of that employer’s staff – with the direct employer, trade unions could get lead companies to sign a WSR agreement, which is essentially a private contract enforceable under contract law. This could, for example, require the lead company to only contract with suppliers who have recognised a trade union.

This could also address another problem, which is that collective bargaining agreements in the UK are not legally enforceable between the union and the employer. Instead, some parts of the agreement (e.g. pay, benefits, working hours) may be incorporated into individual contracts of employment and enforced by individuals or groups of workers through employment tribunals.⁹⁷ This is in stark contrast to how the enforcement of collective bargaining functions in the majority of European countries, where sectoral and national level collective bargaining is more common and the terms are

⁹³ Financial Times. 2019. [High Court Dismisses Outsourced Workers’ Bid for Collective Bargaining Rights](#). [Accessed: 31 January 2020]

⁹⁴ FLEX interview with UK trade union, 18 Sept 2019.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Brandl, B. and Kildunne, A. 2018. [Outsourcing and Collective Bargaining in the UK](#). Recover Country Report. p.10

“Tribunals do not have the power to make wider recommendations that would benefit others in the same workplace”

“In sectors where work is seasonal or contracts get re-tendered frequently, keeping up the pressure is highly challenging”

“Short-term or seasonal work visas under temporary migration programmes will potentially be used to plug resultant labour market gaps, leading to a constant churn of new workers and complicating trade unions’ efforts”

enforced by the signatories to the agreement, not the individual workers they apply to.⁹⁸

There are several issues with the UK’s individualised enforcement system: only a small minority of people experiencing problems at work pursue their case to an employment tribunal⁹⁹ and groups more prone to exploitation are the least likely to do so¹⁰⁰. In addition, it is a long and involved process – claims that need a hearing take on average 30 weeks, excluding the early conciliation process, which can take another month – and, with the exception of discrimination cases, no legal aid is available.¹⁰¹ Trade unions can, of course, support their members through the process, but the decision of the employment tribunals only applies to the claimant; as of 2015, tribunals do not have the power to make wider recommendations that would benefit others in the same workplace.¹⁰²

Trade unions have other methods of enforcing CBAs and maintaining hard-won rights: “We shame them through social media, direct actions, strikes, copying all the clients into the email sent to the company”¹⁰³. However, especially in sectors where work is seasonal or contracts get re-tendered frequently, keeping up the pressure is highly challenging. For instance, in the US, farmworkers are often seasonal migrants who return to their country of origin once their visa expires: “There have been many cases of workers organising and maybe they succeed in getting a day off and better conditions, but when those workers go home then it has to start from the beginning despite it being the same employer”¹⁰⁴. This is an important consideration for post-Brexit Britain: currently most low-paid migrant workers in the UK come from the European Union under free movement and can settle permanently, but from January 2021 this route will be closed. The Government has announced that there will be no general visa for low-paid work, despite high levels of demand from industries including health and social work, transport and storage, construction and hospitality.¹⁰⁵ Short-term or seasonal work visas under temporary migration programmes will potentially be used to plug resultant labour market gaps, leading to a constant churn of new workers and complicating trade unions’ efforts to maintain CBAs, which are dependent on union membership levels.¹⁰⁶ The UK is already piloting, and has recently decided to expand, a seasonal agricultural workers programme that only allows workers to stay for six months, followed by a six-month cooling-off period.

A similar problem occurs with regard to CBAs not covering new hires in firms, which allows employers to slowly erode hard won improvements to wages and working conditions. This highlights the limitations of collective bargaining in the UK: because it is restricted largely to the workplace level instead

⁹⁸ Eurofund. 2011. [Extension of Collective Bargaining Agreements in the EU](#). Eurofund Background Paper. p.11

⁹⁹ Citizens Advice Bureau. 2019. [The Need for a Single Enforcement Body for Employment Rights](#).

¹⁰⁰ Resolution Foundation. 2019. [From Rights to Reality: Enforcing Labour Market Laws in the UK](#).

¹⁰¹ Citizens Advice Bureau. 2019. [The Need for a Single Enforcement Body for Employment Rights](#).

¹⁰² Employment tribunals were given the power to make recommendations for the benefit of the wider workforce in relation to discrimination claims under the Equality Act 2010. However, this power was removed by the Deregulation Act 2015.

¹⁰³ FLEX interview with UK trade union, 18 Sept 2019.

¹⁰⁴ FLEX interview with WSR expert, 28 June 2019.

¹⁰⁵ UK Government. 2020. [The UK’s Points-Based Immigration System: Policy Statement](#); IPPR. 2020. [Immigration Plans Analysis: Two Thirds of Current EU Migrants in Health and Care Sector Would Have Been Found Ineligible](#).

¹⁰⁶ FLEX. 2019. [The Risks of Exploitation in Temporary Migration Programmes: A FLEX Response to the 2018 Immigration White Paper](#).

“The WSR model could be a way of introducing faster, more accessible enforcement that can be enforced across multiple workplaces”

“With WSR you have a route or mechanism for what will happen if bosses don’t comply, and that isn’t that you have to strike, you have another mechanism.”

“How radical or extensive are the demands and how transformative are they really?”

of being sectoral or national, it is difficult for unions to achieve sustainable structural change. Some of the organisations currently implementing WSR programmes experienced the same issue, before turning to WSR:

CIW did very creative things to try to get growers to sit down at the table – hunger strikes, marches, etc. They didn’t accomplish ‘nothing’, but only little stuff, not structural stuff. They didn’t change the structural imbalance that was allowing abuses to happen. Community education decided that if large corporations’ actions were the reason workers were being treated badly, then maybe they could be the solution.¹⁰⁷

The WSR model could be a way of introducing faster, more accessible enforcement that can be enforced across multiple workplaces. In contrast to collective bargaining agreements, the agreement in a WSR programme is legally enforceable between the lead company and the workers’ organisation, so addressing non-compliance is not reliant on individuals bringing claims in labour courts or trade unions maintaining pressure on employers. As one respondent said: “we see it as a strengthening of the power of the workers and of the enforcement, because with WSR you have a route or mechanism for what will happen if bosses don’t comply, and that isn’t that you have to strike, you have another mechanism”¹⁰⁸.

In addition, under WSR, workers are able to report non-compliance easily, anonymously and without fear of retaliation and in the knowledge that it will lead to a quick result. The recommendations issued by the independent authority tasked with monitoring compliance will also benefit the entire workforce and not only the individual claimant as under the UK’s employment tribunal system.

3.3 UK TRADE UNIONS’ CONCERNS ABOUT WSR

Trade unions interviewed for this research saw WSR as a potentially promising model for tackling labour abuse and exploitation in supply chains, but also highlighted the challenge of getting an employer to sign a WSR agreement, saying “nothing is going to change without forcing them”¹⁰⁹.

MORE THAN JUST WINNING: THE IMPORTANCE OF COLLECTIVE ACTION

There were also serious concerns around whether the concessions that could be won through a WSR model would be radical or extensive enough, and whether WSR as a process would be transformative enough for workers:

“In order to assess or evaluate it [WSR] I would really need to see how far they go. The main point would be how radical or extensive are the demands and how transformative are they really?”¹¹⁰

The question of whether WSR would be transformative enough connected to union respondents seeing the *process* of collective bargaining as being equally, if not more, important as the end results. Through organising and collective action, workers learn to “recognise themselves as workers, [...] recognise themselves as a collective”¹¹¹; they gain confidence and the belief that they “can actually bring about change”. This psychological transformation was seen as central to the sustainability of the collective bargaining

¹⁰⁷ FLEX interview with WSR expert, 21 June 2019.

¹⁰⁸ FLEX interview with WSR expert, 28 June 2019.

¹⁰⁹ FLEX interview with UK trade union, 18 Sept 2019.

¹¹⁰ FLEX interview with UK trade union, 24 July 2019.

¹¹¹ *Ibid.*

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Things change all the time – contracts get ripped up, changed and renegotiated – so the only ultimate protection for workers is to be organised enough to take action and protect themselves”

model: “Things change all the time – contracts get ripped up, changed and renegotiated – so the only ultimate protection for workers is to be organised enough to take action and protect themselves”¹¹².

The concern that WSR would not be as transformative and therefore as sustainable over time as collective bargaining was linked to perceived reliance of the model on consumer pressure rather than worker power, the implication being that any programme that is highly dependent on consumer pressure will fail once that pressure is no longer there:

“In terms of sustainability, how can this be carried forward year after year, decade after decade unless the workers are ready to take their own action, not dependent on the good will or solidarity of a consumer movement?”¹¹³

CONSUMERS: A FICKLE FOUNDATION?

Consumer pressure was seen not only by unions, but by respondents across the board, as being a highly unreliable source of protection for workers:

There is an outrage period, the knee-jerk reaction where people will just react to things on social media without knowing the facts, but it's very instant and then we have the tendency to forget very shortly afterwards.¹¹⁴

In time the attention and hype about this agreement will have passed or become watered down because of another social issue.¹¹⁵

The concerns are getting more public discourse time, but I'm not sure there is the same level of pressure for fast food or fast fashion brands to evidence or change their practices in the UK [compared to the US]. There isn't enough consumer interest that people would stop buying from brands that weren't part of this accreditation [sic].¹¹⁶

It is true that WSR programmes rely heavily on consumer pressure and reputational risk to bringing brands to the negotiation table. The extent of this reliance and its effect on sustainability of such schemes is highly dependent on the context in which WSR is being implemented. For instance, the Bangladesh Accord and the Lesotho Agreement may never have happened without consumer pressure being catalysed by Rana Plaza and the #metoo movement respectively:

The context of #metoo helped generate power for the labour side to get a deal through. They were very public-facing brands. I think that without #metoo they wouldn't have gotten that agreement through.¹¹⁷

As consumer interest wanes over time, there is a risk that the worker movement will lose power unless there are other mechanisms in place to protect it, as can be seen in the quote below:

Things have been increasingly problematic in the last couple of years. When the Accord was first established, it was right after Rana Plaza and manufacturers were very motivated

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ FLEX interview with hotel sector stakeholder, 10 September 2019.

¹¹⁵ FLEX interview with UK trade union, 24 July 2019.

¹¹⁶ FLEX interview with UK labour market enforcement body, 7 August 2019.

¹¹⁷ FLEX interview with WSR expert, 27 June 2019.

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Consumers are likely to care about an issue only if it is serious or shocking enough”

to take part, but now they are less willing to participate and increasingly hostile. They are putting increased pressure on unions for speaking on part of The Accord.¹¹⁸

WSR agreements are legally binding contracts, which means that brands cannot simply walk away while they are in force. However, for those programmes that are time-limited, such as the Bangladesh Accord and the Lesotho Agreement, there is a risk that if consumers lose interest, lead companies will disengage when the WSR agreement comes to an end. For instance, when the 2013 Accord came to the end of its five-year period, trade unions and other social partners had to work hard to ensure companies signed on to the 2018 Transition Accord. In contrast, FFP and MWD are “evergreen”¹¹⁹ contracts, meaning they do not have set end dates and are renewed automatically, making it harder for brands to walk away (though they could technically start sourcing from outside of the states to which the agreements apply).

Another concern about relying too much on consumer pressure is that it may limit the issues that a WSR programme is able to cover, as it is more difficult to create consumer pressure around certain issues than around others. Consumers are likely to care about an issue only if it is serious or shocking enough: “It is easy to create a consumer-based campaign when you are talking about the safety of millions of workers – no reasonable brand would choose to say they don't care about worker safety”¹²⁰. However, it might be harder to get consumers to care about other issues:

A public-facing campaign won't help you get a raise from \$14.95 per hour to \$15 per hour, but a collective bargaining agreement will. Consumers will care about whether you can afford to live – collective bargaining agreement might get you a longer lunch break, a consumer campaign won't.¹²¹

There is nothing in the WSR model that means that it *must* rely solely on consumer pressure. In fact, action and organising by workers with the support of trade unions and community groups has been central to the formation of all four WSR programmes. It is perhaps less the case that WSR as a model is not transformative enough or too reliant on consumer pressure, and more that the contexts in which it has developed are ones where more traditional trade union action is difficult and a variety of methods, including consumer pressure, are needed:

A union in another sector might be able to work on a classic strategy of pure union power. But they [the garment sector unions] are not like a metal union or coal union in the UK who can say “if you don't give us what we want, we'll shut down your mine”. [...] So the unions [in the garment sector] need to work with a different strategy – much more of a leverage strategy than a classic union strategy of strikes. And in this case, the main leverage they have is with the buyers. [...] You need a much broader leverage strategy than a classic union might use.¹²²

Where workers' organisations have more power and the context is more favourable to trade union organising and collective bargaining, WSR programmes will be less reliant on consumer pressure:

“

There is nothing in the WSR model that means that it must rely solely on consumer pressure”

“

Where workers' organisations have more power and the context is more favourable to trade union organising and collective bargaining, WSR programmes will be less reliant on consumer pressure”

¹¹⁸ FLEX interview with WSR expert, 11 September 2019.

¹¹⁹ FLEX interview with WSR expert, 21 June 2019.

¹²⁰ FLEX interview with WSR expert, 11 September 2019.

¹²¹ FLEX interview with WSR expert, 21 June 2019.

¹²² FLEX interview with WSR expert, 27 June 2019.

“

What are the material conditions in the agreement and what are the obligations in the agreement and what does the enforcement capacity look like”

I don't see the added value of talking about this as a weak form of collective bargaining, because that [whether it is weak or not] will relate to what are the material conditions in the agreement and what are the obligations in the agreement and what does the enforcement capacity look like.¹²³

The same is true of collective bargaining to a large extent. Unions in the UK are increasingly diversifying their methods of pressuring employers as well as lead companies, especially in sectors that are difficult to organise as a result of outsourcing: “[W]here there is a big dispute, trade unions will work with consumers [...] I guess it already happens. Not as much as it should, but it does already happen”¹²⁴.

LACK OF LEGAL PROTECTIONS FOR ORGANISING WORKERS

A key issue for WSR in contrast to unions is that the law provides some additional protections for collective bargaining that would not be available for WSR. In the UK, if an employer refuses to recognise a qualifying trade union voluntarily, the union can apply to the Central Arbitration Committee (CAC) for statutory recognition. If this is successful, employers must negotiate with the union on pay, hours and holiday entitlements.¹²⁵ There are also certain rights and protections that trade union members and representatives are legally guaranteed, such as protection against blacklisting, time off work with pay for union duties and training without pay for union activities¹²⁶:

A typical recognition agreement will give workers paid time off for trade union activities, training to represent their fellow colleagues in meetings, it would force the company to disclose information or business plans, to consult with the workers when they were considering restructuring or redundancies. It would give them all sorts of access to protections, information and training.¹²⁷

There is nothing stopping such protections from being written into WSR agreements: there are no limits to the type of issues that WSR programmes can cover, other than what is winnable in practice (though this is not an insignificant limitation). WSR agreements are highly context dependent and specific – where it is possible to win larger concessions, the programmes will be more all-encompassing and where it is not, they may be narrower or more restricted:

It's difficult. We now have the advantage of hindsight. Our perception [at the time of developing the Accord] was that it was the maximum negotiable, but technically we could have included components on wages, contracts or freedom of association. But at the same time, you're in a bargaining context where at that given moment this is the best deal you'll get – otherwise people will leave the table and you'll have no deal at all. It relates to how much pressure you can put on the brand and also a bit to what your bargaining strategy is – who do you first talk to, which brand do you first get on board.¹²⁸

However, some of the protections described above, such protection against blacklisting or being treated differently for being a trade union member, are

¹²³ *Ibid.*

¹²⁴ FLEX interview with UK trade union, 24 July 2019.

¹²⁵ See <https://www.gov.uk/trade-union-recognition-employers/ballot-union-recognition>

¹²⁶ See <https://www.gov.uk/working-with-trade-unions/rights-of-employees-in-trade-unions->

¹²⁷ FLEX interview with UK trade union, 24 July 2019.

¹²⁸ FLEX interview with WSR expert, 27 June 2019.

crucial for the period of time before recognition agreements are won. In the context of WSR, this would be the period prior to the lead company signing up to the agreement. Thus, under WSR, workers seeking to organise and introduce such a scheme could be at risk of retaliation because they are working outside of the normal collective bargaining framework.

3.4 OPPORTUNITIES AND RISKS OF WSR FOR TRADE UNIONS

If the content and structure of a WSR programme can be so varied, and is so dependent on the context in which it is negotiated, this raises a key question: in what contexts should trade unions turn to WSR? And are there contexts in which using a WSR approach might actually have negative implications for trade unions and collective bargaining?

CASE STUDY: THE UK HOTEL SECTOR

The UK hotel sector was chosen as a case study for this scoping research to provide a focal point for the sampling – we mainly spoke to unions and businesses active in the hotel sector – and for the discussions with interviewees. It is also a sector known for high levels of outsourcing and non-compliance with labour rights, as well a significant proportion of workers who are migrants (24%). In 2019, the Director of Labour Market Enforcement (DLME) commissioned a report by University of Leicester and Keele University on the effects of the fissuring of employment relationships in the UK hotel sector.¹²⁹ The research found that employment relationships in the UK hotel industry had become more precarious over the last ten years because of the widespread use of subcontracting and outsourcing, and precarious employment practices such as zero-hour contracts. These fissured employment relationships are more susceptible to non-compliance issues as they create legal ambiguities as to who is responsible for labour market violations, often to the benefit of the lead firm. This was confirmed by our hotel sector respondents: “There have been a couple of exposés about employment agencies, including [agency name redacted], and hotel companies – we're not then liable. Hotels will then say: ‘we'll take this very seriously and review our relationship’, but we don't have to take responsibility”¹³⁰.

The impact of the fissuring of employment relationships in the sector were found to be numerous and included high levels of fear of retaliation from management, including for speaking to the researchers; high levels of instability for workers on zero-hour contracts¹³¹; intensification of work visible in the increase of unpaid overtime; and loss of benefits and extra pay for weekend work. Subcontractors and agencies were found to deploy aggressive strategies to increase their profit margins and control over workers, leading to employment rights violations, of which lead companies could then wash their hands: “Hotels don't want to associate themselves with the bad things, so they pass it on to an agency and that's not a very well policed arena”¹³². The research commissioned by the DLME also found that “instances of humiliation and improper behaviour associated with violation of basic labour rights” are more likely to be tolerated by workers who are afraid of losing their jobs and expect to only be working in the industry in the short-term.¹³³

¹²⁹ López-Andreu, M., Papadopolous, O. and Hamedani, M. 2019. [How Has the UK Hotels Sector Been Affected by the Fissuring of the Worker-Employer Relationship in the Last 10 Years?](#)

¹³⁰ FLEX interview with hotel sector stakeholder, 4 October 2019.

¹³¹ The Accommodation and Food industry has the second highest percentage of employees on zero-hours contracts at 20%. See Office for National Statistics. 2018. [Contracts that do not guarantee a minimum number of hours: April 2018.](#)

¹³² FLEX interview with hotel sector stakeholder, 4 October 2019.

¹³³ López-Andreu, M., Papadopolous, O. and Hamedani, M. 2019. [How Has the UK Hotels Sector Been Affected by the Fissuring of the Worker-Employer Relationship in the Last 10 Years?](#)

Discussions with research participants about the application of WSR to the hotel sector proved interesting. A key issue that was raised was where within the hotel sector supply chain the WSR model would sit. The hotel industry has four distinct employment models that differentiate it from other sectors:

- the *physical ownership model* where a company owns the hotel and its assets and directly employs the workers;
- the *managed hotels model*, where the property is owned by one entity (e.g. a property, real-estate or pension fund) but managed by another;
- the *franchise model*, where a company or group operates a hotel on behalf of an owner;
- and the *single entity model*, which tend to be owned by a family or trust.

Applying the WSR model to either the managed hotels model or the franchise model provides an additional challenge, as instead of a three-tier supply chain there are four: the entity owning the hotel, the entity managing it, the outsourced contractors and the workers.

Whether it would be possible to bring outsourced workers in the hotel sector back in-house instead of turning to a WSR model was seen as highly dependent on the type of job:

It is very difficult to find and retain good people across the lower paid workforce and that's one reason why hotels rely on agencies so much. And the second reason is that you're never going to get away from is that the demand pattern in the hotel sectors means there is a variable demand for labour, particularly in housekeeping. And keeping people on call is very difficult.¹³⁴

*I don't see any reason for outsourcing any function other than things that vary significantly by demand, but in many of our hotels we have a third company cleaning contractor coming in to clean. There are two benefits to that, as you can then blame someone else if the work is not done well and you can reduce the permanent headcount on payroll. **Fundamentally it's about finance versus ethics and how the model can unlock that.***¹³⁵

However, whether it would be possible to get companies to bring their workers in-house is something that workers' organisations in the sector will have to assess. If the read of the industry is that bringing workers in-house is simply not going to happen, then turning to WSR may be a good solution: **"You have to assess your power and there may be things that you just cannot get. You may just have to give some ground on something. It's figuring out what your bottom lines are"**¹³⁶.

A SENSIBLE SOLUTION IN HIGHLY HOSTILE CONTEXTS

For some respondents, especially those coming from contexts where there are high levels of hostility and even violence towards trade unions, WSR is the practical solution to addressing labour abuses in difficult circumstances:

"I see it as a spectrum: In some places unions are illegal, in some they exist but are not working, and in some they're working, but not for everyone. I see a WSR programme as a first step. And there may never be a second step. But it would be rational that the next step is workers organising and saying, 'well now we have our basic human rights, we can talk to each other about work conditions without being fired'."¹³⁷

¹³⁴ FLEX interview with hotel sector stakeholder, 4 October 2019.

¹³⁵ *Ibid.*

¹³⁶ FLEX interview with WSR expert, 8 August 2019.

¹³⁷ FLEX interview with WSR expert, 21 June 2019.

“

Collective bargaining is all well and good in Europe, but not for Bangladeshi workers who might be killed for it”

“

There is some indication that the Bangladesh Accord is in fact helping to strengthen the unions”

Collective bargaining is simply not a realistic possibility in all contexts, at least not in the short term, and WSR could potentially provide a stepping stone towards unionisation by helping to create the conditions needed for organising: “Collective bargaining is all well and good in Europe, but not for Bangladeshi workers who might be killed for it – WSR might be a better solution for them and you could expect WSR to be a safe space for workers to unionise”¹³⁸. There is some indication that the Bangladesh Accord is in fact helping to strengthen the unions. Some respondents felt that the Accord had increased the standing of local trade unions in the eyes of both the government and employers, as seen in the quote below:

“By sitting at the table with the brands and participating in the inspections, the unions have gained increased legitimacy. Participation in the Accord has given unions increased confidence, but also changed the perception of the manufacturers. Previously they felt it very easy to dismiss workers' concerns and the trade unions, but under the accord they can't do that. [...] It has given local affiliates of international unions much more respect and legitimacy in Bangladesh, so they are now being consulted by Government on wages and other issues of workers. Prior to the Accord they were usually dismissed. [...] On the factory level, there have been a number of instances where unions have always been present but disregarded by the manufacturers, but now, since the Accord, they're recognised and engaged and negotiated with on broader issues than just fire and building safety.”¹³⁹

This is perhaps also reflected in the fact that the 2018 Transition Accord includes new provisions that were not in the 2013 Accord, most notably protection for freedom of association where it applies to workplace safety.

AN OPPORTUNITY TO IMPROVE OVER TIME

This points to an important aspect: WSR agreements do not have to be static. For instance, the FFP and MWD both have some routes for workers and workers' organisations to influence and change the supplier standards by negotiating changes to the guidance on how to implement standards. CIW has a working group made up of workers and growers and when “new information comes in from the farms of new situations, then they create new guidance so that the code's provisions are having the impact as intended”¹⁴⁰. MWD also has a working group where worker and farmers can talk about and propose changes to the standards:

If the workers see something is more of a priority or is not functioning well, they can make a proposal. Then they vote and make a decision and that proposal will go into discussion with the lead company. So far, the code of conduct has been working; renegotiation hasn't been needed.¹⁴¹

It could be possible to build in more space for workers to negotiate better terms over time, as their power increases:

The Fair Food Program is not structured in a way where it would be easy to go to the buyers and ask for a much

“

It could be possible to build in more space for workers to negotiate better terms over time”

¹³⁸ *Ibid.*

¹³⁹ FLEX interview with WSR expert, 11 September 2019.

¹⁴⁰ FLEX interview with WSR expert, 21 June 2019.

¹⁴¹ FLEX interview with WSR expert, 28 June 2019.

higher premium. [...] But that doesn't mean WSR couldn't be structured in a way that gives workers a pay rise. It's theoretically possible. It is possible that collective bargaining agreements might provide a more direct route to accomplish that, but it depends on the context.¹⁴²

For instance, in the UK, the non-governmental Living Wage accreditation system is structured to provide a pay rise: accredited Living Wage employers commit to increasing pay each year when the Living Wage Foundation announces the new rates. If they fail to implement this increase within six months of the announcement, they lose their accreditation.¹⁴³ However, this scheme does not include the multiple specific components of WSR programmes.

A DEFLECTION TACTIC FOR BUSINESSES?

Several other participants, most notably UK trade unions, were concerned that instead of acting as a stepping stone, WSR could be used as an excuse by brands not to have to deal with unions or to reject calls for future concessions:

“Does it diminish the prospect of workers taking more meaningful transformative action to win more significant demands? Or does it diminish the prospect of the company conceding more? Once they have this brand of approval, it's a stamp of approval on their brand, are they then going to resist any calls for more concessions, or any criticisms about their behaviour and conduct, because everything will be deflected with this stamp of approval. That, I think, is a real prospect – that this could provide a ceiling rather than a floor.”¹⁴⁴

Though the UK context is not nearly as hostile towards trade unions as the ready-made garment sector in Bangladesh or Lesotho, or the agricultural sector in the US, it is clear that there are high levels of reticence from businesses to engage with unions. As one hotel sector respondent put it: “There is a great suspicion of unions. The hotel companies are so suspicious that getting them around a table with union people is hard, instant defences will go up”¹⁴⁵. They went as far to suggest that a WSR programme in the UK hotel sector “should be more worker-led than union-led [...] a worker-led movement born and led within the businesses, not led by unions”¹⁴⁶. In this context, it does seem possible that businesses could seek to use WSR as a way of addressing the worst cases of labour abuse and exploitation in supply chains while freezing out unions and avoiding collective bargaining.

Given that the WSR model is “agnostic as to the type of worker organisation and the rights in the code of conduct”¹⁴⁷, there is a risk that it could be used by companies to agree only to a narrow set of workers' demands and block future attempts to win concessions, especially if trade unions are not the workers' organisations driving the model. However, once again this depends on context and what is winnable – the opposite could also be true. There could, for instance, be a WSR programme that requires lead companies to work only with, or source only from, suppliers and contractors that have recognised a trade union: “WSR is about rights protection and it's up

¹⁴² FLEX interview with WSR expert, 8 August 2019.

¹⁴³ See the Living Wage Foundation: <https://www.livingwage.org.uk/>

¹⁴⁴ FLEX interview with UK trade union, 24 July 2019.

¹⁴⁵ FLEX interview with hotel sector stakeholder, 10 September 2019.

¹⁴⁶ *Ibid.*

¹⁴⁷ FLEX interview with WSR expert, 8 August 2019.

to the workers to decide what those rights are. You could include a demand for collective bargaining in the WSR agreement”¹⁴⁸.

3.5 SECTION SUMMARY

In summary, outsourcing has complicated trade unions' ability to organise workers and collectively negotiate with employers. This is especially true in the UK where collective bargaining happens mainly at the company level, as opposed to on the sector level or nationally, and there are very few effective mechanisms for extending existing CBAs when work is outsourced. WSR offers a potential way of overcoming some of the issues presented by the UK's collective bargaining system. First, WSR enables workers' organisations to negotiate directly with lead companies and not just direct employers. Second, WSR agreements are legally enforceable, meaning workers' organisations can take lead companies to court for violations instead of having to rely solely on strike action at the employer level or individuals' willingness to take their cases to employment tribunals.

However, UK trade union respondents expressed concerns that WSR is too reliant on consumer pressure and will not be transformative enough or build up enough worker consciousness or power to be sustainable in the long-term. It could even be used by companies to freeze out trade unions or refuse to negotiate on broader concerns. Other respondents who have been involved with WSR however said the model could act as a stepping stone towards more worker power and organising by creating the space needed. So much of the effectiveness of a WSR programme depends on the sector and legislative context in which it develops and how much bargaining power workers' organisations have.

In the light of the findings of this scoping research, we suggest that WSR may be applicable in specific scenarios, but that other methods retain their relevance. Most likely, unions will be selecting between and combining a number of responses, including 1) campaigning for workers to be brought in-house and raising standards via CBAs; 2) fighting for better legislation and regulation, such as removing the restrictions introduced by the 2016 Trade Unions Act or campaigning for the government to take a more active role in collective bargaining by legislating for voluntary or compulsive collective extension agreements; and 3) WSR approaches where the former are not feasible and the conditions are right. There is no one-size-fits-all when it comes to winning improved working conditions and a flexible, tactical approach that includes WSR in the toolbox seems wise.

“

WSR could be used as an excuse by brands not to have to deal with unions or to reject calls for future concessions”

“

WSR is about rights protection and it's up to the workers to decide what those rights are. You could include a demand for collective bargaining in the WSR agreement”

“

WSR offers a potential way of overcoming some of the issues presented by the UK's collective bargaining system”

“

The effectiveness of a WSR programme depends on the sector and legislative context in which it develops and how much bargaining power workers' organisations have”

4. WSR AND THE STATE: OPPORTUNITIES FOR BETTER LABOUR MARKET ENFORCEMENT?

4.1 STATE INVOLVEMENT IN WORKER-DRIVEN SOCIAL RESPONSIBILITY

Another aim of this scoping research is to assess whether and how the state could be incorporated into, or involved with, the WSR model. FLEX considers it important not to replace a state obligation with a private sector model, and wanted to test whether state involvement in a WSR scheme could provide it with more credibility and legitimacy in a UK context, as well as ensuring a more sustainable source of funding:

Anything run by the state around labour enforcement tends to have a high degree of credibility [compared to industry-led initiatives]. There might be a lot of scepticism around self-policing otherwise, but I can see that people would be less sceptical of a government run scheme to ensuring reasonable labour standards.¹⁴⁹

However, the logistical challenges of including the state in implementing WSR quickly became clear during our research. In practical terms, UK state labour inspectorates are only able to work with standards codified in the law and would therefore not be able to enforce anything that goes beyond the legal minimum. As one UK inspectorate noted, “[we] wouldn’t have the authority to enforce a code of conduct driven by workers, it would have to be based on legislation”¹⁵⁰. UK labour inspectorates are “very clear and careful about what they can and can’t enforce, and they really rely on having very clear directions and steers and don’t want to put a foot out of place and be charged for making wrong decisions”¹⁵¹. Therefore, currently, if the state were to be involved in enforcing WSR standards, the standards would have to be codified into law. This is less of a problem in some other contexts such as Bangladesh, where the Accord has been established explicitly to enforce existing legislation and the standards are based on the national building code. However, in the UK context where labour market enforcement by the state does exist, a WSR programme should seek to go beyond the minimum standards that are already in legislation. However, some respondents felt that even enforcing the minimum via WSR would be a significant improvement:

I don’t think legally they [UK labour inspectorates] could go beyond what’s in the law, but if they were inspecting at least the minimum standards that are already in the law, that would already be a marked difference.¹⁵²

STATE LABOUR INSPECTORATES LACK CAPACITY AND FUNDING

There was resistance to state involvement in implementing WSR for a number of other reasons as well. For many of our research participants, WSR is needed precisely because the state is failing to protect workers both at the level of legislation and its enforcement. State involvement in the model was therefore met with scepticism and only seen as appropriate

¹⁴⁹ FLEX interview with UK labour market enforcement body, 7 August 2019.

¹⁵⁰ FLEX interview with UK labour market enforcement body, 26 July 2019.

¹⁵¹ FLEX interview with UK labour market enforcement body, 14 June 2019.

¹⁵² FLEX interview with hotel sector stakeholder, 10 September 2019.

where the state was “involved in addition to the private system”¹⁵³ rather than as part of it, for example by dealing with criminal rather than civil violations or if a worker wants to pursue damages beyond what the WSR programme can provide.

In particular, labour inspectorates were seen as lacking the capacity and funding to protect workers. In the context of US agriculture, respondents said they had never had any labour inspectors on farms because the Department of Labour does not have the capacity: “they just send a letter and then a second letter if there is no response – sometimes that works”¹⁵⁴. In the UK context, labour market enforcement is also severely underfunded. The UK has one of the poorest resourced labour inspectorates in Europe, less than half the ILO’s recommended ratio of one inspector per 10,000 workers.¹⁵⁵

The lack of funding and capacity shapes the form labour market enforcement takes, with the result that the “labour inspectorate works much better for some categories of workers than for other categories of workers”¹⁵⁶. One UK labour inspectorate¹⁵⁷ interviewed for this research described having the power to do spot-checks with employers, but rarely if ever doing so because showing up unannounced carried the risk of the right person not being on site, which would be a waste of limited resources¹⁵⁸. To do the most they can with the resources available, UK labour inspectorates tend to be compliance-focused, meaning they focus on educating and providing guidance to employers on labour rights and standards, relying on the assumption that most violations are accidental and born from employers not knowing the rules. Any enforcement activity that does happen is predominantly reactive, relying on worker complaints to trigger investigations.¹⁵⁹ Having a labour market enforcement system that is contingent on worker complaints is a significant limitation considering the most at-risk workers are the least likely to report non-compliance – a fact readily recognised by UK labour market enforcement bodies themselves.¹⁶⁰

In addition to being compliance focused and reactive, UK labour inspectorates only enforce a limited set of rights. The UK labour market enforcement system is highly reliant on individuals enforcing their own labour rights either informally, by seeking advice and raising their concerns with their employer, or formally through the Advisory, Conciliation and Arbitration Service (ACAS) or ultimately by taking their employer to an employment tribunal. There are some labour protections, such as minimum wage, that are monitored and enforced by the UK’s four labour inspectorates, but the default legal method for resolving most workplace problems, including non-payment of holiday pay, equal treatment rights for agency workers, sexual harassment, discrimination, unfair dismissal and violations of working time regulations, is through an employment tribunal. As was outlined in the previous chapter, only a small minority of people take their case to an employment tribunal and those most

¹⁵³ FLEX interview with WSR expert, 21 June 2019.

¹⁵⁴ FLEX interview with WSR expert, 28 June 2019.

¹⁵⁵ FLEX. 2017. [Risky Business: Tackling Exploitation in the UK Labour Market](#).

¹⁵⁶ FLEX interview with WSR expert, 27 June 2019.

¹⁵⁷ The UK currently has four labour inspectorates: The Gangmasters and Labour Abuse Authority (GLAA), the Employment Agencies Standards Inspectorate (EASI), HMRC national minimum wage/national living wage teams (HMRC NMW/NLW teams), and the Health and Safety Executive. The first three come under the remit of the Direct of Labour Market Enforcement (DLME), which coordinates their work. The UK is in the process of creating a new ‘Single Enforcement Body’ to simplify and harmonise this system and at the time of writing is consulting on what it should look like.

¹⁵⁸ FLEX interview with UK labour market enforcement body, 13 August 2019.

¹⁵⁹ DLME. 2019. [United Kingdom Labour Market Enforcement Annual Report 2017/18](#).

¹⁶⁰ Metcalf, D. 2018. [United Kingdom Labour Market Enforcement Strategy 2018/19](#).

“UK state labour inspectorates are only able to work with standards codified in the law and would therefore not be able to enforce anything that goes beyond the legal minimum”

“The lack of funding and capacity shapes the form labour market enforcement takes, with the result that the “labour inspectorate works much better for some categories of workers than for other categories of workers”

“Any enforcement activity that does happen is predominantly reactive, relying on worker complaints to trigger investigations”

“

Considering the limited resources and capacity of labour inspectorates, WSR might be needed as a proxy for what the state should be doing but is failing to do effectively”

“

We realised that the legislation is not the best way forward. You can pass a bill, but if a government changes, they can just change the law”

likely to experience problems are the least likely to do so.¹⁶¹ Those in atypical work (part-time, temporary contracts or with variable hours) are known to be at higher risk of exploitation yet have a below average application rate. The same is true for workers in elementary (low-paid) occupations and young people¹⁶², as well as migrant workers¹⁶³.

Considering the limited resources and capacity of labour inspectorates, WSR might be needed as a proxy for what the state should be doing but is failing to do effectively. This has certainly been the case for the existing applications of WSR:

The state inspectorate system was failing to the extent that there was a need to have that regulatory capacity from somewhere else. The government in Bangladesh has knowingly for decades neglected [its regulatory capacity] and chosen not to strengthen the state inspectorate, so that was a space the Accord filled.¹⁶⁴

MARGINALISED WORKERS LOSE OUT UNDER STATE-ONLY ENFORCEMENT

For most respondents, the lack of funding for and capacity of state labour market enforcement bodies was due to the absence of political will among governments to protect certain groups of workers. In the US context, the key marginalised group highlighted by proponents of WSR was migrant workers¹⁶⁵, while in Bangladesh and Lesotho it was mainly women workers.

The political will to enforce workers’ rights was seen as being largely dependent on the political party in charge. A shift towards a more pro-migrant or pro-worker government might result in better policies for a while, but eventually the pendulum will swing back, and any gains made will likely be lost: “You could petition the state and include farmworkers in collective bargaining. California has done that, and it works for a while, but then you get a new government and then that stops working”¹⁶⁶. It also means that there may be long periods during which advocacy towards the government to increase or improve state labour market enforcement would be largely futile: “In the context of austerity and lack of funding from central Government, increasing the role of state inspections would be quite a challenge”¹⁶⁷.

While it is clear that the strength of state labour market enforcement is somewhat dependent on who is in government, several respondents noted that the dominant trend within politics was and would likely continue to be more pro-business than pro-worker:

When we decided to go through the WSR model, we had a meeting about whether we’re going to keep fighting on the legislation or do a corporate model – should we fight for dairy prices to go up or what. We realised that the legislation is not the best way forward. You can pass a bill, but if a government changes, they can just change the law. So that’s why this

¹⁶¹ Citizens Advice Bureau. 2019. [The Need for a Single Enforcement Body for Employment Rights](#).

¹⁶² Resolution Foundation. 2019. [From Rights to Reality: Enforcing Labour Market Laws in the UK](#).

¹⁶³ Bernard, C., Ludlow, A. and Butlin, S. 2016. [What Minimum Wage? Why Enforcement of EU Migrants’ Employment Rights Matters](#).

¹⁶⁴ FLEX interview with WSR expert, 27 June 2019.

¹⁶⁵ FLEX interview with WSR expert, 8 August 2019.

¹⁶⁶ *Ibid.*

¹⁶⁷ FLEX interview with hotel sector stakeholder, 4 October 2019.

model made sense. We see this model working, especially since companies are now owning the country itself.¹⁶⁸

The political power of corporations is in stark contrast to the power of low-paid migrant workers and other marginalised groups. The majority of migrants, particularly if they are undocumented or on temporary work visas, do not have the right to vote in elections and are less likely to be represented by trade unions. They therefore lack political representation and have few mechanisms for influencing the laws and policies that directly affect them. While a shift away from anti-migrant politics might lead to better state interventions, for many it is precisely the lack of dependence on the government and its structures that makes WSR preferable to state enforcement:

“We don’t want to be engaged with the formal legal system any more than we have to be because the formal legal system doesn’t treat poor people well or fairly. It’s not an anomaly, it’s why the legal system exists. You cannot ask a Government that marginalises people to also protect them. Or you can, but don’t be disappointed when they don’t do it.”¹⁶⁹

In some contexts, states are not only failing to enforce labour market standards for certain groups of workers but are pursuing policies that actively undermine their rights. To take just one example, the UK government has in the last decade positioned itself as the world leader on addressing ‘modern slavery’ in corporate supply chains and introduced the Modern Slavery Act in 2015, the first of its kind globally. The Act takes a hard-line approach against human trafficking for labour exploitation, introducing new criminal offences and hefty prison sentences for those convicted of these new crimes. However, very few have ever been prosecuted under the Act and, at the same time, the Government has continued to implement policies that are known to put workers at risk of forced labour, trafficking for labour exploitation and other modern slavery offences. These policies include criminalising undocumented workers, leaving them unable to report non-compliance issues for fear of deportation and having their earnings seized. Additionally, as mentioned in the previous section, there are plans to introduce significantly more restrictive immigration policies after Brexit, including having no general routes of entry for low-paid migrant workers – a change that is likely to increase the number of undocumented workers in the UK as workers turn to informal routes instead.¹⁷⁰

Context is, once again important: in some countries or sectors it will be easier to advocate for and win state backing for policies that effectively prevent labour abuse and exploitation:

“There’s an honest debate to be had there – it’s very context dependent. If workers’ organisations and their allies believe they can reform the state enforcement regime significantly enough and that it’s a battle they can win, then go for it. In my experience, and the contexts I’ve been involved in, that wasn’t an option. There wasn’t a scenario where we could build the political power to have the state or federal level reforms that would be effective.”¹⁷¹

¹⁶⁸ FLEX interview with WSR expert, 28 June 2019.

¹⁶⁹ FLEX interview with WSR expert, 21 June 2019.

¹⁷⁰ FLEX. 2019. [The Risks of Exploitation in Temporary Migration Programmes: A FLEX Response to the 2018 Immigration White Paper](#).

¹⁷¹ FLEX interview with WSR expert, 8 August 2019.

“

In the contexts where WSR has been implemented to date, “the state is not pro-worker, they’re not even neutral, they’re actively hostile to what WSR is trying to achieve”

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Having a quick response time and, for migrant workers, multilingual support are important incentives for workers to call complaints lines when they experience violations”

In the contexts where WSR has been implemented to date, “the state is not pro-worker, they’re not even neutral, they’re actively hostile to what WSR is trying to achieve”¹⁷². However, compared to the ready-made garment sector, or US agriculture, the UK has a relatively good record when it comes to workers’ rights. It is therefore open to debate whether something like WSR is needed, or indeed is the best way of addressing existing issues. This raises a crucial question when considering the applicability and relevance of WSR: should we be turning to private sector models like WSR or should we instead be pursuing better state labour market enforcement policies, and is it possible to do both?

4.2 THE UNIQUE CONTRIBUTION OF WSR

There are some issues that respondents felt WSR simply does better than state enforcement. The first was addressing non-compliance issues at a speed fast enough for workers to feel that reporting non-compliance would benefit them directly: “At the level of [state] bureaucracy, things move slowly, and it takes time for things to trickle down”¹⁷³, whereas WSR can deliver results to workers very quickly:

When you look at the FFP, it feels very much like a private initiative. The head of the chain will come down like a ton of bricks on the suppliers in the chain rather than the state stepping in and saying: ‘look, you’re doing it wrong and this is where we come in’.¹⁷⁴

Having a quick response time and, for migrant workers, multilingual support are important incentives for workers to call complaints lines when they experience violations: “The enforcement council is bilingual, will respond immediately and faster and can bring solutions at the farm, so it skips the bureaucracy”¹⁷⁵.

Respondents also felt that WSR, unlike the state, had extra-judicial reach: “markets are international, governments aren’t and what Walmart wants to happen will happen almost anywhere”¹⁷⁶. This point is particularly relevant in sectors where supply chains are global, and states may lack the jurisdiction to enforce labour standards across borders effectively. There are, however, statutory proposals that would extend corporate responsibilities legally and beyond borders, such as due diligence legislation. At the domestic level as well, the state could introduce joint and several liability to make lead companies responsible for non-compliance further down the supply chain.¹⁷⁷ Private sector solutions like WSR do not, therefore, need to be the only option with regard to this aspect.

Finally, respondents felt that the state was restricted by the penalties it was able to impose for non-compliance and the processes it has to follow in implementing them, whereas WSR has real and unparalleled market consequences:

In the FFP the only thing that matters is that it [non-compliance] happens, it doesn’t matter if the grower knew about it or didn’t. If government did that, then the grower could go to court and say that they haven’t had a fair process and delay the suspension for five years. Then it won’t be effective. Because workers are transient and if there is

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ FLEX interview with UK labour market enforcement body, 14 June 2019.

¹⁷⁵ FLEX interview with WSR expert, 28 June 2019.

¹⁷⁶ FLEX interview with WSR expert, 21 June 2019.

¹⁷⁷ FLEX. 2017. *Risky Business: Tackling Exploitation in the UK Labour Market.*

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The financial penalties in the UK are actually too small to have a huge impact on trying to encourage compliance”

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The UK Government has recently rejected calls by the Director of Labour Market Enforcement to increase the penalty for non-compliance with minimum wage regulations to “a level that would ensure there is an incentive to comply with legislation”

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No intermittent auditing or inspection system can replace this mechanism for near-constant monitoring by workers”

that kind of delay, they won’t experience the change. The Government doing this would be much, much more difficult.¹⁷⁸

It could just come down to the commercial reality of McDonald’s saying ‘these are the standards we expect and if you don’t fall into line then you’re not supplying McDonald’s anymore’, and that’s potentially more powerful even than state enforcement because they can get on with things that we can’t do. The financial penalties in the UK are actually too small to have a huge impact on trying to encourage compliance. If you’ve got your private sector household name saying ‘look, you’ve lost the business’ then that’s a huge and powerful message and probably stronger than what the state could do.¹⁷⁹

It is not completely unfeasible that laws and regulations could be changed to allow for substantially higher penalties for non-compliance or for suppliers or contractors to be liable even where they did not know non-compliance was happening. Examples exist of companies having responsibility for non-compliance where they have not taken the necessary precautions for it, such as the duty to do everything “reasonably practicable” to protect people from harm in the context of health and safety.¹⁸⁰ A preventative duty has also recently been proposed for sexual harassment.¹⁸¹ However, implementing all these changes takes time, especially in a context where governments are not particularly in favour of increasing labour market regulations. For example, the UK Government has recently rejected calls by the Director of Labour Market Enforcement to increase the penalty for non-compliance with minimum wage regulations to “a level that would ensure there is an incentive to comply with legislation.”¹⁸² Could WSR provide a workable alternative to achieve practical wins for workers while such changes are sought at a statutory level? Might introducing them on the ground help to prove to government that they are feasible, and therefore smooth the path to enactment? It definitely provides an interesting option.

4.3 OPPORTUNITIES FOR STATE LABOUR MARKET ENFORCEMENT

During this scoping, it became clear that even if the state could not itself implement a WSR programme, the model still provides key opportunities for understanding what mechanisms and features state labour market enforcement bodies could apply to their own work so as to more effectively prevent the abuse and exploitation of marginalised groups of workers.

SUPPORTING INSPECTORATES BY ENABLING WORKERS

A key element of WSR is that workers know their rights and are able to report non-compliance issues without fear of retaliation and in the knowledge that doing so will lead to timely and material results. No intermittent auditing or inspection system can replace this mechanism for near-constant monitoring by workers. Even if labour inspectorates were properly funded, inspections on their own would not be as effective as workers themselves being the frontline defenders of their own rights:

¹⁷⁸ FLEX interview with WSR expert, 21 June 2019.

¹⁷⁹ FLEX interview with UK labour market enforcement body, 14 June 2019.

¹⁸⁰ HSE. 2001. *Principles and Guidelines to Assist HSE in its Judgements that Dutyholders have Reduced Risk as Low as Reasonably Practicable.*

¹⁸¹ Government Equalities Office. 2019. *Consultation on Sexual Harassment in the Workplace.*

¹⁸² DLME. 2018. *United Kingdom Labour Market Enforcement Strategy 2018/19: Government Response.*

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Ensuring workers can report non-compliance, as WSR does, would help support labour inspectorates”

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WSR showcases a number of mechanisms that the state could implement to improve its own access to worker information and increase workers’ confidence to report non-compliance”

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WSR demonstrates the importance of having a clear, accessible and multi-lingual complaints system for workers”

“No Government has the resources to be there all the time. Even if they had the interest, they don’t have the resources. But if you have a system where workers can themselves report and not suffer consequences, then you have a video feed; you know what is going on constantly in the workplace.”¹⁸³

An oft-quoted statistic from the UK is that an average UK company can expect to be inspected by HMRC’s national minimum wage team approximately once every 500 years¹⁸⁴. Though the possibility of a non-compliant firm being investigated is higher because someone might file a complaint against them, the likelihood of an inspection is so low that it is unlikely to have a significant deterrent effect. Even if the HMRC’s resources were doubled, the possibility of being inspected once every 250 years is unlikely to be much more of a deterrent than being inspected once every half a millennium. Ensuring workers can report non-compliance, as WSR does, would help support labour inspectorates.

Making sure workers themselves can report and seek help not only in theory but in practice also helps resolve another issue that labour inspectorates struggle with – inspecting small and isolated workplaces: “In Vermont, the Government doesn’t have the capacity, because the farms are so small; most of the farms are not eligible to have health and safety inspections”¹⁸⁵. If all workers, including domestic workers, social care workers and others in small or isolated workplaces, felt confident to report non-compliance issues, fewer resources would be needed to do inspections (not that there are currently enough resources or inspections).

WSR showcases a number of mechanisms that the state could implement to improve its own access to worker information and increase workers’ confidence to report non-compliance. Several of the labour market enforcement respondents highlighted how crucial worker intelligence was for their work and how they need more of it¹⁸⁶, yet little has been done to increase workers’ willingness and ability to report non-compliance – something that is likely linked to the lack of funding mentioned earlier: “what we’ve found is that the amount of calls we get outstrips the resources we have to deal with them”¹⁸⁷.

First, WSR demonstrates the importance of having a clear, accessible and multi-lingual complaints system for workers. FLEX has for years been calling for an anonymous, multilingual 24/7 helpline for workers experiencing labour rights issues, whether at the lower end of the continuum or more extreme cases, such as forced labour. Currently the main option for workers is to call the ACAS helpline, which does provide an interpretation service if workers are able to navigate the initial messages in English. However, some UK respondents raised concerns about the ACAS helpline working on the basis of clearing as many calls as possible – “it is difficult to work for the purpose of enforcement if the aim is to deal with calls in a short amount of time; really they should be looking at what prompted that call”¹⁸⁸. The operatives are also “dividing problems into tier one and tier two, only one of

¹⁸³ FLEX interview with WSR expert, 21 June 2019.

¹⁸⁴ Metcalf, D. 2018. *United Kingdom Labour Market Enforcement Strategy 2018-2019*. p.52. Note: *The likelihood of being inspected varies by sector, with companies in accommodation and food services likely to be inspected once every 200 years and those in professional, scientific and technical activities likely to be inspected once every 2,500 years.*

¹⁸⁵ FLEX interview with WSR expert, 28 June 2019.

¹⁸⁶ FLEX interview with UK labour market enforcement body, 14 June 2019; 26 July 2019; and 13 August 2019.

¹⁸⁷ FLEX interview with UK labour market enforcement body, 26 July 2019.

¹⁸⁸ *Ibid.*

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WSR shows us that for any worker complaints mechanisms to be effective, workers must be able to register complaints without fear of retaliation either from their employer or from the state”

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WSR also demonstrates the importance of worker education: workers cannot be confident to report non-compliance if they do not know their rights”

which is referred to the labour inspectorates”¹⁸⁹, which means that opportunities to identify non-compliance might be missed.

Second, WSR shows us that for any worker complaints mechanisms to be effective, workers must be able to register complaints without fear of retaliation either from their employer or from the state. This learning could be ported over to the state, who could take several steps to address the fact that workers on atypical and precarious contracts are less likely to register complaints for fear of losing work, as are those who fear immigration repercussions. For instance, the state could take steps to regulate zero-hour contracts, giving more workers the right to challenge unfair dismissal¹⁹⁰, and supporting trade unions and sectoral collective bargaining. The UK should also do more to ensure that migrant workers, especially those who are undocumented or lack work authorisation, can report non-compliance without fear of retaliation by creating secure reporting mechanisms. This would enable all workers of any migration status to report abuse and exploitation without fear of immigration repercussions.¹⁹¹

Finally, WSR also demonstrates the importance of worker education: workers cannot be confident to report non-compliance if they do not know their rights. Labour inspection can learn from this by doing more to increase workers’ knowledge of their rights at work, so they feel confident to report issues. Better trade union presence is instrumental in increasing workers’ knowledge of their rights and, for groups that are less likely to be unionised, such as migrant workers (especially those on short-term visas), there are ways in which labour inspectorates can work with community groups to access hard-to-reach workers (see Box 8 below).

BOX 8. CO-ENFORCEMENT OF LABOUR STANDARDS IN SAN FRANCISCO, US¹⁹²

The San Francisco Office of Labour Standards Enforcement (OLSE), established in 2001, is responsible for ensuring compliance with local labour laws. It conducts investigations, initiates civil actions and criminal cases, and can request suspension or revocation of business licenses. In 2006, a community-based programme called ‘The Collaborative’ was established to create greater ties between the OLSE and community groups and workers’ organisations. The organisations involved sign yearly contracts that require them to engage in outreach activities and training for workers; offer consultation and referral services; help file and screen complaints; and mediate between workers and employers. They must abide by certain protocols, such as not using the funding or information they receive through the programme to recruit members, fundraise or organise workplaces. OLSE investigators, for their part, accept information from the organisations, work cases and participate in quarterly meetings.

¹⁸⁹ *Ibid.*

¹⁹⁰ In the UK, the self-employed and those classed as ‘workers’, such as agency workers and people on zero-hour contracts, have no right to challenge a dismissal; only ‘employees’ who have worked for their employer for at least two years (extended from one year in 2012) are protected against unfair dismissal. Employers do not have to provide a written explanation for dismissal unless the employee is pregnant or has worked for them for two years and employees only have three months minus one day to start challenging an unfair dismissal. See Citizens’ Advice Bureau. 2019. [Check if your dismissal is unfair](#).

¹⁹¹ FLEX. 2020 (forthcoming). *Opportunity Knocks: Improving Responses to Labour Exploitation with Secure reporting*.

¹⁹² Fine, J. 2017. [Enforcing Labor Standards in Partnership with Civil Society: Can Co-enforcement Succeed Where the State Alone Has Failed?](#)

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WSR has developed as a means of addressing labour market enforcement gaps, including those created by the lack of sufficient funding and capacity of state labour inspectorates”

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A WSR programme would arguably allow for faster and stronger consequences for non-compliant employers than existing UK systems do”

The co-enforcement established by the programme has been successful in addressing labour rights abuses experienced by workers who would not normally be reached by labour inspectorates. The organisations’ community ties, unique capacity to build trust with workers and gain information have been instrumental in uncovering labour rights abuses and persuading workers who previously didn’t trust the OLSE and wouldn’t talk to investigators to file claims.

Co-enforcement has also allowed San Francisco labour inspectorates to enforce labour standards in sectors that previously would have been outside their capacity, such as the social care sector. Workers in social care often work in isolation in private homes that inspectors do not have access to nor the capacity to inspect individually. OLSE funding enabled one workers’ organisation to educate and organise workers, advocate for changes and file wage claims. As a, the OLSE was able to reach a new group of workers and has won several cases for caregivers, recovering over US\$ 1 million in unpaid wages.

4.4 SECTION SUMMARY

WSR has developed as a means of addressing labour market enforcement gaps, including those created by the lack of sufficient funding and capacity of state labour inspectorates. These gaps often have the most significant impact on marginalised groups, including women and migrant workers, who tend to be overrepresented in low-paid, precarious work in sectors with high degrees of outsourcing, such as cleaning, catering, social care and construction. There are several ways in which these labour market enforcement gaps could be filled, such as better resourcing for labour inspectorates and changes to government policies that are known to reduce workers’ bargaining power, including restrictive trade union laws, lax labour market regulations that allow employers to hire people on precarious contracts, immigration restrictions that limit the rights of migrant workers, and laws that criminalise those who are undocumented.

However, proponents of WSR believe that the balance of power in society is so heavily skewed towards business interests and away from vulnerable workers that it will not be possible to achieve the necessary legislative changes to protect marginalised workers effectively. Therefore, instead of expending energy on influencing laws and government policies, proponents of WSR believe that it, as a private sector model, can provide a more practical solution. A WSR programme would arguably allow for faster and stronger consequences for non-compliant employers than existing UK systems do; provide a central role for workers in negotiating workplace standards – a mechanism that is currently lacking at the sectoral and state level; and establish more effective complaints mechanisms than those presently available.

The question of whether state level change is unachievable or not is of course dependent on the country context – in some situations it will be more feasible than in others. Regardless of the context, WSR may offer a practical interim solution, but one that should not replace all efforts to fight for broader societal change. In addition, the demonstrated success of WSR in preventing the abuse and exploitation of especially marginalised groups in domestic and global supply chains provides an opportunity to examine what changes could be implemented to increase the effectiveness of state labour market enforcement. The box below provides some key suggestions.

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Recognise the role that lead companies play in driving exploitation through their contracting and purchasing practices”

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Involve and consult with workers and their representatives when developing legislation, standards and regulations that affect them”

BOX 9. OPPORTUNITIES FOR STATE LABOUR MARKET ENFORCEMENT FROM WSR

Labour market enforcement bodies in all contexts should consider the following:

1. Recognise the role that lead companies play in driving exploitation through their contracting and purchasing practices and make them liable for non-compliance in their supply chains through, for example, joint and several liability or mandatory due diligence legislation.
2. Recognise the importance of worker intelligence for labour market enforcement and create mechanisms for workers to report non-compliance in ways that protect them against retaliation, including in the form of immigration enforcement, and which will produce tangible and timely results.
3. Address worker precarity, for example by regulating zero-hour contracts and reducing the period during which workers cannot challenge unfair dismissal. Addressing worker precarity would enable more workers to report and stand up to employer non-compliance.
4. Invest in making sure all workers know their rights. There are numerous mechanisms for doing so, such as granting trade unions and other workers’ organisations access to workplaces; doing outreach through workers’ organisations and community groups; or providing pre-departure and on-arrival training for migrant workers on temporary migration programmes;
5. Involve and consult with workers and their representatives when developing legislation, standards and regulations that affect them.
6. Taking an example from the Health and Safety Executive, which has a tripartite governance board, have worker representatives on the governance boards of all UK labour market enforcement bodies.
7. Strengthen and support collective bargaining in the UK.
8. Give employment tribunals the power to make recommendations for the benefit of the whole workplace, not just the individual claimant.
9. Regulate outsourced companies and labour suppliers (agencies and gangmasters) through, for example, extending the GLAA licensing system to more high-risk sectors.

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WSR is a promising method of creating change, and it should be selected in the appropriate circumstance and context”

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The extent to which WSR would have a materially beneficial impact on workers’ conditions would depend on the standards to which it holds suppliers and the doors those standards open and close”

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WSR should be accompanied by strong efforts to improve worker protections in legislation, strengthen state labour market enforcement and support sectoral or national level collective bargaining”

5. CONCLUSION

This research provides a useful analytical basis from which to understand WSR and its implications for different contexts, particularly with regard to trade unions and state labour market enforcement. WSR is a promising method of creating change, and it should be selected in the appropriate circumstance and context. The report finds that this includes contexts where 1) workplaces are fissured i.e. work has been broken down and shifted to third-party companies, subcontractors, or individuals classed as independent workers; 2) the resultant supply chains are highly buyer-driven, i.e. companies at the top of the chain have disproportionate power to influence the conditions further down; 3) other methods, such as collective bargaining or campaigns to bring workers back in-house, are unfeasible or impracticable; and 4) where state labour market enforcement is significantly failing workers or certain groups of workers.

Key questions remain regarding whether WSR can act as a pathway towards stronger worker organising and enhanced legislation and regulation, or whether it risks being used as a deflection tactic. This may depend on the strategies and motivations with which it is implemented and the ways it is embedded into organising structures already in place. Crucially, the extent to which WSR would have a materially beneficial impact on workers’ conditions would depend on the standards to which it holds suppliers and the doors those standards open and close. For example, in the UK context, a WSR programme that focuses narrowly on tackling only the worst forms of labour exploitation, or on enforcing statutory minimums, seems difficult to defend due to the presence of labour inspectorates and their purpose. A more comprehensive programme, particularly one that requires companies to source only from, or contract only with, suppliers that recognise trade unions, would be effective in ensuring WSR enhances rather than undermines workers’ movements. There are some instances in which WSR may be more applicable than alternative approaches, such as in sectors that are highly consumer-facing or where supply chains are cross-jurisdictional, and which fit the other factors noted earlier. However, there are contexts in which it may be less useful as a strategy for improving terms and conditions; for example, where terms and conditions could be improved and placed onto more sustainable footing by bringing workers in-house, a WSR programme would likely be less effective and create less structural change in the long-term than a campaign to end outsourcing in that particular instance.

Any use of WSR should be accompanied by strong efforts to improve worker protections in legislation, strengthen state labour market enforcement and support sectoral or national level collective bargaining so as to achieve change across the whole of the labour market, not just in specific sectors. However, in political climates where those improvements and changes are difficult to win in the near term, WSR can deliver concrete outcomes for workers.

FOCUS ON LABOUR EXPLOITATION

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