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List of Abbreviations

AC	Academic
CA	Charity worker
DEFRA	Department for Environment, Food and Rural Affairs
EASI	Employment Standards Agency Inspectorate
ECHR	European Convention of Human Rights
EO	Representative of employers' organizations
EU	European Union
EUFRA	European Agency for Fundamental Rights
FLEX	Focus on Labour Exploitation
GBP	British Pound
GLA	Gangmaster Licensing Authority
GLAA	Gangmaster and Labour Abuse Authority
GM	Gangmaster
GPN	Global Production Network
GVC	Global Value Chain
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
IA	Immigration Act
LI	Labour Inspector
LP	Labour Provider
OECD	Organization for Economic Cooperation and Development
ILO	International Labour Organization
IO	International Organization
IOM	International Organization for Migration
OSCE	Organization for Security and Co-operation in Europe
LMI	Labour Market Intermediary
MNC	Multinational Corporations
MSA	Modern Slavery Act
MSHTU	Modern Slavery Human Trafficking Unit
NGO	Non-governmental Organization
NHLIS	National Harvest Labour Information Service Australia
NRM	National Referral Mechanism
SAWS	Seasonal Agricultural Workers Scheme
T	Trade unionist
TT	Think Tank
UK	United Kingdom
UNODC	United Nations Office for Drugs and Crime
US	United States

Introduction

Drivers of Forced Labour in Lincolnshire Horticulture

This thesis explores drivers of forced labour in Lincolnshire horticulture, alongside institutional failures that enable this process to continue to thrive. Forced labour within agriculture in the United Kingdom (UK) more widely – horticulture being one sector of agriculture - has been linked to the recruitment and employment practices of labour market intermediaries (LMIs) (Lawrence, 2016a, 2016b, 2016c, 2016d). Institutions such as the Gangmaster Licensing Authority (GLA), now known as the Gangmasters and Labour Abuse Authority (GLAA), have been especially set up to tackle occurrences of forced labour as a result of LMI employment and recruitment; meanwhile, institutions such as trade unions, non-governmental organisations and governments have tried to tackle the wider process of forced labour in supply chains by means of reaching out to those workers who are at risk and the enacting of legislation (namely, the 2015 Modern Slavery Act and the related Transparency in Supply Chains clause) that requires businesses to be transparent in their practices.

With an estimated 40.3 million people across the world in 2016, and almost three million in Europe and Central Asia, currently subjected to conditions of forced labour across the world (International Labour Organization (ILO), 2018), this is a situation that represents a critical and under-researched topic in sociological studies. Historically, there has been little scholarship available on incidents of forced labour in Europe; as I near the end of my thesis, this remains the case even while recent years have seen the publishing of several relevant reports by international organisations (EUFRA, 2015; UNODC, 2015; Andrees et al., 2015).¹ Importantly, the research outputs of such organisations coincide with (as discussed above) increasing political efforts more widely to highlight and tackle these incidents. In the UK specifically, ‘forced labour’ has, now, emerged as an issue that is being confronted by a range of actors. The UK Government is the first government in Europe - and, globally, is only seconded by the Californian Government in the United States - to have enacted a piece of legislation criminalising practices of forced labour

¹ Forced labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2 of the 1930 Forced Labour Convention).

in businesses' supply chains, in the shape of the aforementioned Modern Slavery Act. Victims of forced labour tend to be migrant workers (Robinson, 2015), although recently news has surfaced involving British nationals as victims.² Against this backdrop, this thesis aims at answering three research questions that have been informed by my reading of the literature on forced labour, LMIs, supply chains and UK horticulture. These questions are: i) What is the role of LMIs in global production?; ii) What drives forced labour in Lincolnshire horticulture?; and, iii) How do institutional failures contribute to the process of forced labour?

1 Theoretical Contexts: Locating Forced Labour as a Structural Economic Phenomenon

Answering these research questions is key to understanding and addressing a process – forced labour – that constitutes a human rights violation according to Article 4 of the European Convention on Human Rights. However, while forced labour is a criminal phenomenon that needs to be prosecuted accordingly, recent academic studies (Barrientos et al., 2011; Barrientos, 2013; 2013; McGrath, 2012, 2010; Phillips, 2013; Allain et al., 2013) have pointed to the need to explore this process as being an integral part of the labour market. As such, this thesis does not approach forced labour in terms of its criminality per se, but as a structural economic process that is embedded in labour market relations.

Importantly, approaching forced labour from a socio-economic perspective enables me to analyse how firm-to-firm relations may lead to forced labour outcomes; and for the purposes of the thesis, I have elected to do so in the context of a sector that is particularly prone to all forms of labour exploitation: horticulture – and in a geographic area that forms the horticultural heart of the UK: Lincolnshire. However, approaching the topic in question exclusively from the per-

² A number of articles in the British newspaper *The Guardian* have indicated that victims of modern slavery tend to be seasonal workers of Eastern European origin. (See the cases involving the exploitation of Lithuanian workers in Kentish poultry farms as a recent example, (Lawrence, 2016b, 2016d; 2015)). Studies have indicated that labour migrants are more likely to be exploited than their British counterparts because of i) a lack of English language skills; ii) labour market knowledge; and iii) acceptance of forms of work that may be considered admissible in their home countries, but not in other countries (Van Meeteren, 2015). The risk posed to labour migrants of being exploited has been taken up by trade unions and non-governmental organisations, who provide flyers in several languages to instruct labour migrants in their native languages about their workers' rights in the UK. While the focus on labour migrants is important in relation to forced labour, a recent case that surfaced in Lincolnshire points to the extreme exploitation of British workers that are in vulnerable positions. Moreover, cases of human trafficking for labour exploitation involving British nationals as victims exist but are not highlighted enough (BBC, 2013). As such, while I do not want to dispute the fact that labour migrants are more vulnerable to exploitation than are British nationals, for the reasons outlined above, it is important to keep in mind that British nationals may also be victims despite mastering the English language. In the case of British victims, other vulnerabilities come into play, such as homelessness, disability or addiction.

spective of firm-to-firm relations is limiting insofar as efforts by *non-firm* actors - such as governments, trade unions and civil society actors – to tackle forced labour in supply chains are not reflected upon. As such, this thesis aims to provide new insights into how the process of forced labour in Lincolnshire horticulture is achieved, by bringing together a focus on firm relations with a focus on (failed) attempts by non-firm actors to eradicate this process. To put it another way, looking both to so-called ‘drivers’ (i.e. factors that contribute to forced labour outcomes, such as recruitment practices, employment contracts, and abusive and expensive living conditions) *and* to institutional failures (these failures, often in significant ways, advancing the conditions for forced labour and helping to render them durable), I thus seek to fill a gap in the existing literature. The selected case for my research involves the Seasonal Agricultural Workers Scheme (SAWS) and, here, the scenario of Romanian nationals. This programme ran between 2008 and 2013, when Bulgarian and Romanian citizens, also known as A2 nationals, could only find lawful employment in the UK by the means of LMIs in horticulture. The thesis seeks to address the matter of whether, and how, forced labour occurred within SAWS for Romanian labour migrants in the Lincolnshire context, both at the level of drivers and institutional failures - as well as whether or not acquiring full European citizenship since then has made a difference to such workers in terms of being protected from extreme exploitation.

Against this background of investigating forced labour as a socio-economic phenomenon involving a particular group of European migrant workers, the thesis elaborates a guiding theoretical framework - one that explicitly highlights the international dimensions to (horticultural) production and supply by deploying both global value chain theory and global production network analysis. Work on global value chain (GVC) theory and global production network (GPN) analysis have linked incidents of labour exploitation and forced labour to failure of corporate social responsibility and auditing systems (LeBaron and Lister, 2015). In the past, the literature on both GVCs and GPNs has been critiqued for a dearth of focus on labour and worker issues, however, and has not been substantially used to analyse ‘forced labour’ in Europe; now, corresponding to my interests discussed above, I seek to extend the remit of both theoretical strands to incorporate and apply to the process of forced labour within Lincolnshire horticulture specifically, by investigating the dynamics of firm-to-firm relations (the object of GVC theory), *paired with* examining institutional failures by governments and trade unions (the object of GPN analysis). Producers in horticulture have experienced a rise in the pressures and risks associated with the rationalisation of the sector by supermarkets in the early 2000s. I argue in this thesis that producers in this case seek to respond to these pressures by increasing productivity and flexibil-

ity, which they do through varying strategies with regard to employment practices. These strategies can and do intersect with those of LMIs and migrant workers. The strategies of LMIs and migrant workers are determined by production criteria, and these are, in turn, influenced by workers' gender, race and migration status, pointing to the fact that production relations are necessarily embedded within particular socio-economic contexts.

These labour dynamics are also shaped by state actors. This includes the support provided by the Home Office, the GLA/A, and court officials. The effects of state actions can therefore be contradictory in their effects on 'forced labour'. I argue that drivers and relative institutional failures do relate to contradictory state measures. Nonetheless, I work on the assumption that these contradictions are not intentional, but are a result of a lack of understanding regarding the process of forced labour as being a structural, rather than an exclusively criminal, phenomenon.

Within the literature on 'forced labour', which has been dubbed as being one sort of 'modern slavery' (Bales, 1999), there have been minor attempts to focus on socio-economic issues, with some recent studies and reports applying legal, economic and sociological methods to study forced labour, modern slavery and human trafficking for the purpose of labour exploitation. While Marxist scholarship on labour exploitation (Brass, 2004) may provide one route into analysing forced labour, the specific process this thesis seeks to better understand - that is, the governance of global value chains within forced labour and other forms of indecent work, combined with global production network analysis - has yet to become its own separate strand within either body of literature. Global value chain governance theory (Gereffi et al., 2005) can deepen our understanding of how end user firms may hand down pressures and risks in the production supply chains, pressures and risks that are eventually played out in labour supply chains.³ Global value chain governance more precisely refers to parameters under which other firms in the chain operate, as set out by end users. A chain lacking governance would amount to a string of market relations. The controlling of mangetout production in Zimbabwe by the retailer Tesco's serves as an example of global value chain governance (Humphrey and Schmitz, 2001). In contrast, global production network analysis (Henderson et al. 2002) can provide an overview of non-firm actors that are implicated in the fight to tackle forced labour in supply chains.

³ Product supply chains trace how value is added to a product from its inception to its selling point. The governance of product supply chains - e.g. keeping production costs at bay - may have some direct impact on *labour* supply chains. This is because end users can dictate how products ought to be produced and for what price. The labour supply chain of a product outlines the different workers involved in the production process of a good and/ or service. Strict quality, time and price requirements will increase pressure on workers to produce the requested good.

2 Definitions of Key Terms

A number of terms are used recurrently throughout this thesis. These terms include ‘forced labour’, ‘LMIs’, ‘gangmasters’, ‘supply chains’ and ‘value chains’. In order to facilitate the reading of this thesis, this section provides a brief definition of each term.

I use the term ‘forced labour’⁴ in this thesis because it is the term most commonly employed by the UK Government, alongside the fact that it features in the European Convention on Human Rights under Article 4.⁵ This term, therefore, will be used throughout in reference to the UK context, although it is a term that must be discussed.⁶

Central to the concerns of the thesis is the rise of labour market intermediaries (LMIs) in the horticultural context. Autor (2009) defines LMIs as “[...] entities or institutions that interpose themselves between workers and firms to facilitate, inform, or regulate how workers are matched to firms, how work is accomplished, and how conflicts are resolved.” (2009, p. 1). Such bodies have proliferated since the 1990s and include both labour providers, who are tasked with matching together employers and employees, and gangmasters, who employ workers in order to hire them out to contracting firms. Incidents of forced labour as a result of gangmaster employment include excessive working hours, unlawful remuneration, and treatment (Lawrence, 2016a, 2016b, 2016c, 2016d). Importantly, the ‘forced’ aspect is sometimes of particular salience for understanding conditions of employment here, which also includes the degree to which workers’ freedoms (to change employer, to contest conditions and to move to another area) are respected

⁴ I chose to adopt the term ‘forced labour’ as it has been defined by the 1930 Convention bearing the same name. While incidents of forced labour certainly occur “[...] under the menace of penalty [...]” and when persons “[...] ha[ve] not offered [themselves] voluntarily [...]”, there are also incidents of forced labour when persons are neither victims of potential penalties nor had they not offered to engage in such working conditions. Examples would include: i) persons who have disabilities and who, as a consequence, may not be able to judge whether their employment conditions are lawful (see the recent case in Lincolnshire; (Grierson, 2017)); ii) persons that are living on the margins of society, such as homeless people (FLEX, 2017), and who are unlikely to find regular employment as a consequence of not having permanent residence; and iii) labour migrants unaware of employment practices and workers’ rights in their destination country. While these three categories of persons may also be extremely exploited under the conditions set out in Article 2 of the aforementioned Convention, they may be forced into labour under conditions that indicate the opposite of the adopted definition. I am aware of the pitfalls of adopting the official ILO definition, but chose to proceed in this vein because my research investigates drivers and institutional failures in relation to forced labour and not the different meanings of the term per se.

⁵ On 26 June 2016, the ‘Brexit’ referendum was very narrowly won by the ‘Leave’ camp, with 51.9% of the vote. While on 29 March 2017, Article 50, giving formal notification of the UK’s intention to exit the European Union (EU), was triggered, the exact terms of the UK leaving the EU are not yet known. Irrespective of what form these terms eventually take, the UK will be bound by the European Convention of Human Rights.

⁶ In 2012, the ILO published a brochure with eleven indicators that point to forced labour. These indicators are i) abuse of vulnerability; ii) deception; iii) restriction of movement; iv) isolation; v) physical and sexual violence; vi) intimidation and threats; vii) retention of identity documents; viii) withholding of wages; ix) debt bondage; x) abusive working and living conditions; and xi) excessive overtime. These different indicators are discussed in more detail in Chapters One, Six, Seven and Eight.

or restrained. This is very closely linked to recruitment processes, which are also examined. I will then consider how and why institutions that are tasked with tackling forced labour fail to do so. LMIs operating in agriculture are commonly referred to as gangmasters; as such, the use of the term ‘gangmaster’ in this thesis solely applies to LMIs in horticulture.

LMIs are part of a labour supply chain. While supply chains have existed for a long time, their current global form has only emerged since the 1990s. In this thesis, supply chains denote “the series of companies, including suppliers, customers, and logistics providers, that work together to deliver a value package of goods and services to the end customer” (Maloni and Brown, 2006, p. 36). Supply chains can refer to both product and labour supply chains. Product supply chains denote the range of firm actors included in making a product, while labour supply chains refer to the part of the chain where products are assembled. Product supply chains are also value chains. Value chains are commonly defined as “the full life cycle of a product or process, including material sourcing, production, consumption and disposal/recycling processes” (WBCSD, 2011, p. 3).

Related to this discussion is a critique about the distinction between forced labour being a modern form of slavery and onerous work. O’Connell Davidson (2010) asks whether perpetrators that supply workers into conditions of forced labour “beat, starve, sexually harass and cheat their workers with impunity, in addition to exploiting their labour” in contrast to employers/LMIs who have “kindly refrained from beating or cheating (their workers) despite the huge asymmetries of power that existed between them” (2010, p. 252). O’Connell Davidson’s point highlights three issues: i) whether a clear distinction can be made between freedom and unfreedom; ii) how modern slavery may be a result of structural factors; and, iii) the role of deceit and violence in qualifying as a base for debt bondage as a form of slavery.

3 Outlining the Economic and Political Contexts of Forced Labour in the UK

The UK’s economy over the past two decades can be characterised by, first, steady growth, followed by a severe slump, in the form of the 2008 financial recession. Despite the recession, however, recent data by the Office of National Statistics suggests that the UK is at its highest level of employment since 1971 when records began (ONS, 2018). While, at first glance, this may seem to be good news, it is necessary to pay close attention to the quality of the work roles thus being filled. By quality of work role, I refer to the matter of whether workers in employment can

actually make a ‘decent living’ from their wages. By ‘decent living’, I mean that workers do not need to rely on state subsidies to make ends meet and are in a position to accumulate savings. Whether many workers in the UK are actually in such a position is questionable in the light of the fast rise of zero-hour contracts (Monaghan, 2017).⁷

According to the CIA World Factbook, the UK is the third largest economy in the European Union after Germany and France.⁸ By European standards, “agriculture [in the UK] is intensive, highly mechanized, and efficient ..., producing about 60% of food needs with less than 2% of the labo[u]r force” (CIA, 2017, p. 1). The result of the 2016 referendum on whether or not to leave the European Union has, however, cast doubts over the agricultural sector in terms of labour supply. While the National Farmers’ Union supported the ‘Leave’ camp prior to the ‘Brexit’ vote, farmers’ future outlook has been described as ‘gloomy’ (Harvey, 2017) - this specifically referring to a lack of labour supply and the holding back of future investments because of economic uncertainties whereby calculating future returns is challenging. As such, the industry is at risk of losing out on agricultural innovations.

Politically, the last 12 years (starting from the establishment of the aforementioned GLA/A in 2005), has seen a range of governments. The GLA was set up under the Blair ministry that lasted until 2007, when it was replaced by the Brown ministry. In 2010, Labour lost its majority resulting in the Coalition Government headed by David Cameron from the Conservative Party and Nick Clegg from the Liberal Democrats. In 2015, the Conservative Party won, in a landslide victory, the majority. Following the 2016 ‘Brexit’ vote, David Cameron abdicated and Theresa May became the new Prime Minister.

The agricultural sector, to which horticulture belongs, has undergone a rationalisation imposed by the demands of supermarkets. This rationalisation comes in the form of the replacement of much manual labour by machines. The rationalisation of the sector has also had a profound impact on the composition of the labour force in horticulture. While migrant labour in this sector was never uncommon (for example, the situation of Irish labour migrants in the middle of the 20th century in UK agriculture), the extent to which foreign workers have replaced domestic ones has been linked also to an intensification of work place regimes (Rogaly, 2008). By ‘intensification’ is understood the linking of innovations to contracts with retailers through an

⁷ Under a zero-hour contract, employees are not guaranteed a minimum number of hours, although they do not need to accept work offers.

⁸ At the time of writing, the UK is still part of the EU despite triggering Article 50 on 29 March 2017. As such, the UK still counts as the third largest economy in the EU.

increasing control of labour (Rogaly, 2008). What this means is that in order to execute the innovations that are spelled out in the relations between retailers and growers, pressure is being placed on the labour force to provide the requested innovative goods and to carry out the innovative production modes according to strict criteria.

Workers found in conditions of ‘forced labour’ in UK horticulture tend to be young, male migrants from Eastern Europe, who have migrated for agricultural work. While this is the general tendency, both interview data and recent news coverage indicate, that women also work in agriculture as labour migrants. In the case of female labour migrants in Southern Italy, covered in the media, such workers experienced dual exploitation, in terms of being subjugated to working conditions reminiscent of forced labour on top of being sexually exploited by employers.⁹ In many cases, these workers find themselves in working conditions that are characterised by low pay, highly flexible working hours, and poor and abusive living conditions.

Reports in the media and from other sources have also documented: problems with unlawful employment practices by gangmasters (Lawrence, 2016a; 2016b), the charging of extremely high recruitment fees that may propel workers into debt bondage¹⁰, and extreme health and safety hazards that may lead to workers’ deaths. In the case of UK horticulture, efforts to fight ‘forced labour’ have included, as mentioned, the establishment of the Gangmasters Licensing Authority (GLA), which, in 2016, was reformed to become the Gangmasters and Labour Abuse Authority (GLAA).

3.1 *Labour Inspections by the GLA / GLAA and State Regulations*

Efforts to combat forced labour in the UK are seen as a model that could also inform other countries (Plant, 2011; OSCE, 2016). These efforts have largely been targeted towards ensuring that labour (migrants) work(s) in conditions deemed to be decent. This section briefly outlines indicators of progress in combating ‘forced labour’ in the UK.

⁹ L. Tondo and A. Kelly (2017) reported in *The Guardian* the plight experienced of an estimated one thousand female Romanian labour migrants in Southern Italian agriculture, by which these workers are both being forced into labour and sexually exploited. Following the revelation by the newspaper, both the Romanian Government and Italian authorities from the Sicilian province of Ragusa met to discuss how to eradicate these violations.

¹⁰ Debt bondage is defined as being forced to repay debts by means of work. Pay ranges from low to non-existent, wherewith all or much of the money earned goes towards the repayment of debts. Debt bondage is considered to be the most common form of modern slavery but awareness of its existence is lacking among the public (Anti-Slavery International, 2017).

In 2004, the Blair Government recognised the existence of forced labour in the shell fishing sector.¹¹ The then government body GLA was created the following year and tasked with licensing gangmasters operating in the following four sectors, alongside shell-fishing: i) agriculture; ii) horticulture; iii) food packing; and iv) food processing. Eleven years later, the Coalition Government passed the 2015 Modern Slavery Act, the first of its kind in Europe. This Act applies to every company in England and Wales, but only requires businesses with a yearly turnover of and above GBP 36 million to disclose their actions to eradicate forced labour in their supply chains. The GLAA differs from the GLA in terms of i) having policy style powers; ii) being required to report to two ministerial Secretaries; iii) having created the post of a Director of Labour Market Enforcement; and iv) being able to remove or add to the list of sectors which it covers.

The GLA/A model is unique in Europe. In particular it involves a labour inspectorate with police style powers. However, while both the GLA and GLAA have been praised for their work and institutional uniqueness (Plant, 2011; OSCE, 2016), the amount of convictions has been low.

*Table 1: Total convictions since 2008
(GLAA, 2017)*

Offence	S12	S13	S18	Other	Offenders
2015-16	5	0	0	6	1
2014-15	9	0	0	4	5
2013-14	5	1	0	3	6
2012-13	11	15	0	0	26
2011-12	8	4	0	0	12
2010-11	14	3	0	0	16
2009-10	5	1	1	2	8
2008-09	1	0	0	0	1
Totals	58	24	1	15	75

¹¹ This was in response to the 2004 Morecambe incident, which involved the death of at least 21 undocumented Chinese cockle pickers in North West England. These cockle pickers drowned as a result of hazardous working conditions.

The table above shows the number of convictions, from 2008 until 2016, that resulted from investigations carried out by the GLA/A. This data is the latest available from the agency's website. Some of these investigations were carried out by the GLA/A solely, while others were conducted jointly with other law enforcement agencies in the UK; there are no indications on the website, however, as to which of the two categories a given investigation falls under. The number of offences relating to gangmasters operating without a licence (S12) amount to 58 over a period of eight years. This number increased from one offence in the first year to a peak in the period 2010-11, reaching 14 offences. The number then dropped down to eight offences the following year, before picking up again to see 11 unlicensed gangmasters convicted in 2012-13. The number of convictions then dropped again below ten for the years 2013 to 2016. Meanwhile, convictions related to the possessing of documents (S13) – meaning either forged documents, documents not obtained through appropriate ways, and/ or owning someone else's documents – steadily increased from no convictions in 2008 to 15 during the period 2012-13. Convictions related to this crime then drastically stalled, dropping to one conviction in 2013-14, followed by no convictions at all the following two years. Notably, convictions related to collaborating with unlicensed gangmasters (S18) only happened once and this was during 2009-10. Finally, other non-specified crimes accounted for 15 convictions between 2008 and 2016. In total, then, 75 offenders were sentenced between 2008 and 2016. As such, the number of convictions remains comparatively low if contrasted with news coverage of unlicensed gangmasters. This low number of convictions may be related to a number of facts, including the difficulty in discerning a hidden and/ or isolated process such as forced labour, and victims of unlawful practices by gangmasters either being afraid to come forward and report the crime or not self-identifying as being such, as well as a potential lack of staff on the ground to pursue every single claim (Fletcher et al., 2005; Van Meeteren, 2015).

4 Forced Labour and UK Law

As stated above, the Modern Slavery Act (MSA) became law in England and Wales in 2015. 'Forced labour' may now be punishable by life imprisonment. In terms of interpreting this legal provision, it should be kept in mind that this is a legal novelty and be considered in this context. The novelty reflects an awareness of a process that takes place not only in countries considered as belonging to the 'third world' and/ or where labour laws are less rigid when compared to developed economies, as well as indicating the significant role of end users in handing down risks and pressures in product supply chains that are played out physically in labour supply chains

at the expense of workers located in the lower-tier. The MSA reflects both a contextualised understanding of the issues and practical assumptions of how to fight forced labour in supply chains. Bearing in mind both of these factors can be one way to formulate, or debate, academic definitions.

Despite the awareness of forced labour in the UK and the state providing means to tackle the process via the Transparency in Supply Chains clause contained in the MSA, there appears to be a contradiction between this clause and another recent piece of legislation key to this thesis – namely, the 2016 Immigration Act – regarding the protection of workers located in the lower-tiers of supply chains that the MSA is tasked with protecting. Indeed, blurring the lines between immigration enforcement and labour inspection, as enshrined, according to Robinson (2015), in the Gangmasters and Labour Abuse Authority, puts labour migrants at risk of deportation and sentencing. Studies have indicated that workers located in the lower-tiers of supply chains are more likely to work unlawfully than those employed in the upper-tiers. The MSA, then, is tasked with protecting those workers who the 2016 Immigration Act actually identifies as *offenders*. The question that needs to be answered is which status, that of the perpetrator or that of victim, is prioritised by the government when dealing with victims of forced labour that have been unlawfully employed.

Concerns over ‘forced labour’ can be based on valuing freedoms per se and concerns over negative impacts resulting from restrictions on such freedom (see earlier discussions on freedom in Section II). To put it another way, constraining workers’ capacity to make the decision whether to enter or exit an employment arrangement already counts as a rights infringement; such workers are then likely to become more vulnerable to additional rights violations, precisely because of the increased control that is likely to be exercised by his/ her employer. A fundamental issue here, however, is about the challenge presented in being able to demonstrate proof that freedoms have been constrained. In the UK scenario, there have been well-documented cases in which rural migrant workers have been forced to live in their work places due to violence or threats of it. However, in many other cases, debt bondage is the key mechanism by which workers’ freedoms are suspended. This is because debt bondage is a process by which workers pay back debts by means of their labour and thus receive little or no payment. In debt-bondage arrangements, multiple actors (recruitment agents, sub-agents, informal recruiters) may enter a scene in which structural factors (the seasonal work in horticulture, ‘just-in-time’ production, previous limitations to stay in the UK for six weeks) have constrained the range of choices available to migrant

workers. The definition of trafficking in the document *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* allows for the ‘abuse of power or vulnerability’ to address the restriction of workers’ freedoms in theory. However, in practice, providing evidence for the ‘abuse of power or vulnerability’ is difficult. Such abuse may manifest itself in the intangibility of freedom restrictions. These restrictions may be more difficult to prove given the nature of contemporary forms of debt bondage and human trafficking. An aspect that tends to be disregarded concerns the psychological aspects for victims that kick in when trapped in highly exploitative conditions: Stockholm Syndrome. This is a recognised condition, characterised by victims of abuse holding a positive attitude towards the perpetrator, as a form of survival strategy. In the case of forced labour, when workers become extremely dependent on employers for survival, they may also develop this particular syndrome.

As mentioned, two key indicators of ‘forced labour’ are highly flexible working arrangements and long working hours. The co-existence of these indicators may appear contradictory, but it is not; this situation occurs in horticulture because the just-in-time principle on which supermarkets operate means that fresh produce has to be harvested in a very short amount of time during a particular period of the year. Efforts to combat these issues in the UK have recognised that the line between precarious work and forced labour can be thin (ILO, 2009). The International Labour Organization has argued that there is, in the first place, a thin line between the seemingly non-coerced nature of the exploitation exemplified in these two indicators and more overtly coercive forms of exploitation; moreover, they claim, this also represents the thin dividing line between labour exploitation and forced labour.

5 Structure of the Thesis

‘Forced labour’, understood as involving both poor employment conditions and restricted freedoms, has been identified in the horticultural sector in the UK. Above, a gap in the literature on ‘forced labour’ has been identified, in that the process has not yet been analysed from a socio-economic perspective with particular attention paid to what constitutes drivers in Lincolnshire horticulture and how institutions fail to eradicate this process. This thesis aims to fill this gap – and the shape this effort will take is now briefly described, as I provide an outline of the structure of the thesis.

In Chapter One, I discuss the literature relevant to answering my three research questions. In Chapter Two, I discuss GVC theory and GPN analysis in more depth, to address forced labour

as a structural economic process. This includes an outline of the relevance of these two theories to horticulture, the different legislative, judiciary and executive governances of value chains, and an economic geography of LMIs. In Chapter Three, I discuss and provide the rationale for the research methods this thesis uses to seek answers to my research questions - chiefly, semi-structured interviews with experts. In Chapters Four and Five, I provide a general outline of how the horticultural sector is structured and what regulations exist that govern employment in the United Kingdom to provide a context for understanding the findings of my research. The focus then shifts to the analysis of my empirical findings in the form of Chapters Six to Nine. In Chapter Six, my first findings chapter, I investigate whether or not the SAWS scheme can be considered a source of forced labour for Romanian nationals. In Chapter Seven, I ask the question of whether incidents of forced labour in UK horticulture involving Romanian nationals have been detected once they benefited from full EU citizenship. In Chapter Eight, meanwhile, I attempt to answer the question of how conditions of forced labour may be furthered by institutional failures by trade unions and governments. In Chapter Nine, I conclude my thesis by providing a brief overview of drivers and institutional failures enabling forced labour, as well as outlining policy recommendations based on this overview; the contributions and the limitations of my research are then considered, the latter being discussed with an eye on possible directions for future work in this area.

Chapter One

Literature Review

In recent years, there has been a surge in scholarship on fraudulent recruitment practices by labour market intermediaries (LMIs) (EUFRA, 2015; Andrees et al., 2015; UNODC, 2015; Wright and Kaine, 2015; Sorrentino and Jokinen, 2014). Autor (2009) defines LMIs as: “[...] entities or institutions that interpose themselves between workers and firms to facilitate, inform, or regulate how workers are matched to firms, how work is accomplished, and how conflicts are resolved” (2009, p. 1). In common language, LMIs are referred to both as recruitment agencies and as employment agencies. The difference between recruitment and employment agencies is that recruitment agencies employ workers directly to rent them out to contractors. Meanwhile, employment agencies match employers and employees without having a direct, legal employment relationship with either party.

LMIs have been linked to forced labour (Barrientos, 2013; Sorrentino and Jokinen, 2014; Andrees et al., 2015; UNODC, 2015; Phillips, 2013; ILO, 2005). The Forced Labour Convention (1930) (No. 29) defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Since June 2014, the Forced Labour Convention has been supplemented by both Protocol 29 and Recommendations R203 to include labour trafficking and slavery-like practices. However, this definition is not universal law. Settling on one legally binding definition of forced labour is complicated by disputes over whether to accept a narrow or broad understanding of the term (Koettel, 2009), its recurrent misuse as a synonym for 19th-century-US-style slavery (Bales, 1999), misconceptions regarding unfreedom (Phillips, 2013), and the nexus between forced labour and financial payments (Phillips, 2013).

Academic contributions in the form of articles and special issues about forced labour in global production networks (GPNs) and global value chains (GVCs) - the theoretical framework of my thesis (see Chapter Two: The Theoretical Framework) - have been growing since the late 2000s (Barrientos 2013, 2008; et al., 2011; McGrath, 2010; Phillips, 2011, 2013; Coe and Hess, 2013; Azmeh, 2014). Moreover, reports published by international organisations and academic

discussions of forced labour in GVCs and GPNs point to the role of LMIs specifically in fostering conditions of forced labour (Barrientos et al., 2011; Gordon, 2015; Phillips, 2013; 2011; McGrath, 2010; Barrientos, 2013, 2008; Posthuma and Nathan, 2010). Reviewing the existing literature on the nexus between LMIs and forced labour has informed my three research questions, these being as follows: i) what is the role of LMIs in global production?; ii) how may LMIs place workers into conditions of forced labour?; and iii) how are these conditions rendered durable and institutionalised?

Prior research has demonstrated that European labour migrants can be fed into forced labour within the European Union (EU) (Clark, 2013; Skrivankova, 2014, 2010; Scott et al., 2012). My study therefore does not claim originality for researching the claim whether or not European labour migrants may be subject to forced labour within the EU. Rather, my research explores *how* the process of forced labour in horticulture might be achieved. Romanian labour migrants are a useful case study because, prior to 1st January 2014, they could only find lawful employment in the UK labour market by participating in the Seasonal Agricultural Workers scheme. This scheme entitled such persons to work in UK agriculture and horticulture for six months; if an individual worked beyond this time, they became an undocumented labour migrant. (Undocumented labour migrants are highly vulnerable to abuse and exploitation [Underhill and Rimmer, 2015; Bustamente, 2010; Estrada-Tanck, 2013]). Since 1st January 2014, meanwhile, Romanian labour migrants have been free to take up employment in the UK labour market. LMIs may work as an agent facilitating the migration of workers (Agunias, 2009), while, for contractors, LMIs may play a key role in facilitating the production of goods and services across borders. Hence, production becomes global in the sense of involving production sites located in several countries. Before exploring the literature on the link between LMIs and forced labour, this chapter aims at providing a broad overview of the role and the development of LMIs. Henceforth the approach chosen in my review of relevant literature is that of an inverted triangle, meaning the chapter will move in its focus from the broad to the specific.

The first part of the chapter, then, discusses literatures relevant to understanding *the place of LMIs in global production*. Global production is understood as the dividing up of the production process into different stages across different countries (Hayter, 2004). The breaking up of the production process across different countries has, as a benefit, keeping production costs at bay and an increasing of the availability of raw materials (Hayter, 2004). Since the rise of neo-liberal globalisation, discussions surrounding global production focus on offshoring of production and/ or labour supply (Feenstra et al., 1996; Hayter, 2004). In order to open up my first

research question, about the place of LMIs in contemporary global production, one first has to understand how global production is organised today. Since my thesis focuses on how workers are placed by LMIs into conditions of forced labour in UK horticulture within a global economy, the organisation of production in UK horticulture, specifically in terms of its relationship to global production, has to be analysed as well. Subsequently, I will discuss how production is organised so as to lead to the prevalence of LMIs in the first place. I conclude this section by investigating what the GVC/GPN framework tells us about this organisation of production in relation to forced labour. The second part of the chapter then explores the link between LMIs and *the rise in (international) labour migration*. As LMIs may act as migration facilitators, the working mechanisms of the LMI will be explained. As these working mechanisms may not always be lawful, thus putting workers at risk, fraudulent recruitment practices will be explored. This section concludes by elaborating how fraudulent recruitment practices by LMIs can be linked to human trafficking and forced labour. The third part of the chapter investigates factors that may render durable conditions of forced labour in the horticultural sector. First, I consider the idea that horticulture is a sector that rests on labour migrants' exploitation, and discuss why it is prone to labour exploitation. Second, a brief discussion follows about two agencies, the Gangmaster Licensing Authority and Trade Unions, that are tasked to protect migrant workers, but who may face challenges in doing so. These challenges may constitute a route into forced labour.

1 The Nexus Between the Organisation of Global Production and LMIs

1.1 The Rise of World Wide Supply Chains

Production today is organised in the form of global supply chains (Ruggie, 2013; Wright and Kaine, 2015). Supply chains are defined as “the series of companies, including suppliers, customers, and logistics providers, that work together to deliver a value package of goods and services to the end customer” (Maloni and Brown, 2006, p. 36). Supply chains were not always the dominant organisational model in global production. Ruggie (2013) notes that supply chains have, however, always existed in the construction sector and could also be found in manufacturing sectors. Hence, supply chains as an organisational model were previously limited to particular sectors. However, global production has undergone important changes since the 1990s, with the coming about of neo-liberal economics and the rise of outsourcing and offshoring of production. As such, supply chains as an organisational model of global production have become “ubiquitous in the global economy, found in every industry, and on every continent” (2013, p. 6). With the

ascent of global supply chains as an organisational model, scholars' and practitioners' attention has shifted towards the consequences of these for work and employment relations; while then, as objects of analysis, supply chains *per se* are nothing new, they certainly are in their current form – of *global* supply chains.

The rise of supply chains as an organisational model for global production may be explained by three recent developments leading firms to outsource production and labour supply (Wright and Kaine, 2015). These three trends are: i) the encouragement provided, both by both new public management principles in the public sector and by competitive pressure in the private sector, to outsource to specialised contractors and suppliers those parts of production processes that are considered to be non-core activities (Davis-Blake and Broschak, 2009; Marchington et al., 2005); ii) the rise in subcontracting, franchising and labour hiring (Johnstone et al., 2012); and iii) the growth of global supply chains that came about as an outcome of trade liberalisation and technological advancements (which jointly led to the establishment of a new international division of labour) (Bair, 2009).

Following the above sketch of the current structure of global production, the question arises as to how this development specifically relates to my research project about the supply, by LMIs, of Romanian migrant workers into conditions of forced labour in UK horticulture. The issue of global supply chains may appear irrelevant insofar as goods produced/ harvested in UK horticulture tend to be sold in the UK domestic market and not in other parts of the world. Nonetheless, horticulture is a global supply and value chain in that it consists of networks governed by powerful lead firms such as supermarkets (Barrientos et al., 2003), who, in maximising the value added within their production and distribution chain, set 'local' suppliers of agricultural produce around the world against one another to minimise the prices they have to pay. These lead firms decide on the nature, as well as on the production modes, of the product (Dolan and Humphrey, 2000). Supermarkets tend to control the production process from the beginning to the selling point by means of intensive supply chain relationships without owning production or processing facilities. Horticulture supply chains are buyer-driven, whereby economic demands are highly volatile and subject to buyers' preferences that are likely to be short-lived; in this context, competition between suppliers is kept high and so individual suppliers are left in a weak position.

1.2 *How the Organisation of Production (in Horticulture) leads to the Prevalence of LMIs*

As explained in the previous paragraphs, global and national production are characterised by distinct but not wholly discrete supply chains. The question arising from this observation is how

the organisation of production within increasingly global supply chains has led to the prevalence of LMIs in the first place. LMIs are common in sectors characterised by: i) seasonal demand for labour - where they provide contractors with temporary workers; ii) employment arrangements where employers and workers do not speak the same language; and iii) a labour force significantly comprised of workers who have decided to take up work abroad (UNDOC, 2015; Gordon, 2015; Andrees et al., 2015).

In the case of UK horticulture, growers resort to labour employed through LMIs, and deployed to growers' working sites because of what Rogaly (2008) calls "agriculture's particular relationship with nature" (p. 8). Horticulture is one branch of agriculture; hence, this 'particular relationship' also applies to horticulture. The 'particular relationship' between horticulture and nature is characterised by the divergence in labour-intensive crop production between production and labour time. This divergence is the reason why hiring workers in horticulture on a permanent basis is (economically speaking) unattractive. By hiring workers from LMIs, growers are able to adjust the number of (temporary) workers to labour-intensive times. As such, growers pay for the use of such workers only when they require them. Furthermore, LMIs hiring out their workers may take up responsibility for transporting and overseeing their workers on-site (Rogaly, 2008).

One form that LMIs may take in horticulture is what is often referred to as gangmasters.¹² A gangmaster is an "[individual] agent [that] contracts and supplies workers for employment in the British labour market, traditionally in the horticultural and agricultural sectors" (Strauss, 2013, p. 180). While gangmasters have, in recent years, risen in number, they are nothing new. Strauss (2013) provides a historical perspective by tracing the root of gang labour and masters back to the early 19th century in England. This version of gang labour was characterised by the employment of women and children, but it declined as the century drew to a close. Strauss links the re-emergence of gangmasters and labour to the changes undergone in the global political economy and to neo-liberal imperatives (enshrined in the 1990 Washington Consensus) to foster (highly) flexible labour markets.

¹² Chapter Four: The Organisation of the Horticultural Sector, dealing as it does with the organisation of the horticultural sector in the UK, sets out two different LMIs operating in the agricultural sector: labour providers and gangmasters. The difference between these two LMIs is that labour providers match farmers/ growers and workers, while gangmasters hire workers to supply to farms. Labour providers are not the legal employers of seasonal workers while gangmasters are. Additional and more detailed discussions on the different recruitment channels used by labour migrants are in Chapters Four and Five.

1.3 From the Prominence of LMIs to Intensified Labour Exploitation

Recent reports address the nexus between fraudulent recruitment practices by LMIs and forced labour (Andrees et al., 2015; Sorrentino and Jokinen, 2014; UNODC, 2015). However, in order to fully understand this nexus, one has to take a step back and investigate what exactly it is about the current organisation of production, characterised by a high prevalence of LMIs, that generates pressures leading to forced labour.

Frenkel and Kim (2004) discern two different sorts of contracting in their study of labour practice and employment relations in South Korean sport shoe contracting firms. The first type, *transactional contracting*, is based on explicit, short-term contracts with clearly specified price and quality criteria, meaning there is a low probability of examples of good labour practices being implemented. This is because examples of good labour practices often come in the form of a labour code to which compliance most often involves long-term, costly reform (costs induced are unlikely to be borne by the firm) and which are not requisite to the firm's short-term product requirements. In contrast, in *relational contracting* – based around long-term relationships characterised by frequent, process-based contracts – compliance is more likely to occur as the working relationship between the firm and supplier is an on-going one and the supplier does not have to compete against other suppliers; hence, chances are high that contractors/ suppliers will be influenced by the firm's position regarding labour practices (Frenkel and Kim, 2004). In terms of what this means with regard to LMIs specifically, then, the first sort of contracting (transactional contracting) tends towards their not abiding by codes of conducts about examples of good labour practices, and hence placing the labour force at risk. The second sort of contracting (relational contracting), in contrast, tends towards the adherence to codes of conducts - and the labour force thus not being put at risk in particular respects by LMIs. These particular respects may include the charging of (extremely high) recruitment fees). These fees may be hidden and be charged to the customer, in this case the workers, as a service fee in relation to assisting the customer in finding flights and/ or accommodation in the country of destination. If LMIs were to follow codes of conducts that prohibited such charging, then workers would not be exposed to these risks. In the UK, for example, LMIs that are members of the Recruitment and Employment Confederation have to follow a code of conduct that prohibits the charging of fees.

Stone and Arthurs (2013) and Johnstone et al. (2012) join Frenkel and Kim in analysing employment relations between general contractors and LMIs with respect to the outcome of forced labour. Because global production organisation rests on the outsourcing of labour supply for (short-term) production dependent on a highly volatile economic demand, pressures in terms

of producing goods in time and in accordance with buyers' preferences is passed on from general contractors through LMIs to the supplied labour force. Given that the outsourcing of labour supply or the offshoring of production is common throughout (global) supply chains, one may argue that global production is structured in ways to facilitate the provision of cheap, disposable, temporal and casualised labour. 'Cheap', 'disposable', 'temporal' and 'casualised' are adjectives describing forced forms of labour (Bales, 1999; Fudge and Strauss, 2014). Indeed, forced labour may come in a variety of forms and in varying degrees. Forced labour can be considered to be the top end of Skrivankova's (2010) useful concept of a continuum of exploitation. This concept encompasses "[...] minor and major labour law violations, [through] to extreme exploitation in the form of forced labour" (Skrivankova, 2010, p. 4). Forced labour has become a criminal offence in the United Kingdom since the passing of the Modern Slavery Act in 2015. Newspaper articles (Harris, 2013; Lawrence, 2016a; Lawrence, 2016b; Lawrence, 2016c; Lawrence, 2016d;) that the collusion of a number of factors that individually may not constitute forced labour but in *combination* can do so, are not uncommon in sectors regulated by the former Gangmaster Licensing Authority. Such factors include abusive living arrangements (by abusive is meant both poor quality and highly expensive), working overtime, having no option to rest, ID theft (in the sense of opening bank accounts with workers' identification documentation that the worker was not aware of), and illegal deductions of wages.

1.4 *The Role of Global Production Network Analysis in Understanding Forced Labour*

In my thesis, I use Global Production Network (GPN) analysis and the concept of global value chains (GVC) to investigate the complex set of relations in which forced labour may occur in production chains as a result of employment by LMIs. The incidence of forced labour in GPNs remains underresearched (McGrath, 2010; Barrientos et al., 2011; Coe and Hess, 2013; Azmeh, 2014), while GPN analysis has gained momentum as a framework for investigating the rise in precarious employment (Fudge and Strauss, 2014; Barrientos et al., 2011; Posthuma and Nathan, 2010), as well as for exploring labour standards (Mieres, 2014; Rossi, 2011) and the role of labour (Carswell and De Neve 2012; Selwyn 2013; Rainnie et al. 2011; Coe et al. 2008).

Within the scope of my thesis, GPN analysis is used to explore whether the phenomenon (here, as applied to the case of Romanian labour migrants) of international labour outsourcing by LMIs within global value chains (GVC) leads to forced labour (here, specifically within UK horticulture). Scholars that have undertaken research on forced labour from a GPN/ GVC per-

spective include De Neve (2014), Barrientos (2013; 2008), Phillips (2013; 2011), as well as Posthuma and Nathan (2010). De Neve's (2014) contribution explores how one becomes and what it means to be a labour contractor in the South Indian garment industry. De Neve argues that:

- i) the boundaries between workers and contractors are blurred: this means that contractors not only tend to be former workers, but that, in the context of a casualised and highly flexibilised labour market, contractors may revert to being workers. As such, De Neve (2014) claims that distinguishing between someone who is acting as a labour contractor and who is working for a labour contractor is not clear-cut;
- ii) the claim that LMIs are unscrupulous towards and exploiting the labour force does not take into consideration the complex social reality of LMIs: De Neve's ethnographic study demonstrates that the workforce is not necessarily low-skilled, weak and vulnerable, but may be dynamic, outspoken and highly skilled. As such, workers recruited by LMIs in the South Indian garment sector are not as easily exploitable as assumed, while kinship and informal networks of caste put limits to LMIs' power over exploiting the labour force; and
- iii) informal networks of labour recruitment and management do not necessarily go hand in hand with forced labour, but can be important as sites for acquiring skills and sharing knowledge.

De Neve's contribution approaches the relationship between LMIs and incidences of forced labour from a geographic micro-level, as does Barrientos' (2013) contribution; more specifically, Barrientos (2008; 2013) provides explanations for forced labour in agriculture by investigating processes (supply chain management and recruitment practices) at both micro and macro levels. Meanwhile, Phillips (2011), and Posthuma and Nathan (2010) explore these phenomena from a global political economy (macro-level) perspective.

I now focus on the work of Barrientos (2013) specifically, whose typology of LMIs in the context of a review of case studies from South African and UK horticulture in which it is suggested that LMIs play a significant role in causing forced labour.¹³ This typology includes:

- i) the labour agent: in my thesis, labour providers are labour agents. This means that labour agents match workers with producers. The producers pays a fee to the labour agent for his/her service;

¹³ This typology is further outlined and described in the chapter dealing with the organisation of the horticultural sector in the UK.

- ii) the quasi-labour agent: the quasi-labour agent is the actual employer of the workers which (s)he supplies to a producer. The quasi-labour agent is the legal employer of the workers, while workers are supervised on-site by the producer. This working arrangement may appear unclear to workers who then face challenges in identifying their legal employer. Quasi-labour agents can be gangmasters;
- iii) the labour contractor: in my thesis, labour providers are often gangmasters. Gangmasters are in charge of their workers whom they pay. Producers and workers do not necessarily meet; and
- iv) *ad hoc* labour contractor: recruitment occurs informally; workers pay a fee for being recruited.

The quasi-labour agent and *ad hoc* labour contractor appear, from Barrientos' (2013) description, to be a direct gateway into forced labour. For the purpose of my thesis, the 'labour agent/ labour provider' and the 'labour contractor/ gangmaster' typologies are key because, from 2008 until the end in 2013 of the Seasonal Agricultural Workers Scheme (SAWS), Romanian nationals could only find employment via licensed labour providers; meanwhile, after SAWS, Romanian nationals could also use the services of gangmasters to find employment in UK horticulture. Prior to 2013, only employment in horticulture facilitated through a labour agent was lawful, while, post-SAWS, employment facilitated both by labour agents and labour contractors is lawful. Finding employment through the quasi-labour agent is not illegal, but constitutes a slippery slope for workers into exploitation because it is unclear who is their legal employer. Finally, finding employment through the *ad hoc* labour contractor is illegal and also bears significant dangers of exploitation for the workforce because of the consequently informal working arrangements. Working illegally is a criminal offence that can lead to workers' deportation, as outlined in the 2016 Immigration Act. For the purpose of my thesis, this typology is also key because it introduces the concept of 'triangular employment relationships'. The triangular employment relationship between general contractors, LMIs and the labour force serves as another factor that is likely to account for the labour force's exploitation, as who the actor in charge of the labour force's legal employment is, is not clear.

Phillips (2011), meanwhile, argues that forced labour occurs both within GPNs and market contexts. Currently much attention focuses on the distinction between free and unfree labour, which, according to Phillips, ignores the particular kinds of labour relations in GPNs and present forms of forced labour. She argues that forced labour should be understood as a particular form of 'adverse incorporation' in GPNs, resulting from the internal organisation and functioning of

GPNs as well as from social relations of poverty. Phillips' contribution is key insofar that she links forced labour to labour relations, pointing out that victims may not only be exploited by individuals but actually by labour market relations. As a consequence, even if these victims were to be freed from their criminal employer, this would not mean that victims would not become victims again in the future. This argument is key for my own research because working arrangements in agriculture are deemed to be 'dangerous, demanding and dirty' (also known as 3D jobs). Thus, moving from one job to another in agriculture/ horticulture does not necessarily mean a betterment in employment arrangements, given the nature of jobs in this sector.

Finally, Posthuma and Nathan (2010) explore - in the setting of the Indian economy - the effects of economic upgrading and development for the labour force's working conditions and rights in GPNs. While, it is argued, India's economy recently experienced significant growth that resulted in the creation of new opportunities for large and small firms, as well as for high- and low-skilled workers, the effects of the growth are not split equally between firms, workers and sectors. These authors call for a new generation of regulations to better protect workers located in the lower tier of supply chains. In the framework of my thesis, this means that analysing novel legislation in this area - specifically, the 2015 Modern Slavery Act and the 2016 Immigration Act - is key for understanding whether new regulations mean a betterment for the seasonal labour force that tends to concentrate in the lower tier of supply chains.

Moreover, in the literature on 'new slavery' that also deals with forced labour/ labour exploitation, 'product chains' (Bales, 2007, p. 177 – 212) have received minor attention. The observation about the dearth of scholarship that examines forced labour in relation to 'product chains' is surprising, insofar that, in 2014, the International Labour Organisation (ILO) estimated as many as 21 million people have been forced into exploitative labour; out of these 21 million, men and boys accounted for 9.5 million, while women and girls represented 11.4 million. 19 million people were forced into exploitative labour by enterprises or private individuals, whereas two million people were forced into exploitative labour by states and rebel groups (ILO, 2014). The general tendency is still to approach forced labour in supply chains from a criminological perspective by focusing on how perpetrators should be prosecuted. However, lately, new initiatives have emerged that challenge this general tendency in order to better understand how forced labour in supply chains is actually a structural economic problem.

2 International Labour Migration Dynamics, Working Mechanisms and Fraudulent Recruitment Practices by LMIs

2.1 *International Labour Migration Dynamics*

The integration of national economies in the global economy has resulted in increased flows of goods, services, capital and workers within and across borders. Other factors explaining the rise of workers seeking employment abroad include growing inequalities, warfare and environmental problems in migrants' countries of origin. Simultaneously, global production is concentrated in particular places and necessitates labour relocation. As a result, international labour migration is growing rapidly and predictions do not see an end to such labour flows in the near future (Andrees et al., 2015).

Andrees et al. (2015) claim that, between 1990 and 2013, international labour migration has increased by 77 million, from 154 to 232 million persons relocating for work across borders each year. Despite a rise in international labour migration between 2000 and 2010, a slow-down has been noted since 2010. This may be related to the 2008 financial crisis. The United Nations Department of Economic and Social Affairs Population Division Database claims that migration is most common within and across Europe, as well as within and across Asia and the Middle East. International labour migration may be short or long term. Short-term international labour migrants outnumber long-term migrants and are characterised by low-skilled work in sectors such as domestic work, agriculture, and construction (OECD, 2014)¹⁴.

International labour migration can be facilitated by LMIs. LMIs may assist workers in finding work abroad through specific placements. In this case, LMIs' role as employer is likely to go beyond the usual status of employers, since LMIs may assist workers not only in finding employment but also in organising transportation, accommodation and travel documentation (visas). Taking charge over employment, transportation, accommodation and travel documentation does not in itself make a LMI criminal. However, if LMIs are involved at several stages in the finding and organisation of employment for labour (migrants), the scope increases for them to carry out fraudulent practices.

¹⁴ Although international labour migration receives much scholarly attention (Ruhs, 2013; Stalker, 1994; ILO, 2018; 2014; 2009; 2007), *national/ internal* labour migration should not be disregarded. Taking the example of China, Andrees et al. (2015) state that 230 million workers are currently internal migrants in work or searching for employment outside their home region. This accounts for one-fifth of China's total population of 1.38 billion.

With respect to Romanian labour migrants supplied into conditions of forced labour by LMIs in UK horticulture, it remains to be seen whether, how and to what extent LMIs assist such migrants in travelling from their home country to the UK. Romanians may wish to emigrate for work because of the domestic economic situation relative to perceived advantages abroad. In the case of Romanian labour migrants to the UK, 2014 saw Romania enjoy one of the highest real GDP growths (2.9%) in the European Union (EU) (World Bank, 2015). However, despite experiencing real GDP growth, the outflow of Romanians looking for employment is steady. This may suggest that livelihood options for the population have not increased. This lack of personal economic improvement may pave the way for emigration. Still, the equation of neo-liberal growth and a lack of increase in employment opportunity is not absolute and only partially explains the Romanian exodus and an increase in forced labour.

Moreover, Romanian labour migrants do not technically need LMIs to facilitate travel arrangements to work in another EU member state. Since 1st January 2008, Romania has belonged to the EU; as such, Romanian citizens are free to travel throughout the Union. Moreover, since 1st January 2014, Romanian labour migrants are free to enter the UK labour market without restriction. However, although Romanians are free to travel across, and take up employment, in the EU, LMIs may still play a significant role in finding them employment. This may be explained by a lack of English language skills, and (in part, associated) pragmatic challenges such as finding employment abroad by themselves and organising the necessary travel arrangements. Data gained from interviews carried out in the spring and summer of 2016 confirmed the factors behind Romanians' decision to find employment through LMIs.

2.2 *The Working Mechanisms of LMIs*

From an orthodox economic point of view, LMIs are perceived as information providers that support firms and workers in navigating through imperfect markets (Autor, 2009). Boheim and Cardoso (2009) claim that employment by LMIs may be seen by some labour economists as a necessary channel to enter labour markets. Other scholars, meanwhile, see the involvement by LMIs in labour markets from a more critical perspective: Anderson and Rogaly (2005), Barrientos (2013; 2008), Andrees (2008), Fudge and Strauss (2014), and Strauss (2013) all stress the fraudulent role that may be played by LMIs by means of deception in placing the labour force into exploitative working conditions.

LMIs in agriculture first emerged in the 19th century, while disappearing by the middle of 20th century, being banned by the Fee-Charging Employment Agencies Convention (Revised) in

1949. In 1997, however, the International Labour Organisation (ILO) lifted this ban (Peck et al., 2005). Since then, LMIs have expanded and developed in a variety of forms. These forms are not necessarily novel; in fact, some aspects from the 19th century reappear. LMIs fulfil the role of recruiting labour and supplying this labour to contractors that otherwise face constraints in recruitment through their internal human resource departments. The constraints in hiring labour directly include: i) geographical discrepancy - the firms' headquarters are located in country X while production facilities are in country Y, whereby recruiting labour can prove challenging; ii) the outsourcing of labour within the same country – growers may accept gangmasters' services, as maintaining a labour force throughout the year is economically unattractive due to short but intensive working seasons; iii) the lack of a skilled labour force; and iv) the lack of a local labour force that is willing to take up the job. At present, LMIs provide labour into both high- or low-skilled employment. Enright (2013) notes that the focus in research on LMIs is towards LMIs supplying labour into low-skilled jobs (in the form of temporary staffing agencies, contract brokers and gangmasters), while attention is not paid to the consequences of labour supplied by LMIs into high-skilled positions (in the shape of 'headhunters' and executive search firms). This focus may, however, be explained by the rise in casualised and flexible work at the lower end of the work spectrum (ILO, 2015a).

The scenario of low-skilled work that also may be precarious and/ or exploitative has not yet been satisfyingly analysed from GPN and GVC perspectives. In particular, sectors such as agriculture (including horticulture), where forced labour is believed to be associated with fraudulent recruitment practices, does need more analysis to be able to understand the risk and pressure that gangmasters experience and the origin of this experience. Gangmasters do not operate in a vacuum, but are themselves part of a supply chain whereby risk and pressure can be handed down. Hence, it is important to understand how gangmasters deal with such experiences and whether or not workers also become subject to these experiences.

2.3 *Fraudulent Recruitment Practices*

Fraudulent recruitment practices by LMIs have been addressed in several reports by international organisations (see ILO, 2005); Andrees et al., 2015; UNODC, 2015; Sorrentino and Jokinen, 2014; Gordon, 2015) and NGOs (such as Verité, 2010, 2012a, 2012b). The most commonly reported fraudulent practices include:

- i) charging of (exorbitant) recruitment fees that lead to debt bondage: it is true to say that charging recruitment fees is legal in specific circumstances within some jurisdictions;

However, irrespective of the status of recruitment fees, whether legal or illegal, they tend to be a burden for the labourer and a gateway to becoming trapped in an unfree working arrangement with their employer that is based on debt (UNODC, 2015);

- ii) isolation/ restriction of the freedom of movement: by isolating and restricting workers' freedoms, LMIs are in a position to also supervise their workforce outside of work; as such, workers are prevented from reporting their exploitative working arrangements to local authorities or from learning about their own rights (workers' rights – for example, the right to association, and to change employers) in the country in which they work (ILO, 2015b);
- iii) abuse regarding working and living conditions: the American non-governmental organisation (NGO) Verité (2010) reported cases in the United States where temporary labour migrants were forced to work and live in conditions different to those that had been agreed upon. Although being deceived, temporary labour migrants 'accepted' these conditions out of fear of losing their employment, whereby, in tandem with a lack of identification documentation, their migration status would be removed (a lack of ID documentation increases the possibility of deportation) (UNODC, 2015);
- iv) deception: the ILO task force to combat forced labour defines deception as the failure to deliver a promise. If workers have been deceived, they are stuck in a situation lacking the giving of free and informed consent; in other words, if the workers had known the reality previously, they would not have consented to the situation (ILO, 2015b);
- v) recruiting children under the legal working age: under the ILO's 1973 Minimum Age Convention, countries are free to set the bar of the minimum legal age with a minimum of 15 years; however, the Minimum Age Convention is not universal law and what is understood to be the legal working age differs from one country to another. In the UK, the legal working age is understood to be the minimum school leaving age, currently 18 years, whilst in Bolivia, in sharp contrast, children can work from the age of ten years if they are self-employed and attend school alongside working (BBC, 2014). Irrespective of what is understood by the legal working age, it has to be verified to what extent laws regulating this are implemented, e.g. in country X, the legal working age may officially be 18 years of age but, due to a lack of law enforcement and enforcement officials, there are children under the age of 18 who are working;
- vi) withholding of salaries: workers may have to stay with the abusive employer while waiting for the payment of their overdue salaries. The payment of salaries in an irregular or delayed fashion is not necessarily synonymous with forced labour; however, if salaries are withheld

- deliberately as well as systematically, this counts as a strong indicator of forced labour since the workers are retained by force and barred from changing employers (ILO, 2015b);
- vii) violence: LMIs may physically or psychologically threaten to use, or indeed actually use, violence against their workers, so maintaining the employment relationship by force (ILO, 2015b);
 - viii) deploying workers into unsafe and hazardous conditions: that is, working conditions that are difficult and dangerous, in which the worker is not provided with adequate protective gear (ILO, 2015b);
 - ix) employment contracts: Barrientos (2013) claims that employment contracts predict working conditions; employment contracts that do not clearly state who is the legal employer of the workforce do, alongside verbal contracts, have a high probability of labourers being placed into conditions of labour exploitation; and
 - x) retention of identity documentation and threat of denunciation to authorities to control the worker (UNODC, 2015; Gordon, 2015): by confiscating/ retaining identification documents, employers are in the position to limit the labour force's freedom of movement, to bind them to a specific employer or force them to carry out work they may not have initially agreed to do (UNODC, 2015). Out of fear of permanently losing their identification documents, the labour force may (involuntarily) 'consent' to what employers demand of them. The act of leaving a fraudulent employer who is holding identification documentation is neither a straightforward nor feasible alternative for an employee given that s/he would become undocumented and even more vulnerable to abuse (UNODC, 2015). (It should be noted that this particular criminal practice tends to affect foreign rather than national labour migrants, although the latter may still be at risk.)

In combination, these fraudulent recruitment practices may suggest the intention by LMIs to place workers into conditions of forced labour – and, significantly, they may also result in the offence of trafficking in persons. LMIs may deceive workers by not adequately portraying the nature of the employment arrangements that await them. If employment arrangements are very different from anticipated ones and also qualify as exploitative, aside from constituting a breaking of the law, then a worker has been trafficked. The next section explains how LMIs can become agents of human trafficking.

2.4 *The Relationship of Fraudulent Recruitment Practices to Human Trafficking for the Purposes of Forced Labour*

Forced labour is one outcome of human trafficking (INTERPOL, 2015). The 103rd International Labour Conference that resulted in the adoption of the ‘Protocol of 2014 to the Forced Labour Convention, 1930’ and the ‘Forced Labour (Supplementary Measures) Recommendation, 2014 (no. 203)’ established a direct link between human trafficking and forced labour: “The definition of forced or compulsory labour contained in the Convention is reaffirmed, and there the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour” (Article 1(3), Protocol; Andrees et al., 2015). To date, the ‘United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children’ (the Trafficking in Persons Protocol) provides the most authoritative definition of human trafficking. The Trafficking in Persons Protocol outlines the three constituent elements of trafficking in persons: i) an *act* (the recruitment, transportation, transfer or receipt of persons); ii) the *means* by which the act is achieved (fraud, deception, physical and/or psychological threats/ violence, abduction, and exploitation of vulnerabilities); and iii) the *purpose* of exploitation (including prostitution, forced labour or other sorts of slavery like practices) (UNODC, 2015).

Criminal practices such as deception, fraud and abduction carried out by LMIs can constitute a crime of ‘trafficking in persons’, in line with the definition of the Trafficking in Persons Protocol. LMIs can also be part of wider complex webs of organised criminal groups that are actively involved in trafficking people. In such a scenario, it is not that recruitment agencies are simply unaware of the situation and so are ‘only’ implicitly drawing upon people trafficking, but rather that they are directly involved in this crime; as such, they can be prosecuted under the definition of ‘trafficking in persons’. At other times, however, LMIs may not be aware that the labour force being supplied to them has been subject to human trafficking. In such cases, LMIs cannot be held accountable/ prosecuted under the 2001 Protocol to ‘Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children’ (supplementing the United Nations Convention against Transnational Organized Crime), as they did not knowingly commit a crime. Nonetheless, such LMIs may unknowingly contribute to a climate of human trafficking and a rise in exploitation of labour vulnerabilities (UNODC, 2015). In the case of my own research, UK labour providers relied on gangmasters located in Romania for the supply of labour between 2008 and 2013 (when the Seasonal Agricultural Workers Scheme (SAWS) was exclusively open to Bulgarians and Romanians). As such, gangmasters located in Romania will also have been

subject to the standards set out by the then Gangmaster Licensing Authority. However, whether these standards were implemented adequately remains to be seen. Following the conclusion of SAWS, Romanians can directly seek employment in horticulture through UK-based gangmasters (and other labour providers). In summary then, gangmasters may rely on other gangmasters for labour, who, in turn, rely on other gangmasters. With the elongation of this labour supply chain, it becomes challenging to trace back whether the workforce has been trafficked or not.

3 Institutionalisation of Forced Labour

By the term ‘institutionalisation’ is meant the way processes – such as those involved in forced labour - are rendered durable. This is not necessarily something that occurs on purpose, with any actor’s conscious intention, but rather through a combination of employment characteristics in sectors that are characterised by a volatile demand (horticulture, for example), which paired with institutional failures may lead to the institutionalisation of forced labour. This third and last part of the literature review focuses first on employment characteristics in horticulture that may exacerbate workers’ vulnerabilities, before focusing on two institutions that have been discussed in relation to protecting workers from abusive working arrangements: the now defunct Gangmaster Licensing Authority¹⁵ and trade unions (and specifically, their response to the rise in migrant labour and seasonal workers).

3.1 Horticulture – A Sector Based On the Exploitation of Vulnerabilities?

Studies have shown that, in horticultural jobs, the vulnerability of labour migrants is heightened. Typically, studies of workers’ vulnerabilities have been conducted on the macro- or meso-level, while no attention has been paid to the micro-level - hence to labour migrants’ experiences and LMIs’ functioning (Underhill and Rimmer, 2015). Labour migrants have a tendency to rely on LMIs in finding employment abroad because of a possible combination of factors such as a lack of labour market knowledge (relative to domestic workers) and language barriers. As such, labour migrants using LMIs to find employment abroad is not unusual. Irrespective of triangular employment relationships¹⁶ between growers, LMIs and the labour force in (UK) horticulture,

¹⁵ As of October 2016, the Gangmaster Licensing Authority (GLA) was replaced by the Gangmasters and Labour Abuse Authority (GLAA). While there is some literature available on the GLA, there is not any yet on the GLAA.

¹⁶ The triangular employment relationship involves the contractor, the gangmaster and the workforce. As mentioned, this sort of relationship has a poor reputation and has been pointed out as constituting a gateway to labour exploitation because it is not clear who is the legal employer of the workers - thereby workers cannot complain about potentially exploitative working arrangements.

working conditions in horticulture tend to create ‘layered vulnerabilities’. The term denotes a range of factors that can be held accountable for the disparity in the working conditions of different labour migrants (Underhill and Rimmer, 2015). Sargeant and Tucker (2009) summarise the factors in terms of three different areas: i) factors related to migration (such as migration status and whether the labour migrant is bonded to his/ her employer); ii) characteristics of labour migrants (level of education, skill, and language); and iii) conditions in receiving countries (unions, regulatory protection, and general social inclusion). In sum, labour migrants are not a homogeneous group of persons, and this concept emphasises some factors may better explain labour migrants’ vulnerabilities than do others, depending on the group to which an individual belongs.

As stated, layered vulnerability differs according to labour migrant groups. Underhill and Rimmer (2015) suggest that in horticultural employment, undocumented workers are the most vulnerable kind of workers. This is because of their: i) dependency on one unique employer; ii) liability to deportation; iii) lack of language skills; iv) lack of participation in unions; v) dearth in regulatory protection; and vi) social isolation. The second most vulnerable group are migrants that lack labour market knowledge. These migrant workers may rely on services provided by LMIs to find employment. Labour migrants employed by LMIs are found to be most prone to being exploited, in terms of low payment, short and unsatisfactory working hours, and intense work pressure (Underhill and Rimmer, 2015). In general, piece workers tend to be vulnerable to such exploitation in contrast to hourly-paid workers. In order to keep costs down and increase profits, LMIs may use a variation of these vulnerabilities to achieve what end up being the most exploitative contracting arrangements and payment systems – and so which place workers in a weak position (Underhill and Rimmer, 2015).

3.2 *Institutions Tasked to Protect Workers’ Rights*

In the United Kingdom, one now defunct agency that was tasked to revoke the licenses of gangmasters operating unlawfully was the Gangmaster Licensing Authority (GLA). As such, the GLA was also tasked indirectly with protecting workers. Chapters Four and Five discuss in more detail the role of the GLA, and its successor the Gangmasters and Labour Abuse Authority (GLAA), in protecting workers and acting as a type of labour inspectorate. The role of labour inspectors varies from country to country. The International Training Centre part of the International Labour Organization defines labour inspectors as “ha[ving] the fundamental function of labour law enforcement and [as] play[ing] a key role in ensuring good governance and fairness in the work-

place” (ITCILO, 2017). Andrees (2008) sees an integrated approach, combining policy development and implementation, as key in tackling forced labour and human trafficking in supply chains. National labour administration systems are, in Andrees’ view, critical for actioning such an approach. ILO Labour Administration Convention No 150 (1987) outlines what such national labour administration systems can look like. In the case of the UK, labour inspection by the Health and Safety Executive, tasked to inspect work places to ensure that workers experience safe working conditions, had fallen between 2003 and 2015 by 69%, while prosecutions had decreased by 35% at the national level (Doward, 2016). Doward (2016) blames the severe cut back in labour inspections to austerity cuts by successive governments. Labour inspections are considered to be key in tackling labour exploitation of all kinds.

Academic literature on the matter of trade unions reaching out to labour migrants has pointed out a number of issues that arise in doing so. These are as follows:

- i) The first issue is about whether trade unions should support, or not, employers’ efforts to recruit workers from abroad (Marino et al., 2015). Such recruitment does not necessarily mean that labour migrants will take away jobs from domestic workers, as migrant workers may be recruited to work in sectors where it has been established by the government that there is a dearth in available labour. However, if governments allow labour migrants to be hired in sectors where there is abundant labour available while flexibilising labour market regulations (e.g. enabling a decrease in wage-levels), then such policy may lead to a displacement of domestic workers. This is because labour migrants may be more willing to work for lower wages than domestic workers, as wages are still higher than in their home countries; meanwhile, domestic workers may experience pressure on their wages that leads them to instead look for jobs in other sectors or to seek unemployment benefits (Marino et al., 2015). As such, migrant workers’ representation has been historically a sensitive topic for trade unions.
- ii) The second issue centres around labour migrants’ culture in terms of suspicion towards state institutions. Migrant workers from formerly authoritarian regimes, such as the Soviet Union, may still harbour suspicion towards state institutions as a result of their previous experience with authoritarianism.
- iii) The final and third issue is about the representation of seasonal workers. Due to the structure of seasonal work in agriculture, with workers tending to change every couple of weeks from one farm to another, it is logistically difficult to reach out to this workforce even if

they are documented. Moreover, besides the movement aspect of seasonal work in agriculture, these workers may be in the country only for a certain amount of time before going back to their home country, whereby trade union membership becomes problematic as workers may not be in the country long enough to make membership worthwhile.

These issues are all relevant to my research topic. Of course, combining them does not establish that these issues are automatically routes into forced labour. However, these issues have, in the past, exacerbated labour migrants' vulnerabilities. Regarding the first issue, namely the challenge of reaching out to undocumented labour migrants, this may have been the case for Romanians who overstayed after the end of their six-month posting in horticulture between 2008 and 2013 as part of the Seasonal Agricultural Workers Scheme (SAWS) and who subsequently may have found employment illegally. At the same time, Romanians who entered the UK between 2008 and 2013 to work in a sector not covered by SAWS or who found employment in horticulture through an unlicensed labour provider/ gangmaster would also have been undocumented.

The second issue for trade unions regarding the support for recruiting labour migrants is perhaps key. By excluding workers from representation, workers have a more difficult position from which to negotiate their rights and turn towards help. In the case of the UK, labour migrants are preferred to domestic workers in horticulture because of what Rogaly (2008) calls the 'intensification of workplace regimes'. Rogaly explains the preference of hiring labour migrants by "a general pattern of intensification of horticultural production driven by an ongoing process of concentration in retailer power, and in the greater availability of migrant workers, shaped in part by state initiatives to manage immigration" (2008, p. 497). The third issue, meanwhile, may be relevant as Romania was part of the Soviet Union until its disintegration in 1992. The final point, about problems surrounding membership representation of seasonal workers, also applies to my research. In this context, it would be worth establishing whether or not seasonal workers also tend to be part of what can be called circular migration - whereby the scenario of repeatedly coming to country X for seasonal work may be a starting point for thinking about the representation of circular migrants rather than 'only' seasonal ones.

Conclusion

This chapter explored in its first part how the structure of global production - notably, the rise of global supply chains, the fragmentation of production, and the outsourcing of labour supply - has facilitated a need for LMIs to supply firms with labour. However, it should be noted that the structure of global production facilitated but did not give the final impetus for LMIs in their becoming recognised legal economic actors. Indeed, the 'green light' given by the ILO in 1997 paved the way for LMIs to become a recognised actor. In horticulture, LMIs are crucial in supplying growers with labour in harvest seasons, since for growers there is no economic benefit in maintaining a constant workforce considering the short length of time that harvest seasons last. Moreover, by 'renting' labour from LMIs, growers also avoid employment responsibilities. This avoidance of responsibility may be considered an economic gain by growers because they do not have to invest in safety measures for the workforce; consequently, there are many health and safety risks associated with horticulture. Following on from this discussion, the organisation of production that generates pressures towards intensified labour exploitation was explored. The organisation of production in supply chains results in two different sorts of contracting relations between general contractors and LMIs. The second part of this chapter dealt with international labour migration and how LMIs may facilitate this. In this connection, I explored LMIs, both in terms of their working mechanisms and their potential for fraudulent recruitment, as either factor can facilitate migration across borders. By facilitating migration across borders and placing workers into working conditions that qualify as forced labour, LMIs not only become guilty of labour exploitation but also of human trafficking. The third and final part of this chapter investigated characteristics of the horticultural sector and gave a brief overview of the institutions that are tasked in UK horticulture with protecting workers from adverse labour outcomes. It was argued that this sector creates, even *without* the involvement of LMIs, layered vulnerabilities for labour migrants. Indeed, institutions that are tasked to protect workers from adverse employment arrangements may contribute to forced labour because of institutional failure.

Chapter Two

Towards A Theoretical Framework

This chapter outlines the theoretical lens through which this thesis seeks to understand the process of forced labour, notably as a structural phenomenon that thrives because of certain institutional factors (see discussions in Chapter, Six, Seven and Eight). The first part of the chapter traces the evolution of scholarship in the area of forced labour and supply chains. Analysing value chains was first conducted from a global commodity perspective. This perspective was then superseded by global value chain (GVC) theory, which, in turn, has been supplemented by global production network (GPN) analysis but still remains an active perspective in economics, politics and sociology, being utilised to determine how value in supply chains is created. The second part of the chapter then explores debates around global value chain and production networks in horticulture. To this end, the notion of buyer-driven and producer-driven supply chains is introduced. The third part of the chapter elaborates GVC theory by highlighting how legislative, executive and judicial powers may regulate value chains. The fourth and final part then provides an economic geography of labour market intermediaries (LMI) by highlighting the normalisation of temporal employment patterns, alongside putting forward the idea of the dually international character of LMIs, in terms of their functioning across borders and the international character of their labour force.

1 Theoretical Framework

1.1 *From Global Commodity Chains to Global Value Chains and Global Production Network Analysis*

Chronologically, scholarship on *global value chains* (GVC) precedes *global production network* (GPN) analysis. Basic ideas concerning GVC theory can be dated back to the 1970s, with studies on commodity chains (Bair, 2005). The idea here was to identify and describe the different inputs and transformations that eventually resulted in a final product (Hopkins and Wallerstein, 1977). Gereffi (1994) first introduced the term *global commodity chain* (GCC) in the context of the

apparel manufacturing industry, beginning with the collection of raw material up until the final product of sellable clothing. In the 2000s, this focus on commodity chains was replaced by an interest in *value* chains – or GVC theory. GVC theory emanates from within the literature on international business, and an analysis of trade and industrial organisation conceived as a value-added chain (Porter, 1985). A value-added chain sees its activities linked to another in a vertical manner. Each activity adds value in producing and distributing products and services. In contrast to the GCC approach, focus on global value chains is more inclusive in aiming to understand how global industries are organised (Bair, 2005).

GVC theory highlights the dichotomy between buyer- and producer-driven supply chains, with the former standing in contrast to the latter in terms of its relationship to the means for manufacturing products (Gereffi, 1995a). Capital- and technology-intensive industries are characterised by producer-driven chains, given that firms specialised in transnational manufacturing direct the chain by overseeing core technologies and production facilities. Within buyer-driven chains, key decisions regarding both the organisation and actors' involvement are taken by large retailers who do not actually own manufacturing facilities. Moreover, Humphrey and Schmitz (2001) have demonstrated that chains are not necessarily governed in the same style across the board, even when referring to otherwise comparable types (buyer-driven, for instance); indeed, the individual parts that constitute a chain may be each governed differently. Agriculture, for instance, is a buyer-driven supply chain where profits are a result of a combination of research, design, marketing and financial services (Gereffi, 1999). Each of these segments of the buyer-driven supply chain is differently governed, since every segment comprises one distinct aspect of the final product.¹⁷

In the mid-2000s, a third strand of scholarship emerged, known as GPN analysis. The semantic change (to specify 'network') can be traced back to the statement that "economic processes must be conceptualised in terms of *a complex circuitry with a multiplicity of linkages and feedback loops* rather than just 'simple' circuits or, even worse, linear flows" (Hudson, 2004, p. 16; emphasis added). GPN shares in common with GCC and GVC approaches a concern to analyse shifts and transformations in production processes – each conceives of the global economy as consisting of

¹⁷ It is worth noting that the 'producer and buyer' dichotomy has been extended to include other governance types, such as international-trader-driven chains (Gibbon, 2000) or infomediary-driven chains in online commerce (Gereffi, 2001). Despite the expansion of governance types, Barrientos, Dolan and Tallontire (2003) support the statement that the opposition between buyer- and producer-driven chains provides the basis for understanding GVC dynamics.

dynamic and complex economic networks that are embedded in inter-firm and intra-firm relationships. Indeed, the emergence of GCC and GVC approaches and their expansion into GPN testifies to the scale of change in international development ushered in by the advent of neo-liberalism since the 1980s. However, GPN differs from its predecessors in terms of exactly *who* it looks to in order to analyse such trends. Mahutga (2014) and Henderson et al. (2002) argue that GCC/ GVC approaches are comparatively narrow in their outlook, in exclusively focusing upon inter-firm relations to explain globalisation; the GPN approach, meanwhile, also takes into account ‘outside’ forces - such as institutions (at local, national and international levels), other stakeholders, and labour groups. As such, the GPN approach provides explanations of globalised production by incorporating actors that are located outside of firm and inter-firm power dynamics - a feature that, as we shall see, is integral to my own research and the analysis of forced labour. Alongside this, however, GVC theory remains an active and useful approach for analysing firm-to-firm relations and how value is generated in the different segments of a chain.

1.2 *Production Models*

Although the global value chains and global production network approaches are becoming increasingly popular as theoretical frameworks, their conceptions of production differ. The focus of the GVC theory is on the following aspects of production: the value that is added at each point in the supply chain; how geographic elements determine the location of a supply chain’s links; how governance structures influence the distribution of value throughout supply chains; and what institutional elements influence this governance of distribution (Wright and Kaine, 2015). The main contribution of the GVC approach, then, is to identify how supply chains are organised and how different firms shape such organisation (Gereffi et al., 2005). This framework, however, has been criticised by GPN scholars for its strong and exclusive emphasis on lead firms as sources of power distribution and value creation. The argument is made that a narrow and exclusive focus on lead firms ignores the role of other actors, such as consumers, unions, workers, international organisations, small and medium businesses, and states. Such actors may, alongside lead firms, alter both the organisation and nature of supply chains as well as the creation and distribution of value. Finally, the linear model of GVC supply chains, it is claimed, overlooks an important number of other actors involved in inter-organisational arrangements that may take the form of a network (Dicken, 2015; Rainnie et al., 2011). With these debates in mind, GVC theory and GPN analysis are used in my thesis to explore the consequences of supply chain pressures that go beyond organisational and national borders. The combination of GVC theory and GPN analysis provides a better theoretical insight in contrast to general employment theories that tend to

concentrate on either organisations, industries or national states as separate entities (Lakhani et al., 2013; Rainnie et al., 2011).

GVC and GPN approaches have so far been mainly used to investigate global supply chains - in particular, the poor implementation of international labour standards in national systems of employment regulation (Bamber et al., 2016; Posthuma and Nathan, 2010). Considering the significant problems arising from this governance deficit, the focus of scholars has revolved around how to regulate and operate international and transnational supply chains (Barrientos, 2008; Meardi and Marginson, 2014; Riisgaard and Hammer, 2011; Posthuma and Nathan, 2010). Different regulatory attempts to eradicate this governance deficit have been put forward; however, so far none of these attempts has been able to eradicate the gap (Papadakis, 2011; Vogel, 2008). Scholarship about the pressures of (international) supply chains on domestic employment relations - as per the focus of my research - has received very little attention.

2 Applying GVC Theory and GPN Analysis to Horticulture

2.1 Agricultural Exceptionalism

Value chain relationships tend to dominate global agribusinesses. In this context, firms coordinate with another in a vertical manner. In respect of food businesses, studies have highlighted that lead firms have reciprocated characteristics formerly attributed to modern manufacturing cooperations (Humphrey and Memedovic, 2006). These characteristics include the moving away from quality control to process controls, 'just-in-time' delivery and product innovation, as well as differentiation. These characteristics indeed also tend to be found in agriculture/ horticulture, where risk management and process controls are part of contracts between supermarkets and growers and farmers (Humphrey and Memedovic, 2006). These same contracts also tend to be short in nature, whereby the production time may only account for a couple of weeks - putting pressure on farmers, growers, gangmasters and workers to provide the requested goods in time.

These types of linkages are usually referred to as vertical coordination in supply chains, or even just as supply chains, in order to distinguish them from vertically integrated firms. While these terms attempt to capture the most common form of linkages, relationships between firms in the agribusiness sector are highly diverse - potentially taking the form, for instance, of contract farming, marketing contracts or outgrower schemes.

As previously noted, studies have indicated that agribusinesses are replicating characteristics previously attributed to modern manufacturing. Despite this replication, Gereffi (1995a) draws another difference between these two sectors by introducing the notions of producer-driven and buyer-driven value chains. Producer-driven value chains are typical of transnational manufacturing cooperations, while buyer-driven value chains are exemplified in the situation of the Kenyan horticultural sector being driven by supermarkets in the United Kingdom (Dolan et al, 1999).

Nonetheless, this distinction between buyer-driven and consumer-driven value chains has been called into question (Humphrey and Memedovic, 2006). First, as mentioned above, it has been observed that agribusiness replicates, to some extent, characteristics from transnational manufacturing cooperations (Humphrey and Memedovic, 2006). Therefore, the once assumed structural distinction between these two sectors falls away. Second, buyers may choose to purchase products in different ways, wherewith the dichotomy between buyer- and producer-driven supply chains further decreases (Humphrey and Memedovic, 2006). Third, scrutinising buyers in buyer-driven supply chains reveals that not all buyers carry out their function in a similar manner. Hence, even within buyer-driven value chains, there are discrepancies in buyers' behaviours (Humphrey and Memedovic, 2006). Finally, speaking of drivers in both buyer- and producer-driven supply chains does not provide an accurate picture of value chains. Some value chains that were considered to fall into the 'buyer vs producer' dichotomy actually were characterised by arm's-length market relations – this meaning that firms are either independent from the other firm with which they are dealing and/ or in an equal positions. In other words, there is no dependency relation between the two (Humphrey and Memedovic, 2006).

In the context of the UK, supermarkets use as their competitive strategy the improvement of the quantity, seasonal availability and range of produce throughout the entire year. Fresh produce in UK supermarkets comes increasingly ready-chopped and packed (sometimes comprising mixed products), which tend to be consumed by clients who lack time to prepare fresh produce themselves but who can afford to pay higher prices for a ready-prepared product. A drive to make greater differentiations between fresh produce has meant that growing, harvesting and post-harvesting mechanisms have had to be altered - and the different actors involved in both product and labour supply chains have had to be instructed accordingly. In the 1990s, supermarkets reformed the industry. This reform resulted in the superseding of arm's-length market relations by more long-term relations (Gereffi et al., 2005). While these long-term relations may be the norm for overseas suppliers (e.g. horticultural producers located in countries with warm climates, who

supply the UK with exotic produce that either grows more easily there - for instance, as in the case of avocados – or that will not grow in the UK at all), it remains to be seen whether this is also the case for domestic suppliers. Domestic horticultural suppliers are in competition with foreign producers regarding fruits and vegetables that can also be produced in the UK but perhaps not throughout the year, e.g. strawberries. Moreover, horticulture being a captive value chain - whereby it is very costly and risky for growers and farmers to exit the contract arrangements with supermarkets - means that growers/ farmers are at supermarkets' mercy regarding the length and terms of contracts. The next section explains how the three powers that make up states - the legislative, judiciary and executive - can respectively govern value chains.

3 Legislative, Judiciary and Executive Governances of Value Chains

3.1 Governance by Global Buyers

Conditions associated with global value chains are imposed by global buyers and the state of the operational environment. These conditions influence income generation and upgrading in value chains. (The International Labour Organisation understands the term 'upgrading', when used in relation to value chains, to mean "increasing the economic competitiveness of enterprises, occupying new positions in a global value chain or delivering to new markets and buyers" (ILO, 2006, p.1).) In the following section, I discuss these conditions, that is, the state of the operational environment in the UK. This debate uses the typology of governance (legislative, judiciary, and executive) put forward by Kaplinsky (2004).

i) Legislative Governance: Setting the Rules

Value chains are divided into different segments. Global buyers influence every single piece of a value chain. (Fold, 2002; Gibbon, 2003; Gibbon and Ponte, 2005; Humphrey and Schmitz, 2002). Alongside the traditional firm actors - for example, end users, transport firms, and subcontractors - that have an interest in influencing value chains, there are also other, non-traditional firm actors situated outside value chains that have a significant interest in influencing the chain. Such actors may be, for example, certification bodies, horticulture associations or governmental agencies (Ponte, 2007; Riisgaard, 2009). As cases of forced labour have been detected in UK horticultural supply chains, there are also *non*-firm actors that are interested in influencing the chain – by seeking to tackle labour abuse. These actors include several governmental institutions, such as the former Gangmaster Licensing

Authority (now known as the Gangmaster and Labour Abuse Authority) and the UK Anti-Slavery Commissioner, as well as several non-governmental organisations, such as Anti-Slavery International, Focus on Labour Exploitation, The Salvation Army, Migrant Help UK, Trade Union Congress (and other workers' organisations), and Association of Labour Providers (and other employers' organisations), to name just a few. The *non-firm* actors try to influence the governance of value chains, but, because of their lack of economic power, this task is problematic. (In Chapter Four, the different existing kinds of value chain governance are further elaborated.)

ii) Judiciary Governance: Compliance and Conformity

The rise of food safety standards imposed onto supermarkets in the European context has resulted in a need to regulate value chains. Supermarkets create rent-seeking opportunities. This rent-seeking behaviour complicates the implementation and/ or enforcement of regulations by means of judicial governance (Davis et al., 2016). Bearing in mind the oligopsonistic character of horticultural value chains, combined with the short-lived nature of fresh produce, suppliers have little choice other than to sell their produce below costs (MacDonald, 2006; Azzam, 1998). These factors also confirm the argument that horticulture is a captive value chain insofar as buyers, in this case supermarkets, can choose to switch suppliers easily and almost spontaneously. As barriers to entering the highly competitive environment of suppliers are low, supermarkets can choose from other suppliers that sell fresh produce at a lower cost. Supermarkets request that their suppliers provide products according to very strict production criteria, whereby operational risks are handed down the supply chain. Because there is a lack in control of such practices, the handing down of risks that occurs at the expense of local suppliers may occur in the long-term without being noticed.

iii) Executive Governance: The Promotion of Compliance

Resources, such as new technologies, have to be available in order to fulfil contracts (Haggblade et al, 2002). Academic literature on executive governance points to correlations between firm productivity, performance and physical infrastructure (Jalan and Ravallion, 2002; Estache and Vagliasindi, 2007; Estache and Goicoechea, 2005). Participation in value chains, as well as in consumption, is facilitated by road infrastructure (Jalan and Ravallion, 2002). For horticultural produce, infrastructure is key to transporting the produce from rural to urban areas. Without the existence of infrastructure and logistics, horticultural produce may rot, which can constitute important losses for suppliers - as cases in

Kenya and Ghana have evidenced. Estache and Vagliasindi (2007) have demonstrated that a lack of roads in Ghana has resulted in suppliers losing their market shares to competitors. Estache and Goicoechea (2005), Boopen (2006), and Reinikka and Svensson (1999) all demonstrate that telecommunications, power and roads are means to facilitate both economic development and the participation of poorer segments of society in global value chains. This may result in an increase in the activity of global value chains, which, in turn, positively affects the wage levels of the poor by means of an increased demand for horticultural produce (Mu and van de Walle, 2007; Escobal and Ponce, 2002; Lokshin and Yemtsov, 2005; Valdivia, 2009). However, increased consumption does not necessarily translate into poverty alleviation, as the level of infrastructure development and accessibility to the poor is key (Estache and de Rus, 2000; Mu and van de Walle, 2011). The next section outlines issues surrounding LMIs. The next section reviews issues around LMIs. Working mechanisms by LMIs are directly influenced by corporate governance types.

4 An Economic Geography of Labour Market Intermediaries

4.1 The Staffing Industry: When Temporary Becomes Normal

This section analyses the literature on labour market intermediaries (LMIs) to investigate the rise of flexible employment patterns. In economic geography, the development of LMIs is associated with the advancement of flexible labour markets and the increase in so-called non-standard employment patterns. With the introduction of LMIs in employment relations, the classical employer-employee relationship has changed (Vosko, 2010; Coe, Johns and Ward, 2008b, 2009a). Following from the rise of employment practices involving LMIs, full-time employment opportunities with benefits are being replaced, bit by bit, by non-standard employment opportunities characterised by insecurity and individualism (Coe, Johns and Ward, 2009a). With the rise of flexible employment in industrial economies, the concept of time has undergone changes as temporary jobs become a constant characteristic of employment relations. Nollen (1996, p. 567) notes that “temporaries were always peripheral to the main thrust of the company’s business. Now ... temporary employment is a permanent feature of the business landscape”. Moreover, with the increase in flexible employment opportunities – in which workers tend not to be able to negotiate their employment conditions and have to accept conditions that are being offered/ imposed onto them – the rise in precarious work goes hand in hand (Kalleberg, 2009, 2011; Vosko,

2010). Precarious work has also been associated with a triangular employment relationship involving employers, LMIs and workers (see my discussion in Chapter Four). The employment relationship is determined by the employee and the LMI, while the employer decides upon the work conditions (Gonos, 1997).

LMIs deduct a proportion of the worker's wage (Parker, 1994; Vosko, 2010). This, in addition to the aforementioned triangular employment relationship, is a fundamental change in both regulatory and institutional contexts in which employees work (Coe et al., 2009a). The literature on LMIs tends to focus on industrial economies, such as the United Kingdom or the Netherlands, where the use of LMIs to find employment is very common (OECD, 2014a). Also, the employment contracts offered by LMIs tend to be 'zero-hour'. Zero-hour contracts are supposedly used for high-skilled workers by LMIs to enable these workers to work on multiple projects at the same time; indeed, to some extent, this may indeed be the case. However, studies show that zero-hour contracts more often tend to be used for unskilled labour – that is, for workers who receive wages lower than their skilled counterparts and who might also face stiffer competition in securing and retaining work, wherewith flexible hours may lead to labour exploitation, if not forced labour (Brinkley, 2016). Highly flexible working hours can mean that workers do not earn enough money to make ends meet. Since workers may not have the choice to leave such employment, because of coercion or a lack of alternative, they become adversely incorporated into the labour market; adverse incorporation is one route into forced labour (Phillips, 2013). At present, almost a million workers in the UK are employed on the basis of zero-hour contracts in sectors as diverse as agriculture, hospitality, retail and academia. (Because of the precarity associated with this kind of contract, New Zealand decided in March 2016 to abolish zero-hour contracts.)

From the perspective of firms, reliance on workers provided by LMIs turns out to be a strategy to reduce costs associated with permanent workers. As such, these workers turn out to be a segmented labour force that experiences precarious employment conditions when compared to core staff members employed directly by the client firm (Mangum et al., 1985; Purcell et al., 2004). From a worker's perspective, meanwhile, engaging in temporary work may be justified as constituting free choice as outlined by neoclassical theories – for instance, women looking to combine paid employment with childcare responsibilities, or students working part-time hours to finance their studies (Lewis and Molloy, 1991; Van Breugel, Van Olfen and Olie, 2005). However, a picture perhaps closer to reality is the *lack* of choice experienced by many such workers when pursuing employment. In this context of constraint, concerning what types of job

are available in the first instance, a power asymmetry emerges between the worker and the hiring firm - in this case, the LMI (Smith, 1998; Gottfried, 1992). Highly skilled staff tend to have more job choices compared to lower-skilled staff who, as said earlier in relation to zero-hour contracts, face tougher competition generally in securing work. Indeed, Coe et al. (2009a) claim that skill differential (in this case, being less skilled than others competing on the job market) is the reason why some workers decide to work in flexible arrangements for LMIs. Furthermore, while both high- and low-skilled staff may use services by LMIs, they will do so in different ways and have to pay different prices for their services. The literature on staffing industries helps in better grasping the role of LMIs across national borders, which is important given that the lack of organisation among temporary workers, by the nature of their employment, results in this labour force being fragmented and lacking in group solidarity (Coe, Johns and Ward, 2010). This situation is further reinforced by the fact that both the transnationalism of staff and the *modus operandi* by LMIs as national frameworks/ legal systems does not enable these flexible workers to exercise their labour rights or to join unions.

The development of LMIs also impacts on the political sphere by adding pressure on nationally designed labour regulations that include LMIs and LMI staff (Smith and Neuwirth, 2008). Moreover, operating as they do across borders of nation states, LMIs influence regulations at a global level. It still is the case that the incorporation of labour migrants into domestic labour markets or the deployment of workers in other countries' labour markets raises several issues regarding rights and protection mechanisms in the light of LMIs not being regulated.

4.2 *The Dual International Character of LMIs: Operating Across Borders and an International Labour Force*

LMIs are transnational insofar that they can expand across borders to fill labour supply and that their workers may originate from different countries. During my fieldwork, I spoke to staff members of labour providers, such as Concordia and Hops Labour Solutions that had recruited workers from within and outside the United Kingdom. Recruiting workers who were located outside the UK was facilitated by the offices that these two labour providers had in Romania and Bulgaria. These offices did not only concentrate on metropolitan areas such as Bucharest or Sofia, but also on areas with structural economic problems where unemployment was high - such as Iasi or Bacau in Romania. Within the academic literature, there is also a growing body of work that focuses on the role of LMIs in the provision of workers across borders (Li et al., 1998; Eelens and Speckmann, 1990; Jones and Pardthaisong, 1999; McDowell, Batnitzky and Dyer, 2007). In

the Philippines, the Overseas Employment Agency controls the triangular employment relationship associated with LMIs, by providing a regulatory framework. In the case of the UK, the Gangmaster Licensing Authority (GLA; a non-departmental public body) regulated, until recently, the recruitment of labour migrants by LMIs operating in agriculture, horticulture and shell fishing industries. Since October 2016, the GLA became known as the Gangmaster and Labour Abuse Authority – or GLAA. While the GLAA aims at tackling labour abuse in agriculture (as well as in other sectors yet to be determined), such legislation as the 2016 Immigration Bill may actually put at risk the very workers that the GLAA is deemed to protect. This is because workers located in the lower tier of supply chains are more likely than workers in the upper tier to work in the black economy. The 2016 Immigration Bill states that working unlawfully in the UK is a crime. Workers that undertake unlawful employment face deportation. As such, workers that are at the height of exploitation because of being located in the lower tier, and, likely, in the black economy, face deportation.

The literature on temporary staffing agencies offers a thorough exploration of how these agencies, operating across national borders, work and supply firms with temporary labour. Nonetheless, temporary staffing agencies are particular in the sense that they deliver their services, meaning labour supply, locally (Coe, Jones and Ward, 2009b).

Conclusion

This chapter began by reviewing the different theories that have been and are commonly used to understand firm-to-firm relations. The first theory that is central to my thesis is global value chain theory, which dates back to the 1970s. At first glance, this may not appear to be relevant to my research about forced labour in Lincolnshire horticulture. However, as the horticultural supply chain is also global in nature, with supermarkets often sourcing fresh produce from many different countries, this particular theory is relevant for my study. However, given that I am interested in how the process of forced labour is achieved, I also need to analyse the measures taken by non-firm actors such as governments, trade unions, non-governmental and international organisations in order to understand how efforts at tackling forced labour are undertaken – hence, the need to augment my theoretical framework with another key approach to understanding forced labour and supply chains, that is, global production network analysis. The second part of the chapter dealt with the specifics of horticultural value chains. The third part approached how value chains may be governed from a legislative, judicial and executive perspective. The fourth and

final part then provided an overview of the economic geography of labour market intermediaries, by highlighting the trend for temporary work and the dual international character of labour market intermediaries.

Chapter Three

Research Design: Cases, Methods and Data

In this thesis, the role of labour market intermediaries (LMIs) in placing workers into conditions of forced labour within global production networks (GPNs) is explored through means of a qualitative case study approach. Data about recruitment processes, fraudulent recruitment practices, the role of LMIs in facilitating migration, and vulnerabilities generated by work in horticulture have been gathered by carrying out a series of semi-structured interviews with expert participants. While each of my research questions can be partially answered by the desk-based research that I have also conducted, I seek, in interviewing, to grasp the knowledge and understanding of interviewees, including their personal interpretations of key terms, laws, recruitment practices and institutions. Both methods of data collection will be used, then, to complement the other; findings through desk research, concerning reports about forced labor in UK horticulture, labour inspections, LMIs and recruitment practices, will be checked against data generated from interviews, and vice versa. In the first part of the chapter, I explain and justify the rationale for a case study approach. I also outline the selection of my case study of the forced labour of Romanian migrant workers in UK horticulture, and my choice of specific interview participants, as experts working in relevant areas including recruitment agencies. The second part of the chapter, meanwhile, details my data collection strategy, explaining how I identified and recruited my participants and how interviews were typically conducted. I also discuss ethical issues relevant to interviewing individuals on the sensitive matter of forced labour and some of the challenges I anticipated and experienced; and I describe the other data sources that I used alongside interviewing to supplement and inform my research. Finally, I provide an overview of my data analysis, including the transcribing and coding of material, and a table of my final participants.

1 Setting the Scene

1.1 *For a Qualitative Case Study Approach: Using Insider/ Expert Knowledge to Explore the Nexus Between Labour Market Intermediaries and Forced Labour*

When I first chose to carry out a PhD thesis about forced labour and labour market intermediaries (LMIs), I pondered over which methodology to adopt. Very early on I came to the conclusion that carrying out a quantitative study about forced labour was not a route that I wished to pursue. This was for two main reasons: the problematic quantification of criminal phenomena; and the fact I was interested not so much in *measuring* forced labour (for example, in terms of incident rates) but rather in understanding *how it is achieved*. To elaborate on the first point, criminal phenomena are difficult to quantify on two counts:

- i) they tend to take place in hidden places whereby authorities are not aware of their occurrence; as such, incidents are then not recorded. Indeed, the difficulty in recording cases of forced labour suggests that the ‘dark’ number is very probably much higher than the official number provided by authorities; and
- ii) victims of criminal phenomena may not self-identify as such or may be too scared to come forward. In the case of forced labour, victims not self-identifying as victims may be related to trauma or working conditions that are deemed illegal in the country where victims work while being accepted in their country of origin. Victims of forced labour also may be working without documents or unlawfully in other ways; hence, while being exploited, they most likely would have been technically breaking the law themselves in this respect. Depending on states’ priorities, victims of forced labour may be considered either to be victims or to be perpetrators breaking the law.

To elaborate on the second reason for my not wishing to undertake a quantitative study: from the start, I was interested in exploring the institutional and social processes informing forced labour. In other words, I have wanted to understand how forced labour is achieved at the level of the key actors involved, including those individuals and agencies who recruit affected workers, and the role of firm-to-firm relations in this respect - alongside the role played by non-traditional firm actors (such as governments and non-governmental and international organisations) in efforts made, conversely, to tackle the phenomenon. In this sense, my research topic informed my methodology, with a qualitative methodology being judged to be the best fit. Adopting a case study approach was my first choice as readings of the literature suggested that this approach would enable me to gain in-depth explanations that quantitative methods could not offer me (Yin, 1984;

Grassel and Schirmer, 2006; Tellis, 1997; Zainal, 2008). In the framework of my thesis, then, I believe that quantitative data could not provide me with sufficient information about how forced labour (in respect of Romanian labour migrants in UK horticulture between 2008 and 2015) may be achieved.¹⁸

In order to research the nexus between LMIs and forced labour in the form of a qualitative case study, I have used a retroductive strategy – an approach which it is necessary to now briefly elaborate. Saether (1998, p. 245) defines retroduction as “[...] a research process that is characterised by the linking of evidence (induction) and social theory (deduction) in a continually evolving, dynamic process”. Retroduction not only involves elements of inductive and deductive research strategies (Downward and Mearman, 2007; Ragin, 1994) but is an attempt to address and overcome some of the shortcomings associated with such methods. Retroduction enables one to discern the underlying mechanisms that contribute towards or cause an observed phenomenon (Blaikie, 2000). From the beginning of the project, I identified, as significant concepts of analysis, mechanisms such as: exploitation of workers’ and labour migrants’ vulnerabilities; capitalist excesses/ processes; and regulatory holes, employment relationships, and fraudulent practices by LMIs that may lead to forced labour. Combining retroductive strategy with a case study approach is useful insofar that cases may be used to discern causation based on relations between actors and agencies (Thomas, 1998, p. 308). Also, it is worth noting that in order to implement a retroductive research strategy, flexibility – that may lead to changes in research designs along the way - is paramount.

I chose to focus on the specific case of Romanian nationals in UK horticulture, and between the years of 2008 and 2015, because of the structure of the now defunct Seasonal Agricultural Workers Scheme (SAWS). SAWS, originally dating back to the post-war years, was altered when Bulgaria and Romania joined the European Union in 2007. This alteration limited employment opportunities of these nationals (also known as A2 nationals) to agriculture and

¹⁸ On a final note regarding quantitative studies on forced labour, and their undesirability in the terms of conducting my own research, it can be said that attempts to measure statistical correlations between variables would require very careful attention in specifying the independent and dependent variables. One major problem relating to independent and dependent variables for studies attempting to quantify forced labour is the failure to distinguish (so-called push and pull) factors that cause human trafficking from factors that contribute to migration. The United Nations Office for Drug and Crime (2017a) distinguishes as a push factor into migration, among others, a dearth in social and economic opportunity, oppression, poverty and conflict. These push factors can bring people under the control of traffickers. Pull factors, meanwhile, that may cause human trafficking include a demand for cheap labour in sectors such as agriculture, manufacturing and sex work. Differentiating between pull and push factors is difficult insofar that persons may decide to migrate to find better economic opportunities abroad. These better economic opportunities abroad may, however, come under the form of a demand for cheap labour - as it was the case for Romanian nationals who wanted to improve their economic livelihood options by taking up employment in UK horticulture.

horticulture in the UK from 2008 until 2013. SAWS was a transitional programme,¹⁹ taking place before A2 nationals would enjoy full EU citizenship and therefore could integrate into the UK labour market without constraints. As part of SAWS, A2 nationals had to go through a third-party recruitment agent to find employment in the UK. At the same time, agriculture, horticulture, shellfishing, food packing and processing are sectors that were previously known to be characterised by extreme cases of labour exploitation, as testified in the establishment of the Gangmaster Licensing Authority in 2004. Combining the restricted employment opportunities by Romanians, and the need to go through a third-party recruitment agent, with the knowledge of cases of forced labour in horticulture, I came to the conclusion that adopting this particular case study was well founded - not least to be able to explore if and how conditions of forced labour arose during the time that A2 nationals were only able to find employment in the UK via SAWS (hence, between 2008 and 2013) and if this may have changed since then, when Romanian nationals became free to enter the UK labour market without restrictions (from 2014 until the end of 2015). I chose 2015 as a cut-off point, as my interest lay in (exploring) past recorded cases of forced labour rather than in identifying ongoing incidents; I did not want my research to risk seeming to be a vehicle for uncovering individual criminal gangmasters when, of course, my concern has been with producing academic knowledge about *processes*, and the achievement of forced labour as a sociological phenomenon.

Having decided on the rationale behind my case study choice, I then proceeded to ask myself the question of how data should be gained. This question was answered in a fairly straightforward manner: by the means of semi-structured interviews with relevant experts, that is, persons working in organisations or roles relevant to issues of forced labour. I had initially considered the possibility of gaining data by means of ethnographic fieldwork involving participant observation, to include Romanian labour migrants in UK horticulture themselves; but this was quickly dismissed as an option because: i) gaining access to workers that are currently exploited in horticulture is problematic because of the (already addressed) hidden nature of this crime; and ii) my personal safety and security while doing such research may have been at risk. Horticultural work is isolated by nature, meaning that cases of forced labour in horticulture are also geographically isolated. Investigating current cases of forced labour in horticulture would have required me to travel to not easily accessible locations. As I was carrying out fieldwork by myself without the assistance of a third party, I decided that travelling to and conducting research in remote

¹⁹ It should be noted that several EU member states implemented such transitional programmes - Austria, for example - and that the UK was not alone in doing so.

locations was too dangerous for me. Undertaking interviews, in contrast, allowed me to access key actors (workers aside) in a way that was less immersive and therefore safer for me. Additionally, the technique of semi-structured interviews chimed with my aims, offering me the opportunity to manage the overall direction and general content of each interview (that is, gearing it towards the individual participant, depending on what expert group s/he belonged to; see *Doing the Interviews* below) while also allowing space for the talk that emerged to be shaped both by me, as researcher, and the participant. Semi-structured interviews, then, provided the interviewee with the opportunity to raise points that I had not anticipated, hence potentially enabling existing explanations for phenomena to be supported, corrected or supplemented by new factors that had not previously been paid attention to (Fontana and Frey, 1994; Punch, 1998). Such knowledge included, for example, the importance of tax avoidance in the horticultural sector, whereby it is not possible to retrace how many workers are employed by a gangmaster.

As said above, carrying out semi-structured interviews gave me the opportunity to interview participants that are considered to be expert. By ‘experts’ is meant persons that have special, inside knowledge because of their profession (Littig, 2013). I understand that the term ‘expert’ is open to interpretation; it is certainly true that I made the choice whom to call an expert or not. However, my motivation for denoting person A as an expert in contrast to person B stems from both their particular profession and the published reports in which they have been involved. As such, prior to interviewing particular experts, I had read the material that they published in relation to my research topic. In turn, I asked these participants who else they would recommend that I interview.²⁰ In this sense, the categorisation of expert interviewees was not solely done by me, but also by my initial expert interviewees. (In order to see whether the recommended person was someone who I also would have initially considered to be an expert, I checked their staff website (and publication list).) In sum, I interviewed 52 experts from international, inter-governmental and governmental organisations as well as the private sector.

1.2 Expert Interviews

Expert interviews are used to gain specific and concentrated knowledge about a chosen research topic. Expert interviews are guideline oriented interviews. Guideline oriented interviews are structured in the sense of managing the interview in terms of content and progression. Experts

²⁰ It should be noted that I asked this question of all my participants. This question allowed me, on the one hand, to interview participants I had previously not thought of; on the other hand, I could also double check whether or not I had interviewed the persons who were considered to be key in the field by others.

were recruited either by identifying the authors of reports, academic material and/ or newspaper articles that I then approached for an interview. Having attended the 2016 Human Trafficking Conference hosted by the Organization for Security and Cooperation in Europe, I got in touch with a number of future participants while my month-long study visit at the European Agency for Fundamental Rights and my involvement in the labour exploitation working group of the 2016 European Fundamental Rights Forum further enabled me to meet experts in the field of labour market intermediaries and forced labour.

The choice of experts is in accordance with i) a choice of certain organisations; ii) the reputation and position of relevant actors and persons; iii) opportunity to influence of persons in important decisions and actions. Interviewing several experts within one organisation should provide different / alternative perceptions and views. This was the case when I interviewed two experts from the same international agency and several experts working for different agencies in the same intergovernmental organisations. I divided these experts into different categories. The name of the categories (Monitoring body, Victims' Support Organisations, etc.) were taken from the 2015 Report by the European Fundamental Rights Agency (EUFRA) on Severe Labour Exploitation. I adopted these categories since they also included non-firm actors. The list of categories was only supplemented by one group, the labour providers and gangmasters group (R Group). I adopted this categorization of experts as EUFRA staff members had in the context of their research also interviewed a wide range experts emanating from different sectors.

I developed interview guidelines based on the chosen research area and preliminary document analysis. The interview guideline was reflected in the clear structure and logical progression of interview questions. I began interviews with easy stating questions in order to loosen the interview and to make a bridge to the main body of questions. The main body of question consisted of questions to subthemes and the related subject area. Questions were short in nature and clear, e.g. please explain the link between labour market intermediaries and forced labour while also trying to yield answers that evaluate the state of the art, e.g. how have LMIs supplied workers into conditions of forced labour? Questions then differed according to the group that was interviewed. Also, I often asked participants what they exactly meant after having answered my questions.

1.3 *Analysing expert interviews*

In order to analyse the carried out expert interviews, I used the structural content analysis developed by Meuser and Nagel (2009). Meuser and Nagel (2009) divide the analysis into five categories. I followed Meuser and Nagel's content analysis as it was well described and clear. First, I split interview transcripts into single parts that I considered to be significant. To this end I read the transcribed X interviews over and over again and used different pen colours to delineate the different broad topics I encountered. Second, I arranged these parts according to different topics. To this end I drafted key words and titles for these different parts. These key words and titled were, however, not set in stone. Third, I compared these highlight text parts between the different interviews. To this end I made lists to indicate in which interview topic A, B or C had come up to maintain an overview. By comparing the text parts, I altered the titled in order to come up with a key word that would capture the different parts. Fourth, I compared the categories I established with other empirical studies and, at times, tried to provide a more scientific title for these categories. I then, started with the interpretation process. Fifth, I took into consideration my thesis' theoretical framework, global value chains and global production network analysis, to put the different emerging themes into context. This means I took into account the work of non-firm actors in tackling forced labour in Lincolnshire while also looking at how the horticultural value chain is managed by supermarkets in the UK.

1.4 *Case Selection*

My case study concerned the deployment by LMIs of Romanian labour migrants within UK horticulture, notably in Boston, Lincolnshire. This specific case was selected due to the presence of a number of characteristics that are the basis of forced labour incidences: *geography* – Lincolnshire being the heart of UK horticulture; *sector* – horticulture being characterised by flexible working arrangements with a high prevalence amongst migrant workers; and *occupation* – jobs in horticulture are seen as low-skilled, dangerous, demanding and degrading. The UK was chosen due to the fact that incidences of forced labour in horticulture have previously been identified in this country (Clark, 2013; McCollum and Findlay, 2012; Barrientos, 2013; Strauss, 2012), as well as because of notable national attempts by the state, civil society and institutions to combat this problem.²¹

²¹ The attempts to fight forced labour in UK horticulture include, for example, the establishment of state institutions such as the Gangmaster Licensing Authority (set up following the 2004 Morecambe incident which resulted in the death of 21 Chinese cockle pickers). At the level of civil society, non-governmental organisations such as

In order to carry out field research, I needed to gather a sample of interviewees. In order to do so, I used both theoretical and cluster sampling procedures. Theoretical samples are units that have been chosen by researchers because of their relevance to the topic area (David and Sutton, 2004). As such, some prior knowledge is necessary to decide on which theoretical sample to adopt. As established, I have chosen to focus on the horticultural sector, where incidents of forced labour are well documented (Clark, 2013; McCollum and Findlay, 2012; Barrientos, 2013; Strauss, 2013). My understanding about this situation (my prior knowledge) stemmed from documentation I had read, both before embarking on the PhD and in its early stages (that is, engaging with reports and newspaper articles in the manner described throughout this chapter), as well as having being made aware of the process of human trafficking for labour exploitation in Europe at a meeting of the International Organisation for Migration that I attended in December 2013 – an event that particularly drew my attention to the harrowing situation potentially faced by labour migrants in UK agriculture. As described in the chapter about regulations, the 2004 Morecambe incident – involving the death of 21 Chinese cockle pickers – led to the establishment in the following year of the Gangmaster Licensing Authority (GLA). The establishment of the GLA proved that the government then in power recognised the high risk of forced labour in horticulture. Significant for current purposes, jobs in horticulture are a common source of employment for Romanian labour migrants (Scott et al., 2012). Therefore, my theoretical sample comprised individuals and agencies who could help me to understand more about the achievement (and tackling) of forced labour in respect of UK horticulture and the exploitation of Romanian workers in this context. In order to more practically identify and access relevant parties, it was necessary that I also deployed cluster sampling – which involved dividing my population into separate groups. The next section discusses this procedure in more depth.

2 Data Collection

2.1 *Selection of Participants*

The selection of my participants has involved a process of researching and enumerating different groups of suitable individuals, doing so on the basis of their membership of particular organisations or institutions relevant to the UK horticultural context – and what, consequently, they might be able to tell me as interviewees in relation to particular research questions or aspects of the

Focus on Labour Exploitation (FLEX), Anti-Slavery and the Migrants' Rights Network try to raise awareness about forced labour and to combat labour exploitation.

study. Interviewees have, then, included labour market intermediaries, employers, state officials (including labour inspectors and health and safety executives) and NGO staff, who have been categorised into the following groups:

- i) Monitoring bodies (M group - Gangmaster Licensing Authority; Labor Provider Alliance; and International Labour Organisation);
- ii) Victim support organisations (S group - Focus on Labour Exploitation and the Salvation Army in the UK, as well as Caritas and ADPARE in Romania);
- iii) Labour providers and gangmasters that recruited workers for employment in UK horticulture (R group);
- iv) Workers' organisations (W group - Trade Union Congress; UNI Global Union);
- v) Employers' organisations (E group - British Grower's Association, National Farmers' Union); and
- vi) National policy experts (N group - UK Home Modern Slavery Section; UK Migration Advisory Committee; Romanian National Agency for Employment; and National Agency Against Trafficking of Persons).

The names of these different groups (e.g. Monitoring bodies; Victim support organisations) were derived from a 2015 report by the European Fundamental Rights Agency (EUFRA) on severe labour exploitation, a document which was based on interview research with a wide range of experts emanating from different sectors. I adopted this categorisation scheme because of its comprehensive nature and its relevance to me, not least due to it including non-firm actors. I supplemented the scheme with my own addition in the form of the R group: labour providers and gangmasters. As said, these groups were utilised in order to be able to target and glean expert knowledge on each of the different aspects of my research, with specific questions varying across interviews according to which group an interviewee belonged. In total, I devised and utilised six different interview question sets (one set per group). Interviews were not wholly different, however, as there were also areas of commonality including: questions about participants' understanding of the term 'forced labour'; knowledge about such cases in horticulture; whether there existed a link between recruiting agents and forced labour - and, if so, how the process of forced labour involving recruitment agents was achieved; and the profiles of 'typical' victims. The R group, then, was selected to explore the role of labour providers and gangmasters in supplying growers and farmers with labour, as well as the pressures faced by labour providers/ gangmasters that may generate conditions of forced labour. Participants from the S group were asked to recount how their clients were placed into conditions of forced labour by third-party recruiters

and what the profile of their clientele was, while the M group was a relevant source of data regarding the risks faced by workers in horticultural employment. The N group was there to ascertain policy expertise on patterns of forced labour in both the UK and Romania. Meanwhile, the W and E groups (and, again, the R group) were useful for learning more about changes in employment within horticulture in the last two decades, and both E and R groups were also interviewed to achieve an understanding of how relevant interviewees interpret key terms and laws in the field of employment and forced labour.

In sum, then, my final sample of experts, comprised of these six different groups, was drawn up in accordance with: i) a focus on the kinds of organisation deemed to be relevant to my research, and in this connection, which particular places I should approach; ii) related to this, the reputation and position of relevant actors and persons (see *Recruiting Participants* below); and iii) the opportunity that might exist to have some kind of influence on these persons in terms of potential, future decision-making.

2.2 *Recruiting Participants*

I approached my identified participants by email in order to enquire about their availability. Many of these were authors of reports, academic material or newspaper articles with which I had engaged while exploring the literature, and who I felt would be in a position to provide further insider knowledge on their respective areas of expertise. Other experts were identified (and subsequently approached) following my attendance at the 2016 Human Trafficking Conference (hosted by the Organization for Security and Cooperation in Europe). Others still were people I had met because of my involvement in the labour exploitation working group of the 2016 European Fundamental Rights Forum. (Meanwhile, experts from the R group – gangmasters and labour providers – were identified and recruited in a slightly different fashion; see below for more discussion.). In these emails, then, I first of all introduced myself (or reintroduced myself, in the case of those persons I had already met), before outlining a brief summary of my project and explaining why the potential participants' involvement was sought for my project. I also attached a sheet containing further information about the project's purpose and more on why they - the potential participant - had been approached in particular. This information sheet also made clear that participation was not mandatory, and what s/he – if agreeing to the interview - would be expected to do, as well as the benefits of participating in the project. The sheet also explained whom to approach if anything went wrong, that anonymity was guaranteed, what research findings would be used for, and who had organised and funded this study. Finally, it raised the possibility of me audio-recording the

interview, explaining that s/he would be asked for permission first. Once potential participants confirmed their availability to me, I set about organising places and dates for interviewing them, and sent them all a consent form to sign in advance (see *Ethical Considerations* for more discussion).

I started sending out interview invitations to participate in my study in early May 2016, this being for interviews scheduled in late June and early July of that year. I received almost exclusively positive answers from all approached participants from the M, S, W, E and N groups. There was, however, an exception to this pattern of positive responses, in the form of gangmasters. The lack of gangmasters' responses is important to note and needs to be discussed here because, as a consequence of this development, my interview material relies mostly on information about gangmasters provided by other interviewees. The reluctance of gangmasters to participate in a study such as mine may be explained perhaps by the negative reputation that they endure that has been linked to forced labour incidents - as testified by numerous newspaper articles (Lawrence, 2016a, 2016b, 2016c). I had initially contacted 40 gangmasters by email, who were identified through two public websites (one government, one belonging to an employer association) that each contained the details of all gangmasters currently registered with the organisation hosting the site, inviting them to be interviewed for my thesis. I received not one single response (acceptance or rejection) to this invitation. As such, I then proceeded to ring these gangmasters, if a telephone number was available. Two gangmasters located in Boston, Lincolnshire, agreed to participate in my study. (I had originally planned to go to Spalding, another town in Lincolnshire with a significant horticultural sector, but I decided to drop my plan after I failed to secure any interviews there.) As time was running out - I had only one and a half months before beginning my fieldwork - I decided to follow the advice of one of my other prospective interviewees, from an employer organisation, who had suggested to me via email that I might broaden my geographical scope to include Cambridgeshire because of the high concentration of gangmasters there, in the market towns of Wisbech and King's Lynn. Again, I browsed the two aforementioned websites to identify gangmasters in these areas. (I also informed my supervisor of the need to broaden my scope in this way due to the low response rate I was experiencing in Lincolnshire.) Unfortunately, my reaching out to gangmasters in Cambridgeshire did not yield the intended result of achieving several more interviews with this group of potential participants.

As such, when I first embarked on my fieldwork in June 2016, I had secured interviews with two gangmasters in Boston. In the end, however, I was able to achieve additional interviews

in this respect, due to what is called the ‘snowball effect’ - meaning thanks to the recommendation of other interviewees. To elaborate, when I spent the day in Boston carrying out the two scheduled interviews, I also dropped in to various offices to ask gangmasters and their recruitment staff whether they would be interested in participating in my study. While the majority declined straight away, some were less opposed since I introduced myself as a researcher that had been in touch with a particular staff member from the employer organisation that lists the different gangmasters in Boston, an individual who was also participating in my study. Mentioning the participant’s name was a means to reduce any suspicion the gangmasters might be feeling, as he was well known in this professional community. (It is important to stress that prior to embarking on my interview journey with gangmasters, I had asked this particular participant for his permission to mention him in such a capacity.) Indeed, one gangmaster in a high street office agreed to be interviewed there and then; however, this did not then take place as he was called away to deal with a police visit to one of his premises. In total, then, the UK-based side of my research saw me interviewing three gangmasters from Boston. In terms of the R group, I also interviewed two labour providers (based in Portslade, near Brighton, and Kenilworth in Warwickshire respectively), who, during SAWS, had supplied farms in Lincolnshire with Romanian workers (I would subsequently interview two further gangmasters, both of who were based in Romania, who in their work collaborated with the aforementioned UK-based labour providers).

While I was very keen on having at least ten gangmasters as interviewees to achieve a more representative sample, the general reluctance of this group to participate in my study does not come as a surprise. Indeed, several participants from other groups voiced their surprise that I was managing to get any interviews with gangmasters at all, given that they may well be afraid of being interviewed about such a sensitive topic and fear being blamed.

2.3 *Doing the Interviews*

In sum, I carried out 52 interviews. These interviews were all semi-structured and carried out either face-to-face, or by telephone or Skype. Every interview started with the same two questions: i) ‘What is your current position?’; and ii) ‘For how long have you been working in your current position?’ These questions were asked to begin the interview in a relatively light manner (meaning not to go straight to the point about forced labour before rapport had first been established, given the sensitivity of the subject), alongside being a way of learning how to describe the profession of participants in broad terms when writing my analysis in order to avoid identifying them. I also asked all participants particular key questions on their understanding about the

links between labour market intermediaries and forced labour. From there, questions differed according to expert groups. For instance, interviews with gangmasters and employer organisations sought to understand how gangmasters were treated by their contractors. This was because gangmasters do not operate in a vacuum, but are themselves part of a supply chain and, as such, are subject to risk and pressure by other firms. Questions were purposefully kept short and clear, and I often asked participants for clarification and encouraged elaboration of any initially brief answers.

The majority of my participants were located in the United Kingdom and Romania, although I also conducted interviews in Belgium, Austria, Ireland, Sweden, Switzerland and the United States. I carried out: four interviews based in Austria, all of these face-to face; seven interviews in Romania, five face-to-face and two over the phone; and 30 interviews in the UK, 17 in person, seven over the phone and six via Skype. All three interviews in Brussels were carried out via Skype, as were the four interviews in Switzerland, one in Sweden and two in the United States. Finally, the interview with the one participant located in Ireland was done over the phone. While I did not have the impression of interviews suffering in terms of quality if they were conducted over the telephone or Skype, they tended to be shorter in length than interviews carried out in person.

2.4 Ethical Considerations

In order to carry out interviews in an ethical fashion, it was necessary that I first obtain informed consent from the participants. As stated above, each participant was sent a consent form to review during our initial correspondence. When I subsequently met the interviewee, I then asked him or her to officially consent to the interview by signing the form. At this stage, I also ascertained whether making an audio recording of the interview was permissible and made a note of their verbal agreement accordingly; there was only one case where a participant (a gangmaster) declined to be recorded (in this case, I produced a transcript by making notes during the interview). I did not offer any financial payment to the participants.

It is true to say that forced labour is a very sensitive topic. Nonetheless, I did not anticipate my research causing any psychological harm/ distress to my participants. This is because I was not interviewing workers, i.e. people who had been and were being placed into conditions of forced labour and who, as a result, may be traumatised. In order to try and elicit honest information from gangmasters and other participants, I gave a brief overview of the professions of all my participants to ensure that they were aware that I was also interviewing persons who may dispute

their claims. Importantly however, as the community of relevant persons in the area of forced labour is limited and personal identification can quite easily be made, I asked interviewees to not reveal specific details concerning identifiable cases, but rather to talk about these without identifying particular people.

Participants were free to ignore questions which they did not want to answer and to interrupt the interview at any time, as well as to withdraw their consent for the information they provided to be used, this right existing up to six weeks following the interviews. (Six weeks seemed to me to be a sensible amount of time for participants to reflect on whether or not they wanted their answers to be included in my study.) So as to ensure the success of my project, participants were encouraged to freely share their views, following discussions of confidentiality and anonymity procedures. When asked about whether participants were aware of cases of forced labour in Lincolnshire horticulture, I asked them not to mention the actual name of the actors involved but to describe their profession in broad terms. When participants agreed to recount incidents they were aware of, I reminded them that their name would not appear in my thesis and that the data gained may be shared with my supervisor and examiners, but with no one else. After all, I told them, the point of the interview was not to uncover criminal gangmasters, but to understand the process of forced labour as a result of gangmaster employment. (When writing up my thesis, I have also taken care not to reveal sensitive information, including names. Additionally, when describing participants' professions, I have done so in broad terms, so as to substantially lessen the likelihood of them being identified.).

Of course, given, as mentioned, the sensitive nature of my research project, there was always the possibility that interviewees may not always answer my questions honestly about what is a contentious issue (and indeed that potential interviewees may not always be willing to speak to me in the first place, as per my experience with many gangmasters; see *Recruiting Participants*). This issue was addressed in some measure by the aforementioned offering of assurances that only a limited number of people would see the output of my project; in a similar vein were the steps I took at both interviewing and analysis stages to anonymise the data.

As my fieldwork took place both in the UK and Romania (participants in the other aforementioned locations abroad were reached via telephone or Skype interview), my plans outlining how the field research would be organised underwent a risk assessment. This assessment took place during my first-year review. I had to explain to the committee how I would address potential safety risks. I answered that I had shared with my supervisor the dates when I would be abroad to carry out my interviews and that I had his work phone number saved in my contact list,

so that I could call him at any time if something happened while I was conducting fieldwork. This was despite me being confident that there would be no safety concerns. I was not unduly concerned purely because participants were being interviewed within their professional contexts and I was not meeting with them outside this particular setting. As such, interviews also occurred between 9am and 5pm and no earlier or later. When I interviewed gangmasters, I did not feel at any more personal risk than when I was spending time with other participants. However, at the level of researcher, I felt more nervous as I was afraid that this group of participants may be more easily inclined to drop out of interviews or to not answer honestly. As such, during their interviews, I phrased questions especially carefully and paid even more attention to how these participants reacted to questions and the ways in which they answered. Another factor that indirectly contributed to my safety was the fact that I did not stay overnight in any of the areas where I conducted interviews but rather I went back to what I called home at this time, in North East England - even though, as a result, I ended up commuting for almost eight hours on the occasion when I went to Boston (where I interviewed gangmasters).

2.5 Other Data Sources – Drawing on Literature, Policy Reports and Newspaper Articles

Alongside conducting interviews, I also engaged thoroughly with a wide range of relevant documentation as an additional source of data. This undertaking was very important in the first stages of the research, for a number of reasons. Firstly, it allowed me to familiarise myself with many factors salient to the field of forced labour. For instance, NGO reports and GLA briefings helped me to understand labour inspectors' working mechanisms and their limits. Reports by international organisations, meanwhile, helped me to understand the most common forms of fraudulent recruitment practices. Newspaper articles provided me with insights into whether forced labour has been linked in media coverage to employment conditions of LMIs. Secondly, this drawing on material played an exploratory role in other, more specific, senses, enabling me to construct a theoretical framework and to develop the research strategy that resulted in the selection of my particular case study. Key documents in this connection were journal articles and reports by international organisations that used global value chain theory to explain firm-to-firm relations where asymmetric power relations exist (such as in the case of agriculture/ horticulture where, in the UK, four large supermarkets dominate the market). Articles on recruitment practices and employment contracts highlighted that forced labour does not merely start on the production site of goods, but actually with the initial recruitment process. This is why I decided to investigate the particular case study I did, i.e. where workers were recruited from abroad and necessarily had to go via a third-party recruitment agent to find lawful employment in the UK between 2008 and

2013.²² Finally, information gained from the drawing on this range of sources also enabled me to single out important actors in UK horticulture production networks, crucial to when I was drawing up my sampling frame and designing my interview questions. Moreover, as my research has developed, drawing on different documents has, in addition, allowed me to critically interrogate data gained from these interviews - and vice versa (see my discussion on data triangulation below for more detail).

3 Data Analysis

3.1 *Research Questions Altered*

I initially set out to understand the link between labour market intermediaries and forced labour in Lincolnshire horticulture. The selected case study involved Romanian nationals that had tried finding employment in Lincolnshire horticulture from 2008 until 2015. While several participants were able to answer my question about the link between labour market intermediaries and forced labour in broad terms, they failed to provide me with precise details about the extreme exploitation of Romanian nationals in Lincolnshire horticulture between 2008 and 2015. Only one participant, LI: Charles, could provide me with some details by sharing a link to The Guardian's news website.²³ The lack of recorded cases does not necessarily indicate that Romanian migrant workers were not exploited in Lincolnshire horticulture, but that they may have been reluctant to come forward. With as little data available on the exploitation of Romanian labour migrants as a result of labour provider and/or gangmaster employment in Lincolnshire horticulture, I decided to rephrase my research questions following my supervisor's advice to the following: i) What are drivers of forced labour in Lincolnshire horticulture?; and, ii) how do institutions fail to tackle this process in that particular sector?. Readjusting research questions with empirical findings is not uncommon as anticipated results may either not crystalize to the anticipated extend or at all. In my case, neither interview questions nor a review of newspaper coverage

²² Post-SAWS contributions, in the form of reports by international organisations, think tanks and non-governmental organisations, include Andrees et al (2015), Jones (2015), Molenaar et al (2017), Mendoza (2013), UNODC (2015) and Vérité (2012a). These reports investigate how recruitment practices may be rendered more secure and ethical so that labour migrants do not risk being trafficked for labour exploitation.

²³ The Romanian gangmaster operating in Northern Ireland subjected his workers to conditions deemed 'inhumane' alongside not holding a license by the GLA. Inhumane working conditions amounted to workers having to sleep in unheated buildings, find food in supermarket bins while having to pay transport, accommodation and food costs and being paid GBP 100 per week (Lawrence, 2014). In October 2016 it was reported that this particular gangmaster was jailed for more than two years (BBC, 2016).

and reports yielded any significant results about the exploitation of Romanian nationals in Lincolnshire horticulture from 2008 until 2015. As such, my research could have been deemed void if I had chosen not to realign my research questions. My initial three research questions were:

- i) What is the role of labour market intermediaries in global production?
- ii) How do LMIs supply workers into conditions of forced labour?
- iii) How are these conditions institutionalized?

Following the analysis of the gained interview data, the revised three research questions are:

- i) What is the role of labour market intermediaries in global production?
- ii) What are drivers of forced labour in Lincolnshire horticulture?
- iii) How function institutional framework to avoid these conditions?

Chapters Six, Seven and Eight present the findings to the three revised research questions while Chapter Nine provides a summary of my thesis and highlights its novel contribution.

3.2 *Interpreting Interview Data: Data Triangulation*

When it came to analysing my data, I attempted to understand the various experiences of interviewees, as well as taking into account the interviewees' different interpretations of concepts, institutions and laws. I anticipated that interviewees would offer different perspectives that may diverge from one another. As such, a method of triangulation was used to discern not only patterns of similarity and difference in interviewees' narratives, but also to gain alternative perspectives by cross-referencing interview statements with reports, academic literature and/ or newspaper articles (as described throughout this chapter).

Downward and Mearman (2007) argue a retroductive research strategy can manifest itself in (methodological) triangulation. Denzin (1970) provides a useful typology of four different sorts of triangulation, which are as follows: i) data triangulation; ii) investigator triangulation; iii) theoretical triangulation; and iv) methodological triangulation. In my thesis, I have used data triangulation, or the gathering of data from different subjects - in my case done according to the six different categories, or groups, discussed in *Selection of Participants*. Triangulation was useful to my project in having a positive effect on what Downward and Mearman (2004) call the 'persuasiveness' of evidence (Webb et al., 1966; Campbell and Fiske, 1959; Denzin 1989) – first,

in enhancing the validity of participants' insights (Denzin, 1989), and, secondly, in elaborating understanding in making accounts more 'complete' (Jick, 1979; Shih, 1998).

Another reason for conducting data triangulation concerned this helping to ensure the trustworthiness of interviewees' narratives. By cross-referencing answers across interviews and against other forms of data (i.e. documentation), I was better able to establish the veracity of information being given to me – when participants were asked whether they are aware of any cases of forced labour in Lincolnshire horticulture and claimed that this was not the case, I showed them reports that have established that this process had happened previously and asked whether they had heard about the Stronger2gether initiative.²⁴ Thus, as part of the triangulation method – “the use of more than one approach to the investigation of a research question in order to enhance confidence in the ensuing findings” (Bryman, 2004, p. 1) – the utilisation of existing documents plays a vital part (Symon and Cassell, 1998).

3.3 *Transcription and Coding*

When I was performing data triangulation, and indeed while analysing my data more generally, I found it helpful to print out my interview transcriptions and have these in front of me. This allowed me to easily compare answers across interviewees, and to note down where answers *within* participant groups - as well as *among* these groups - converged and diverged. In terms of coding the data specifically, I used the structural content analysis approach developed by Meuser and Nagel (2009). The procedure for this took the following form: on having produced a verbatim transcription of an interview, I printed this out and I read through it several times to completely familiarise myself with its main themes, before dividing its most relevant passages into different parts, using different pen colours to delineate the various, broad topics I encountered. Once I had divided the passages into parts, I read these passages over and over again, making notes as I did so in order to devise eventually a code book, which I then used to systematically apply codes to each and every passage, with the intention of so achieving a better understanding of its meaning in terms of my research questions. Once I had coded the different passages, I compared these passages/ codes across the different interviews. Here, I made lists to indicate in which interviews a topic had come up, in order to maintain an overview of themes. As I progressed through my

²⁴ The Stronger2gether initiative was developed by the Association of Labour Providers, the Gangmasters Labour Abuse Authority and Migrant Help. This initiative offers training to businesses to effectively tackle forced labour in their supply chains.

analysis, codes were adjusted and cross-checked before being refined. For instance, while comparing passages/ codes across the interviews, I altered titles in order to come up with an overarching key word that would encompass similar themes. I then compared the key words, or categories, that I had produced with those produced in other empirical studies (and, at times, adjusted them for a more formal, or scientific, articulation). Importantly, I also worked from within my adopted theoretical framework, of global value chains and global production network analysis, to place the emerging themes into context. More concretely, this means I took into account the work of non-firm actors in tackling forced labour in Lincolnshire, while also looking at how the horticultural value chain is managed by UK supermarkets.

Transcribing interviews was very time intensive. In the end, I transcribed 33 out of my 52 interviews, having first listened to each interview and made a ranking of its significance for my research (I also consulted my handwritten notes, made immediately following each interview, to help inform my decision-making here). It is important to note that with these 33 interviews, three were conducted with two participants simultaneously²⁵ – in other words, the total number of transcribed interviews came to 33, but these involved 36 participants. Moreover, out of these 33 interviews, data from two transcribed interviews, those of NGO: Alan and GM: Emily, were eventually not incorporated within the finding chapters because I had wrongly assumed that the information they had provided would be useful, when in actual fact it was not (in terms of directly answering my research questions). Alongside what were now the 31 transcribed interviews that flowed into my analysis, I also took account of three additional interviews. Out of these three interviews, one was an interview that had unfortunately been deleted by me without being saved, one was an interview that I had deemed not to be as key compared to the other interviews but that had turned out to be helpful regarding European law, and the last was an interview that suffered from very poor audio recording quality, whereby I relied mainly on my handwritten notes. Data from these interviews came from my hand-written notes and, in the case of the second and third interviews, this was supplemented with information that I managed to gather by listening to the most relevant parts of the interview recording. These 34 selected interviews, then, provided me with the data that I felt saw me achieve theoretical saturation on those issues most pertinent to my overarching research concerns. The remaining 18 interviews were broader and focused on topics such as circular migration, labour migrants' profiles in horticulture (notably gender issues), human trafficking, international law, UK domestic law, the rise of temporary

²⁵ These interviews took place on 28th June 2016 with participants HO: Ivan and HO: Henry, on 30th June with NGO: Jeremy and NGO: Julian, and on 1st July 2016 with T: Stephen and T: Ruby.

workers, and EU Directives. While these topics are all important aspects to my research topic, they did not add any concrete information about the link between forced labour and LMIs in Lincolnshire horticulture. Nonetheless, I intend to use the information gained from these aspects when disseminating the findings of my thesis.²⁶ (See Table 1 at the end of the current section, where I introduce the 34 participants who will feature in my analysis.)

When interpreting interviewees' answers, I took into account the context of the interview, that is to say both the historical moment (date) and some of the particularities of the research encounter (where the interview happened, and how the interviewee reacted to questions). I particularly paid attention to gangmaster participants' reactions to my questions and their answers, to detect whether they felt uncomfortable with what I was asking them. 'Anxiety' from some such participants was reflected in them asking me repeatedly to not reveal their identity and/ or to not record the interview. (In these cases, I reiterated to the participants that I would remove all identifying characteristics when referring to them in my thesis. When asked to not record the interview, I did as requested.) 'Disdain', meanwhile, was displayed by some participants using strong language when answering my interview questions and, on one occasion, in racially abusing me for being Austrian. I do not think that these signs were detrimental to my analysis. While the interview atmosphere may not have been as comfortable as it was with other interviewees, these feelings did not impact on the process of analysing the data. I, indeed, used data and quotes from the participant who declared Austrians and Germans to be inferior human beings compared to other Europeans, despite it not being a particularly pleasant interview to revisit.

As mentioned previously, measures were also taken in order to avoid personal identification of the interviewees during my analysis and write up of the data, including not naming the interviewees and not indicating where exactly they were based. Moreover, I kept all personal identifier details (e.g. names and addresses) on a disc separate from the anonymised data itself. As identifying markers were removed from documents, I relied on devising a systematic scheme to identify participants as I conducted the analysis; this involved the attribution of a particular multi-digit number to each individual, based firstly on the location of interview (e.g., 1 for Lincolnshire), secondly, on which order the participant was interviewed in a given location (so, for instance, if s/he was the first person to be interviewed in Lincolnshire, it would be the number 1), and, thirdly, on the month in which the interview took place (if taking place in September, say, it would be 9). So a participant might be – following the above example – attributed the identification number of 1.1.9. Moreover, when it came to the write up of my findings, each

²⁶ The data gained from these 23 interviews may flow into publications based on my field research.

participant received a ‘dummy name’ and his/ her profession was described only in broad terms. Considering that the field of persons working with issues surrounding forced labour in the UK is small and that cases of forced labour in Lincolnshire horticulture had already previously received some attention, choosing to give my interviewees dummy names was a very sensible thing to do.

Interviews in the UK, Belgium, Austria, Ireland, Sweden, Switzerland and the United States were carried out by me in English. I had originally anticipated that the interviews in Romania would be conducted to some extent in English and to some extent in Romanian, and that, therefore, I may well require the services of a translator when it came to producing the transcripts of such interviews. However, in the end, all participants in Romania were fluent in English, so this assistance was not necessary.

Data was stored on a password-protected computer. Transcripts and coding documents were stored in a separate folder from that which contained the information about participants and date/ location of the interviews. Following the completion of my project, all recordings will be destroyed, while the anonymised data will be kept securely for future research.

Table 2: Overview of participants

Monitoring Bodies (M Group)					
Number	Dummy Name	Profession	Means	Location	Date
1	Andrea	NGO	Face-to-face	London	29 th June 2016
2	Michael	Home Office	Face-to-face	London	28 th June 2016
3	Ronald	Home Office	Phone	Sheffield	3 rd August 2016
4	Dominic	Home Office	Face-to-face	Nottingham	15 th July 2016
5	Henry	Home Office	Face-to-face	London	28 th June 2016
6	Ivan	Home Office	Face-to-face	London	28 th June 2016
7	Timothy	Home Office	Face-to-face	London	1 st July 2016
8	Charles	Labour Inspector	Face-to-face	Bucharest	11 th August 2016
9	Sophie	Ethical Trading Manager at a UK Supermarket	Phone	London	10 th August 2016

Victims Support Organisations (S Group)					
Number	Dummy Name	Profession	Means	Location	Date
1	Jeremy	NGO	Face-to-face	Dover	30 th June 2016
2	Jacob	NGO	Face-to-face	Dover	30 th June 2016
3	Francis	NGO	Skype	London	5 th August 2016
4	Shaun	Charity Worker	Skype	Boston	24 th August 2016
Labour Providers and Gangmasters (R Group)					
Number	Dummy Name	Profession	Means	Location	Date
1	Theodore	Gangmaster	Face-to-face	Boston	7 th July 2016
2	Jonathan	Gangmaster	Face-to-face	Boston	7 th July 2016
3	Rob	Gangmaster	Face-to-face	Boston	7 th July 2016
4	Peter	Gangmaster	Phone	Iasi	10 th August 2016
5	Anthony	Gangmaster	Face-to-face	Bucharest	9 th August 2016
6	Rufus	Labour Provider	Phone	Portslade	2 nd August 2016
7	James	Labour Provider	Phone	Kenilworth	5 th August 2016
Workers' Organisations (W Group)					
Number	Dummy Name	Profession	Means	Location	Date
1	Ruby	Trade Union	Face-to-face	London	1 st July 2016
2	Stephen	Trade Union	Face-to-face	London	1 st July 2016
3	Gloria	Trade Union	Skype	Nyon	6 th September 2016
Employers' Organisations (E Group)					
Number	Dummy Name	Profession	Means	Location	Date
1	William	Employer Organisation	Face-to-face	Wansford	12 th July 2016
2	Kimberley	Employer Organisation	Skype	London	14 th July 2016
3	Daniel	Employer Organisation	Face-to-face	London	1 st July 2016
4	Caleb	Employer Organisation	Phone	Keilworth	17 th August 2016

Policy Experts (N Group)					
Number	Dummy Name	Profession	Means	Location	Date
1	Nathan	Think Tank	Skype	London	26 th July 2016
2	Aglaia	International Organisations	Skype	Geneva	2 nd August 2016
3	Andreas	International Organisation	Face-to-face	Vienna	31 st August 2016
4	Letitia	International Organisation	Skype	Geneva	25 th July 2016
5	Norbert	Academic	Telephone	London	16 th August 2016
6	Alexandra	Academic	Skype	London	16 th August 2016
7	Gerald	Academic	Face-to-face	Durham	6 th July 2016

Conclusion

This chapter began by outlining why I chose to investigate my research topic by using a case study. The case study scenario was chosen because it offers a more in-depth understanding of phenomena than quantitative methods can capture. Semi-structured interviews have particularly enabled me to gain knowledge I may not have anticipated (such as the relationship of tax avoidance to labour exploitation). I then justified why I selected the case of Romanian nationals that worked in Lincolnshire horticulture from 2008 to 2015. The second part of this chapter explored the data collection process. I first recounted how I identified potentially relevant interviewees, categorising these according to a system of distinct expert groups that I knew I wanted to incorporate into my study. Then, I explained how I approached individuals and how interviews were carried out, noting that every interview began with the same two questions while remaining questions differed according to which expert group a participant belonged. In this section I also mentioned that I had already drawn on some relevant documentation prior to beginning the interview process, and that this was in order to be aware of as much information in the field as possible, something which also fed into the creation of the aforementioned expert groups system. The third and final part of the chapter dealt with data triangulation, a very important process in my research considering that I was trying to understand a criminal phenomenon that hardly anyone would like to be linked to. Finally, I described how interviews were transcribed and coded.

Chapter Four

The Organisation of UK Horticulture

As a branch of agriculture, horticulture deals specifically with the cultivation of flowers, fruits, vegetables and ornament plants. In 2014, vegetables produced in the UK were worth approximately GBP 1.2 billion. This figure represents a decrease of 8.5% when compared to 2013. The UK Department for Environment, Food and Rural Affairs (2014) explains this decline in worth in terms of the falling price of vegetables. Falling prices for vegetables, in turn, are due to both oversupply and a lack of demand. Fruits produced in the UK, in contrast, increased in value by 7.5% between 2013 and 2014; in 2014, home-produced fruits were worth GBP 620 million. In the same year, meanwhile, UK ornaments were worth GBP 1.17 billion, a decline of 2% when compared to 2013; nonetheless, the UK Department for Environment, Food and Rural Affairs (DEFRA) notes that the 2014 value was still comparatively higher than values prior to 2013. *Agriculture as a whole* contributed 0.6% to the UK's GDP in 2015 (CIA, 2015).

The total import of fresh fruit and vegetables increased between 2011 and 2012 by 2%, reaching GBP 4.6 billion. At the same time, exports experienced a 3% decrease, to GBP 157 million (DEFRA, 2013). Imports thus reached higher levels than exports. This observation supports the claim that UK horticulture satisfies a domestic demand whose products tend to be sold on the national market. Nonetheless, the issue of *global* supply and value chains is not irrelevant, in that horticulture consists of networks governed by powerful lead firms such as supermarkets (Barrientos et al., 2003), who, in maximising the value added within their production and distribution chain, set 'local' suppliers of agricultural produce around the world against one another – and so minimise the prices they (the lead firms) have to pay. Hence, horticulture in the UK is a domestic supply chain that experiences pressures in terms of production and prices from global supply chains.

The pressure to produce fruits and vegetables according to strict quality and price criteria has significant consequences for employment in UK horticulture. Rogaly (2008) links strict quality criteria, which play a key role in the governance of retailer-supplier relations, to a particular kind of workforce. The particular workforce that is supposed to produce 'quality' products should

be compliant, reliable and flexible. If adjectives such as ‘compliant’ and ‘flexible’ are taken to an extreme in describing horticultural workers, the likelihood of these workers ending up being placed into conditions of forced labour is high (Skrivankova, 2014).

Incidences of forced labour in UK horticulture have been reported on several occasions (Skrivankova, 2014; Anderson and Rogaly, 2005; Clark, 2013; Scott et al., 2012; Barrientos, 2013). Forced labour does not exist in one exclusive form, but may vary in intensity and depending on the sector. This is why Skrivankova (2014) speaks about a continuum of exploitation. The ILO Forced Labour task force (2012b), however, holds that there exists a list of indicators that strongly point towards conditions of forced labour. This list includes isolation, a lack of payment, highly flexible working hours, excessive overtime, abuse of vulnerability, retention of identification documentation, and the experience of physical/ psychological threats. Data gained from interviews carried out in the UK and Romania between June and September 2016 will provide insight into which of these indicators are relevant to explain conditions of forced labour experienced by Romanian labour migrants in the UK horticultural context. This chapter explores first the organisation of production in UK horticulture. Second, this chapter describes the recruitment mechanisms and employment relations in the production network, where incidents of forced labour have been identified. Third, the composition of the labour force in horticulture is analysed. The chapter then considers why and in which instances employment conditions have been characterised as constituting forced labour.

1 The Organisation of Production

1.1 Production Systems in Horticulture

There are different production organisation systems within horticulture (Midmore, 2015). These production systems can be divided into four different groups: i) subsistence; ii) home garden; iii) semi-intensive mixed commercial; and iv) very intensive commercial (Midmore, 2015). Midmore (2015) distinguishes these groups according to their degree of market integration and specialisation. Given the focus of my thesis – which analyses how Romanian labour migrants in Lincolnshire may be placed by labour market intermediaries (LMIs) into conditions of forced labour - I will exclusively focus on very intensive commercial horticultural production systems. This is a system within which Midmore (2015) does, in turn, discern four different systems of producing fruits and vegetables. These systems include field-based production and glasshouse/

protected production (where horticultural products are protected against rain, decreasing the risk of bad crops while increasing productivity). They also include hydroponics production, which represents the most significant move in the sector towards all-year-round horticulture, and is synonymous with controlled environment agriculture in the sense that crops are constantly being controlled, checked and analysed. Midmore (2015) explains the move towards hydroponics with reference to poor soil structure and fertility, surface salt accumulation, and the wish to eliminate soil diseases and pests. Finally, there are organic systems, which claim to be different to the other three production systems in being sustainable. This sustainability rejects the usage of soluble mineral inputs and agrochemicals for controlling diseases, insects and weeds. Moreover, organic production systems claim to not use synthetically produced fertilisers, pesticides and growth regulators (Midmore, 2015). Whether every organic product is as sustainable as it claims to be is, however, questionable.

Despite having its own horticultural produce, the UK has imported vegetables and fruits for many years. Indeed, between 1988 and 2011, net imports doubled in volume. The rise in imports may be explained by the increase in UK agricultural produce prices. These prices increased at a swifter pace (48.3%) between 2005 and 2010 when compared to other European countries, such as Austria (22.7%). The price increase may be very well the reason why supermarkets tend to source from foreign growers that sell agricultural produce at a cheaper price. The Migration Advisory Committee (MAC) (2013) also notes that tasks in horticulture have diversified by including on-site packing or the processing of products on-site. This development has led to a rise in demand for workers outside of peak seasons.

1.2 The Governance of the Fresh Fruit and Vegetables Product Supply Chain

The retailing of fresh food in the United Kingdom has undergone significant changes in the last thirty years (Dolan and Humphrey, 2000). The most significant change has been the rising influence and dominance of large supermarkets in sourcing fresh vegetables and fruits from growers. This trend has led to a decline of the market share of independent specialist greengrocers. Gray and Klein (1997) claim that, in 1980, independent specialist greengrocers and fruiterers owned 46% of the market share of the UK horticultural market, while a decade later their share had decreased to 26%. The decline in greengrocers' and fruiterers' market shares has steadily continued, whereby, in 1997, 76% of UK fresh fruit and vegetable sales had been executed in supermarkets and major retail chains (Fearne and Hughes, 1998). The process of retail concentration had direct impacts on the horticultural value chain that links supermarkets and costumers

in the UK with firms and farmers in Lincolnshire. The rise of supermarkets in retail governance in the UK is part of the broader phenomenon of retail concentration. Retail concentration has been linked to the significant transformation of product and labour supply chains, notably in terms of playing an important role in developing products and setting prices (Barrientos et al., 2003).

2 Employment, Recruitment and Gangmasters

Employment in horticulture has been described as seasonal, demanding, dangerous and ridden with vulnerabilities (Consterdine and Sahizer, 2015; Underhill and Rimmer, 2015). Despite these negative qualities, labour migrants may choose to take up employment in UK horticulture because of the perception of high earnings being available, when compared to the salary paid in labour migrants' home countries, alongside the opportunity to live in the UK and to pick up/improve one's English language skills (Rogaly, 2008). Rogaly (2008) notes that this trade-off mainly applies to university students. Due to what has previously been referred to as the "agricultural special relationship" (Rogaly, 2008) - meaning the highly flexible character of work in agriculture due to its seasonal nature as well as weather considerations - growers find it unattractive, economically speaking, to hire a permanent workforce. This is when gangmasters (a private form of labour market intermediary exclusively supplying workers with employment in agriculture, shellfish gathering, food and drink processing and packaging) step in and provide growers with a labour force. Gordon (2015) shows that subcontracting – the hiring of a worker from outside of one's firm to carry out tasks - is a key structural factor in the recruitment of workers in supply chains. Horticulture is not only a value chain, hence a product supply chain, (Gereffi et al., 2005; Gereffi et al., 2011) but also a labour supply chain (Dolan and Humphrey, 2001; Barrientos et al., 2003), whereby recruitment patterns identified in agricultural labour supply chains also apply to horticulture. Unless an employer recruits his/ her workers directly him/ herself, workers are hired from a LMI. The basic labour supply chain consists of the firm hiring labour from LMIs, the LMI, and workers (see Figure One below). The firm hiring labour is not the legal employer of the migrant workers; this function is instead played by the LMI. As the legal employer, the LMI rents these workers out to the firm contracting workers, who, in turn, pays the LMI for the workers' productivity/ work. Transposing this basic labour supply chain model onto origin and destination countries, the migrant labourer's direct employer is a LMI that may be located in the migrants' country of origin. This LMI then rents its workforce out abroad to firms that are producing goods and services for other firms. Alternatively, labour migrants may be hired by a

LMI in the *destination* country and, here, rented out to firms that are producing goods and services for other firms. In the case of Romanian nationals that were deployed in Lincolnshire horticulture, the firm employing migrant workers represents farmers and growers, who have turned to recruiters for hiring labour. During the Seasonal Agricultural Workers Scheme (2008 – 2013), or SAWS, recruiters were licensed labour providers such as Hops Labour Solution or Concordia. These labour providers, in turn, may have relied on licensed gangmasters located in Romania to directly recruit workers from there (as described in Chapter Five, the Gangmaster and Labour Abuse Authority, formally the Gangmaster Licensing Authority or GLA, operate a licensing scheme in respect of the supply of workers). However, it should be noted that unlicensed gangmasters in Romania could also have acted as recruiters, deploying Romanian nationals into unlawful employment opportunities in Lincolnshire horticulture (hence, within the black economy) by collaborating with (un)licensed labour providers and/or gangmasters based in Lincolnshire. (While this is a possibility, no data confirmed this last assumption.) Since the cessation of SAWS, recruiters may be both licensed labour providers and gangmasters, in Lincolnshire horticulture. (Workers in the aforementioned Figure One can thus be said to represent, in the context of my thesis, Romanian nationals that have been deployed in Lincolnshire horticulture.)

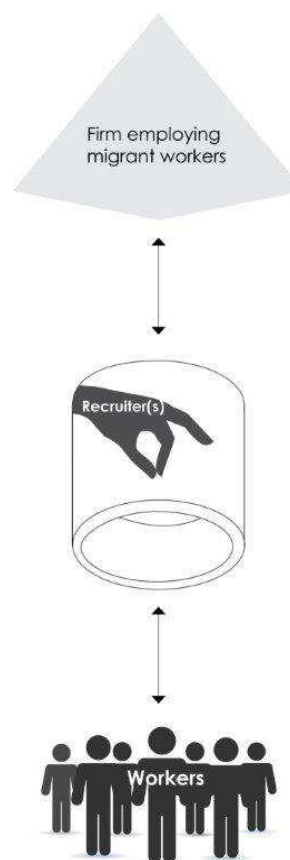


Figure 1: *The Basic Labour Chain*
(Gordon, 2015)

Managers of labour providers or gangmasters may rely on a network of sub-agents for running recruitment processes (Figure Two). (In the case of gangmasters and labour providers in Lincolnshire that sourced workers from Romania, I was told that it is common practice by gangmasters' or labour providers' counterpart staff members in Romania to give presentations about work in UK horticulture at (agricultural) universities in Romania; these presentations are one method of recruiting workers, standing here alongside family ties, social media and word-of-mouth. See further discussions in Chapter Five) These sub-agents recruit workers from rural areas by not only offering them employment but also transportation, accommodation and access to money lending. Labour providers and/ or gangmasters can also rely on lead migrant workers to recruit workers (Gordon, 2015). Two of my gangmaster participants used to be seasonal workers. Another case of seasonal worker turned gangmaster, reported by the media in December 2015, concerned a former health and safety consultant from a Lincolnshire gangmaster, Local Link Recruitment; the BBC revealed that this individual was an unofficial recruiter who "collect[ed] people for work and g[ot] them to sign their job sheets. He [the former health and safety consultant] was also recorded saying complaints about Local Link Recruitment workers should be made to him, not the farm" (BBC, 2015). Workers told the BBC that everyone knew that it was this consultant, and not the licensed managing director, who was the boss. At present, the general contractor located at the top end of the chain does not often face any legal action against them when labour violations occur (these occurring further down the chain).

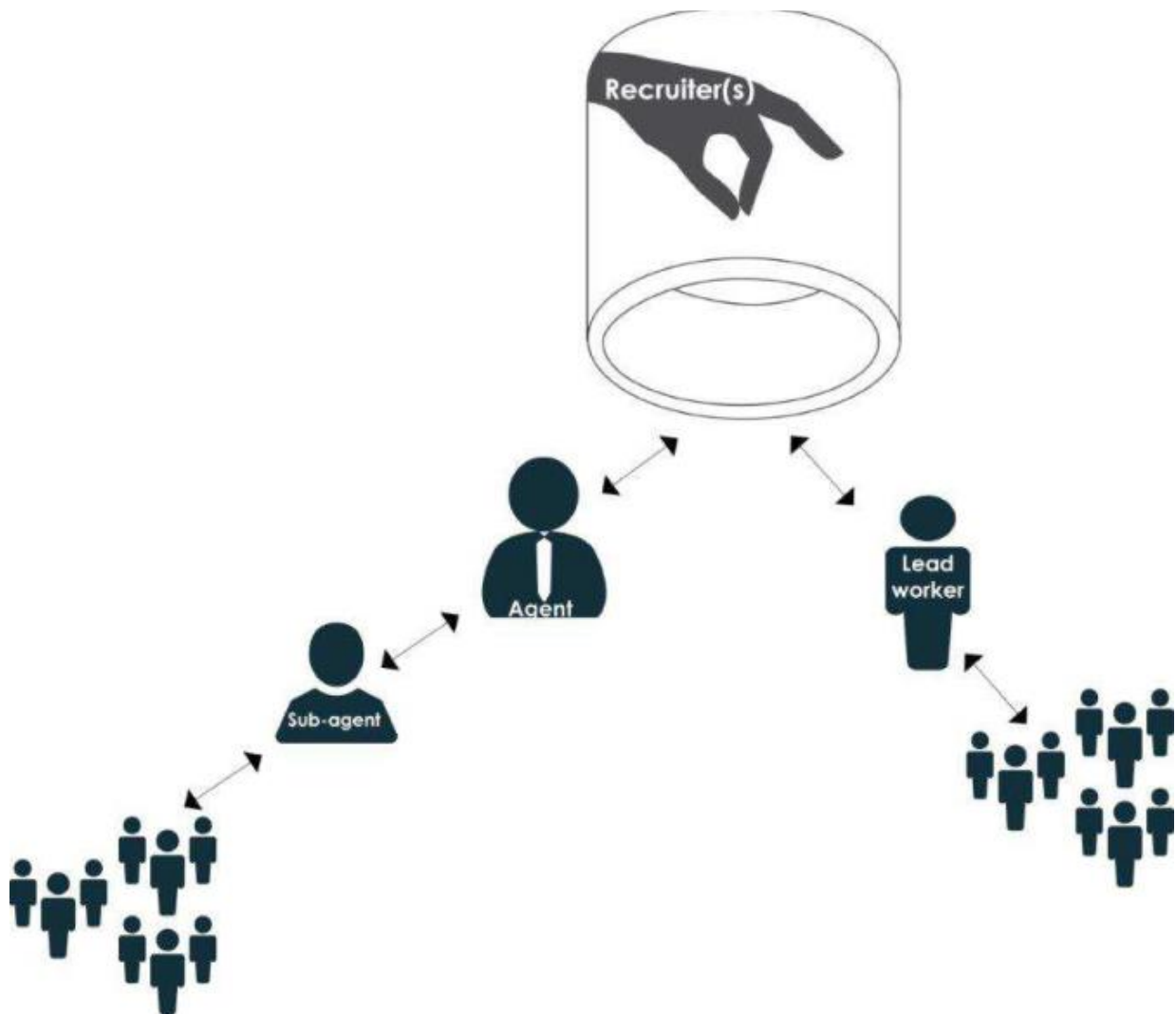


Figure 2: *The Complete Labour Supply Chain*
(Gordon, 2015)

News coverage of forced labour in supply chains does, however, tend to fail to make the distinction between *product* and *labour* supply chains. Indeed, both are supply chains but they differ in how they should be analysed – in the case of product supply chains, by applying *global value chain theory*. In the case of the labour supply chain, meanwhile, global value chain theory should be supplemented by *global production network analysis*, an approach which takes into account that non-firm actors (such as governments, trade unions and non-governmental organisations) have attempted to raise awareness and improve the working conditions of the labour force in the lower tier of labour supply chains (see discussions in Chapter Two). Nonetheless, it is important to understand how pressures and risks are passed on in product supply chains to labour providers and gangmasters. (Figure Three demonstrates one form of a basic product/ service supply chain.) In the framework of my thesis, firms that sell the final produce tend to be, for the large part,

supermarkets, while greengrocers represent only a small fraction. The intermediary firm located between the end user and the firm employing labour migrants may be packing and/ or food processing houses that sort out sellable from unsellable produce. Depending on the quality requirements of supermarkets, packing and food processing houses may put pressure on farmers and growers to provide the requested produce. Workers hired by growers and farmers are, as a result, asked to pick the requested produce according to strict quality and time requirements, whereby labour law provisions may be disregarded in order to satisfy the demand.

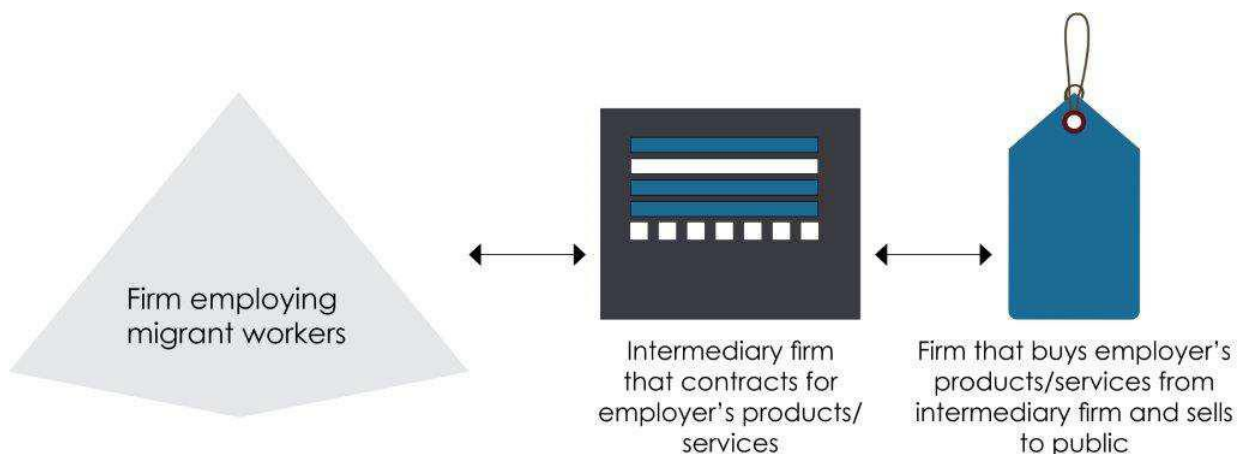


Figure 3: A Basic Product/ Service Supply Chain
(Gordon, 2015)

As noted above, incidents of forced labour in supply chains tend not to be clear about the difference in product and labour supply chains. This may be because these two different sorts of supply chain are indeed interrelated. Vegetables and fruit can, to date, not be produced without manual input, whereby a physical workforce is needed. As such, the product supply chain analysis how value is being generated while the labour supply chain may provide insights regarding employment conditions and the profile of the workforce. Product and labour supply chains come together where growers and farmers hire labour from gangmasters. Growers and farmers own plots of land where the produce, which is eventually sold either through supermarkets or greengrocers, is harvested by labour migrants provided by gangmasters. As such, production requirements that are transposed from supermarkets and growers are passed on from the product supply chain onto the labour supply chain. This transposition has been viewed as a source of poor employment conditions that may qualify as forced labour. (See Figure Four for an illustration of an integrated labour/ product supply chain.)

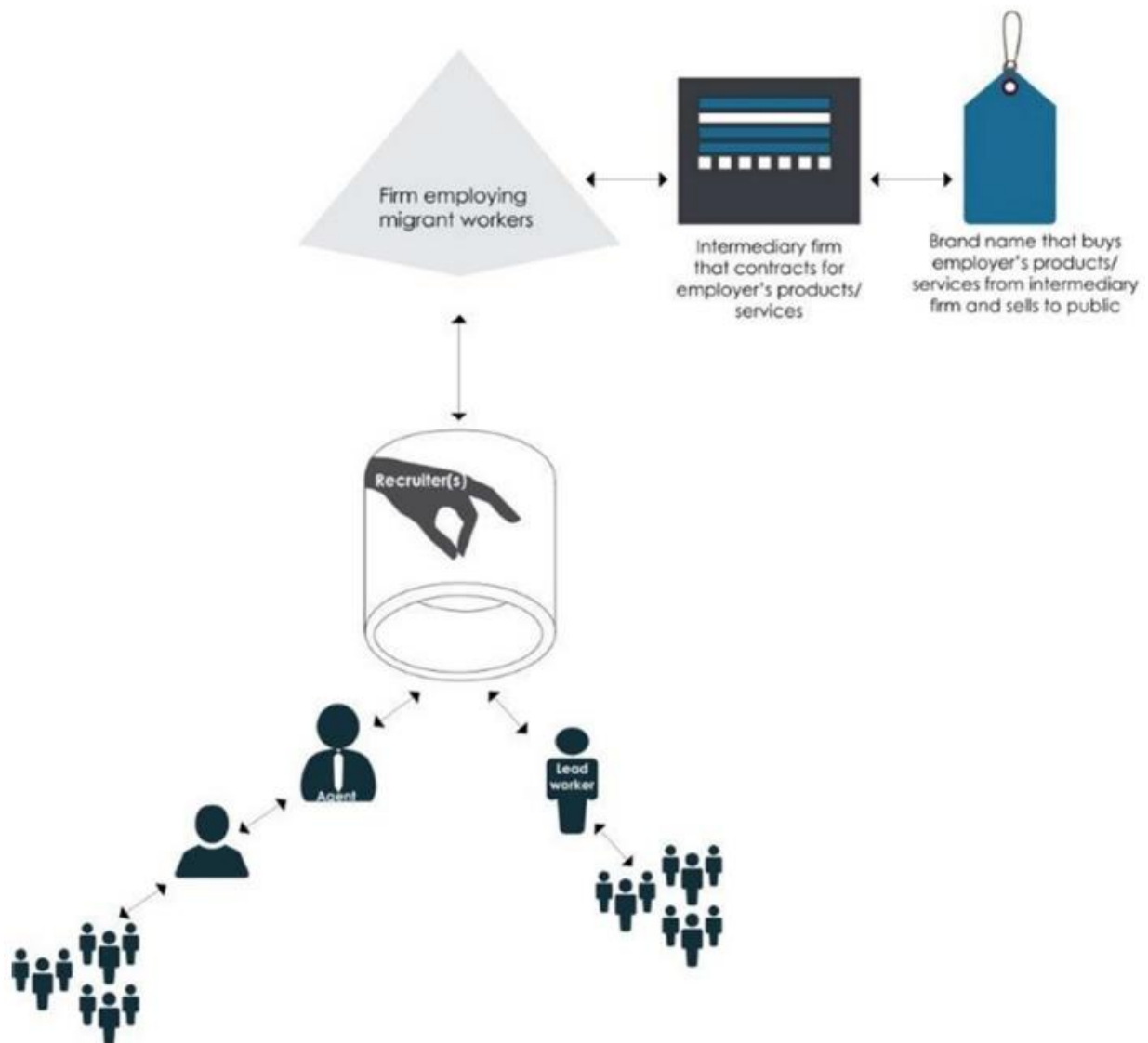


Figure 4: *Integrated Labour and Product/ Supply Chain*
(Gordon, 2015)

Considering that forced labour in UK horticulture has been linked by a number of commentators to employment by gangmasters (McCollum and Findlay, 2012; Anderson and Rogaly, 2008; Barrientos, 2013), it should come as no surprise that many discussions/ interviews concerning my research topic started with the role of such organisations. However, focusing *exclusively* on gangmasters as perpetrators might be unhelpful. It is important to know how gangmasters may achieve the *process* through which they are able to place members of their labour force into exploitative employment conditions. As such, particular attention has to be paid to the *triangular employment relationship* that is involved. Triangular employment relationships involve the general contractor – in this case, the grower - the labour force, and the gangmaster. This set of relationships can be

found in any sector as long as the three actors – the general contractor, the LMI and the labour force – are present.

Triangular employment relationships have a poor reputation. Studies have shown that forced labour is likely to occur in settings where such employment relationships are at play (ILO, 2005; McCollum and Findlay, 2012; Frenkel and Kim, 2004; Barrientos, 2013). The shift of legal employment responsibility from the general contractor to LMIs means identifying the legal entity in charge of the labour force becomes more difficult, particularly as the labour force supplied by LMIs often work on a short-term basis, e.g. for one or two weeks. As the employment of the labour force supplied by LMIs is often short term, profits made by LMIs can only be made in a small window of time. In order to increase profits, fraudulent LMIs increase the pressure on the flexibilised labour force to produce goods in time by abusing the flexible labour force's vulnerabilities - for instance, by paying workers a salary not reflective of the real value of their work. By exploiting these workers' vulnerability, fraudulent LMIs keep costs at bay by: i) supplying labour to employers who operate within dangerous and hazardous employment conditions, where workers are not supplied with adequate protective gear; ii) deceiving workers by not paying them their promised salary; and iii) deceiving workers by not providing them with promised accommodation arrangements (workers may be told they will be given lodgings in a single room, while in reality they have to share one room with other workers). Barrientos (2013) describes the triangular employment relationship in the horticultural labour market in South Africa and the UK as constituting a cascade system. The cascade system is understood to involve the passing on of employers' liability for workers to further down the supply chain. This passing on of liability obscures the actual employer of the labour force (Davidov, 2004; Wears and Fisher, 2012; Barrientos, 2013), and, as such, obscures the actor who is, in reality, in charge of and responsible for legally employing contract workers. Because of this lack of clarity about the legal employer, the risk of members of the labour force becoming victims of abuse is high; moreover, this is compounded by the fact that in not knowing who their employer is, they cannot report such instances of abuse to him or her.

While it is true that not all triangular employment relationships lead to conditions of forced labour (or even necessarily have a negative effect on the labour force), a number of recent reports and academic publications have asserted the increased likelihood of forced labour as an outcome of such relationships, relative to direct employment. However, this generalisation must be qualified. This is because the likelihood of one being placed into conditions of forced labour

may depend on the economic sector, the type of LMI involved, and a country's legislation. Moreover, many of these discussions try to explain the relationship between recruitment practices and conditions of forced labour by strongly focusing on exorbitant recruitment fees, but with almost no attention being paid to the employment contracts issued by LMIs. The conclusion that LMIs supply workers to employers who operate within conditions of forced labour that is put forward by such reports (Andrees, Nasri and Swiniarski, 2015; Sorrentino and Jokinen, 2014; Gordon, 2015; UNODC, 2015) and by academics (Barrientos, 2011, 2013; Enright, 2013) relies on research that is very thorough but which amounts to a limited pool of studies; in other words, it constitutes an underdeveloped area at the level of empirical evidence.

In terms of LMIs specifically and their role in horticultural employment relations, these gangmasters may take different forms. Barrientos' (2013) LMI classification most directly informs my thesis. This is because her classification is informed by her field research on labour contractors in UK horticulture and their supplying of UK supermarkets. Barrientos (2013) distinguishes between four different kinds of LMI: (i) the labour agent; (ii) the quasi-labour agent; (iii) the labour contractor; and, (iv) the *ad hoc* labour contractor. The *labour agent* supplies firms with workers in exchange for a fee. The worker is directly employed by the firm, and the worker's and firm's employment relationship is based on a direct contract (Barrientos, 2013). The *quasi-labour agent* also supplies firms with workers. Their difference lies in the fact that while the worker is supervised in their work by the producer (as they are in the above scenario), they receive their salary directly from the agent. The agent not only pays the worker, but also extradites a percentage of the worker's salary (Barrientos, 2013). The employment relationship between the worker, the quasi-labour agent and the producer is, by the very nature of such third-party involvement regarding payment, not as clear-cut as a direct contract between a firm and an employee (Barrientos, 2013). The *labour contractor*, meanwhile, again supplies firms with workers. The supply of workers is, however, only for a specific task for which the contractor receives payment from the firm (Barrientos, 2013). In this scenario, the contractor both pays and supervises the worker. As such, no employment relationship exists between the worker and the firm (Barrientos, 2013). Finally, the *ad hoc labour contractor* recruits workers spontaneously when demand for workers is high, such as for key events like Christmas or Valentine's Day, in order to satisfy clients' consumption. Barrientos (2013) claims that these workers are either recruited against a fee or informally, with a fee being deducted from their wages. The employment relationship between the worker, the *ad hoc* labour contractor and the firm lacks an explicit contractual employment relationship (Barrientos, 2013).

McCollum and Findlay (2012) enumerate different channels for migrants to find employment in the UK agribusiness. These channels include:

- iv) *migration regimes dominated by gangmasters*: gangmasters are tasked to manage migrants on a daily basis when their presence on production sites is required. In this arrangement, gangmasters also source and pay the workforce;
- v) *collaborative migration systems between gangmasters and employers*: in this system, gangmasters rent out their workers to growers on either a temporary or a fixed term basis. In this scenario, gangmasters pay the labour force. This system is frequently used by growers during planting and harvesting seasons;
- vi) *recruitment via a gangmaster*: here, gangmasters, as a form of LMI, both source and supply an employer with labour. Subsequently, the employer employs the labour force directly, either on a short-term or long-term basis. In this scenario, the employers pays the LMI a set, one-off fee for the workers;
- vii) *the recruitment of temporary workers managed by employers*: in this arrangement, employers source workers directly without any LMI or gangmaster involvement; and
- viii) *the recruitment of permanent staff by employers*: this arrangement is very rare in UK agribusiness; due to a volatile demand, growers prefer to hire labour from LMIs on temporary contracts, instead of hiring them on a permanent basis, and to make the workers redundant as soon as peak moments are over.

The table below summarises McCollum and Findlay's (2012) classification of recruitment, employment and management regimes in the UK rural agribusiness sector.

Table 3: Typology of recruitment, employment and management regimes, migrant labour in the UK rural agribusiness sector (McCollum and Findlay, 2012, p. 10)

Label	Sourced/s elected	Paid Wa- ges by	Managed on day- to-day basis by	Employment Status
Gangmaster- domi- nated migration regime	Gangmaster	Gangmaster	Gangmaster	Temporary/ fixed term. Some later employed by employer
Gangmaster- employer collabo- rative system	Gangmaster	Gangmaster	Employer	Temporary/ fixed term. Some later employed by employer.
Conventional recruitment agency system	Gangmaster	Employer	Employer	Usually temporary/ fixed term. Some kept on by emplo- yer.
Employer-led recruitment of temporary workers	Employer	Employer	Employer	Temporary/ fixed term. Some kept on by employer.
Employer-led recruitment of permanent staff	Employer	Employer	Employer	Permanent.

2.1 The Seasonal Agricultural Workers Scheme

In 2013, the Seasonal Agricultural Workers Scheme (SAWS) was phased out. SAWS is both the first and the longest-running temporary migration programme in the UK. Originally established in 1945 as a cultural exchange programme for European students to work in UK agriculture during peak seasons, SAWS soon became a means to recruit labour migrants to fill vacant positions. Over the years, SAWS turned into a tool to supply labour in UK agriculture, advanced by Tony Blair's Labour Government who attempted to present migration as one part of its economic growth agenda (Consterdine, 2014). In the 1990s, SAWS assumed a quota-based system, starting with an annual quote of 5,500 workers (Spencer et al. 2007); in its final year, SAWS had risen to a quota of 21,250 (Consterdine and Sahizer, 2015). Consterdine and Sahizer (2015) claim that

the phasing out of SAWS has had negative consequences for the various parties previously involved: the host state (in terms of a lack of temporary labour force); labour migrants (who are denied the opportunity to learn new things, things that they could not have learnt in their home country); and the home country (with regard to the additional knowledge that may have been gained abroad by its citizens, which cannot now be brought back and applied at home). The table below outlines the evolution of SAWS from 2004 up until 2012.

*Table 4: SAWS Work Cards and Quota used
(Consterdine and Sahizer, 2015, p. 5)*

Year	SAWS Work Cards Printed	SAWS Quota	Percentage of SAWS quota used (%)
2004	20,554	25,000	82
2005	15,611	16,250	96
2006	16,171	16,250	100
2007	16,796	16,250	103
2008	16,461	16,250	101
2009	20,179	21,250	95
2010	19,798	21,250	93
2011	20,035	21,250	94
2012	20,842	21,250	98

From 2004 until 2007, the majority of labour migrants originated from the following six countries:

- i) Ukraine (33%);
- ii) Bulgaria (23%);
- iii) Russia (15%);
- iv) Romania (11%);
- v) Belarus (9%); and
- vi) Moldova (6%).

On 1st January 2007, Romania and Bulgaria (both as A2²⁷ nations) joined the European Union. The UK suspended A2 nationals from freely entering the labour market for seven years. In exchange for this temporary suspension from the labour market, a concession was made to A2 countries that only A2 nationals could work on SAWS as of 2008. In 2007, only 40% of places in SAWS were reserved for A2 nationals, while one year later the Scheme was now open exclusively to them. Simultaneously, the student restriction fell away wherewith non-students became eligible to apply for SAWS. Following an initial six-month period in the SAWS framework, labour migrants became entitled to remain for one year in the UK, but without the right to work (Herefordshire Council, 2014). Consterdine and Sahizer (2015) assert that SAWS' phasing out may produce effects that are considered to be adverse and contrary to the achievements of SAWS. SAWS was seen as a means to limit net migration and bring to a halt low-skilled migrant channels, as well as to rise employment among native workers.

My research about Romanian forced labour in UK horticulture will investigate whether and, if so, *how* Romanians have been channelled into such working conditions. Although there is a strong tendency to assume that LMIs are the source of forced labour, other intermediaries, such as family relatives or acquaintances (Andrees, 2008), may also be potential conduits. As such, the question arises whether forced labour in (UK) horticulture is dependant, or not, on triangular employment relationships between general contractors, LMIs and the labour force.

3 Composition of the Labour Force

Those migrating for agricultural/ horticultural work to the UK are mainly seasonal migrants - although some may stay in the destination country from season to season and others may permanently settle there. The origin of those migrant workers who plant and harvest fruits and vegetables in the UK appears to have shifted over the years. Rogaly (2008) points towards changes in the composition of the labour force in UK horticulture since the 1990s. The 1990s stand out because of changes undergone in the composition of work more generally due to the rise of economic globalisation that has led to a flexibilisation, as well as a casualisation, of work. The Migration Advice Committee (MAC) (2013) found that, between 2002 and 2012, the share of EU migrations had significantly increased: in 2002, 0.2% of the labour force originated from so-called A8 countries, while, a decade later, Polish migrants accounted for one tenth of recent

²⁷ A2 nations: Bulgaria and Romania joined the European Union (EU) on 1 January 2007. Bulgarian and Romanian nationals faced several restrictions on rights to work, to access social housing and to claim benefits in other EU countries during the accession period. As of 1 January 2014, these restrictions have ended.

migrants to the UK. MAC also notes that the level of education of recent migrants has increased when compared to previous migrants; despite higher levels of education, recent labour migrants still tend to be placed into low-skilled positions, as sectors characterised by low-skilled work have extended their share of labour migrants. Regarding the use of LMIs to find employment in the UK, MAC noted that: “Migrant employees are three times as likely to be recruited through an agency as native workers. The use of agencies is most common among A8 workers. This group is six times more likely to be recruited through an employment agency than the general UK workforce” (2013, p. 12). Migrants from A8 countries also tend to use services by recruitment agencies to a greater extent than other migrants. MAC (2013) added that migrant workers are more likely to take up temporary work than are native workers; in agriculture, 70% of migrants are employed on a temporary basis.

The proportion of migrant labour in low-skilled sectors in the UK is comparatively lower than in low-skilled sectors of other European countries (OECD, 2007). The OECD found that 17% of labour migrants in the UK are employed in the following three sectors: i) agriculture; ii) mining and manufacturing; and iii) construction. In contrast, these three low-skilled sectors combined provide employment for 30% of labour migrants in Austria, and 33% and 38% in Germany and Italy respectively. As such, in regard to MAC’s period of study (stretching from 2002 until 2012), the UK hosted fewer labour migrants than did other EU countries. The UK labour market is distinct because of its high degree of flexibility. In terms of flexibility, the UK, when compared to other European labour markets, stands out for five reasons: i) the common use of short-term contracts; ii) flexible employment patterns; iii) easier hiring and firing of workers; iv) a greater flexibility in pay arrangements; and v) a high geographic mobility of the workforce (Anderson and Rogaly, 2005). Anderson and Rogaly (2005) refer to the 2002 White Paper by the British Government that acknowledges the need for the UK to hire labour migrants in order to remain a competitive economic force in the world economy. Although this particular Paper sets out the case that labour migrants were required at both low- and high-skilled ends of the UK economy, it remains questionable whether both ends are filled at a similar level with foreign labour migrants - and whether their labour rights are equally respected.

Considering the shortcoming of the UK labour market, questions also arise as to why labour migrants, and in particular Romanian labour migrants, choose to move to the UK to work. In order to answer this question, we need to analyse the economic situation in Romania. Whether Romania’s economic situation exclusively explains the outflow of nationals is something that will be explored in the context of the data gathered from my interviews. The answers discussed

below, then, are only suggestive answers; data collected from interviewees will give more detail. First, in 2014, Romanian real GDP growth was about 2.9%. As such, Romania was one of the EU countries with the highest level of growth during that year (World Bank, 2015). Despite a prospering economy, however, Romania's level of poverty remains one of the highest in the EU, resulting in an important outflow of nationals to other (European) countries in search for employment (World Bank, 2015). Moreover, the transition from a planned economy to a free market economy has led many Romanians to look for jobs outside their country since employment opportunities in the domestic market have disappeared (Hamburg International of Institute Economics, 2007). As a result of the important decline in jobs in Romania, it is estimated that at least two million Romanians have left the country in recent years in search of work. In 2007, it was estimated that 3.4 million Romanians worked outside of their country; supposedly, however, only 1.2 million Romanians did this work legally (Hamburg Institute for International Economics, 2007).

3.1 The Replacement of National Workers by Foreign Workers in UK Horticulture

The employment of foreign nationals in the UK economy has been on the rise since the 1990s (Anderson et al., 2006). Despite the rise in foreign national employment, employers' use of foreign labour varies across sectors. Dench et al. (2006) found that the structure of demand for foreign labour in UK horticulture as well as agriculture displayed particular characteristics, these being: i) a strong preference for migrant workers in agriculture; ii) a perception of migrant workers as being crucial for employers in agriculture; and iii) employers in agriculture being shown to be highly critical of the ending of temporary migration schemes, such as SAWS (these schemes having been replaced by a points-based system) (Dench et al., 2006). Labour migration to the UK tends to be described as a new phenomenon related to the emergence of corporate retailers. However, migrant workers already took up employment in UK agriculture and horticulture prior to the emergence of corporate retailers. Indeed, employers saw migrant labour as crucial in the 19th century (Collins, 1976), while Irish labour migrants were the most common labour migrants (Johnson, 1967).

Case histories carried out and used by Rogaly (2008) indicate that British nationals are less likely to take up employment in horticulture than migrant workers. The reduced likelihood by British nationals to work in horticulture does not necessarily stem from any sense of unwillingness; indeed, the particular structure of demand for labour in UK agriculture and horticulture is shaped by the relation between retailers and growers. Horticulture is a buyer-driven supply

chain.²⁸ This means that entry barriers are low and that producers have to abide by consumers' preferences. The buyer-driven nature of horticultural supply chains has paved the way for retailers to claim an ever-increasing value from producers in horticulture (Lawrence, 2004). The increasing claim of value by retailers has led growers to experience declining margins for each unit of output. As such, many growers of vegetables and fruits have been forced to close down their businesses while the structure of the horticultural sector has become increasingly concentrated (Rogaly, 2008). The growers that decided to work with retailers have had to supply greater volumes of fruits and vegetables by means of intensifying their production - packing and processing not only their own products but also imports.

3.2 *Quality Standards as a Factor in Singling Out Particular Workers*

Migrant workers are typically seen as apt for the hard work of planting and harvesting fruits and vegetables. This is sometimes by virtue of the perception that they are already accustomed to horticultural work; Rogaly (2008), for instance, states that growers ascribe to labour migrants a particular suitability because of their assumed knowledge in this area. With this in mind, it is interesting to note that the governance of retailer-supplier relations has been characterised by one particular principle: *quality*. The quality principle is currently being used to denote the increasing standardisation of products, in terms of shape, colour, texture and size. The increasing standardisation of products has led to changes in work place regimes, including efforts to intensify workers' output in harvesting and packing fruits and vegetables that fulfil the criteria. At the same time, the supermarket governance of the supply chain through the language of 'quality' has led growers to look for a particular workforce. Rogaly (2008) indicates that growers associate labour migrants with being compliant, reliable and flexible, in contrast to local workers who are considered to be the opposite; as one vegetable grower from the East Midlands reports:

"...they [British nationals] always basically want[ed] to do as little as possible for as much as possible and they thought it was demeaning work. I think they felt

²⁸ Horticultural product supply chains have been commonly categorised or identified as buyer-driven. For instance, Dolan et al. (1999) investigated how supermarkets based in the United Kingdom shaped horticultural production in two African states, Kenya and Zimbabwe. Buyer-driven supply chains, where retailers play a dominant role in governing the supply chain, are seen in opposition to producer-driven supply chains, where transnational manufacturing corporations played a key role in regulating the supply chain (Gereffi, 1994). The dichotomy between buyer- and producer-driven supply chains was first made by Gereffi. The buyer-driven vocabulary, however, has undergone criticism. This criticism centres on: i) retailers and transnational manufacturing companies tending to buy produce in a similar way; ii) buyers located in the various segments of a supply chain differ from one another and are thus not homogeneous entities; and iii) the term 'driven' does not appear to be relevant to every chain, since some chains lack 'clear' drivers: some chains are rather governed at arm's-length or by powerful firms at several points. Hence, it is key, rather, to understand the factors that determine inter-firm governance.

that we felt they were inferior citizens basically which of course is absolute nonsense [...] I think one of the reasons why Eastern Europeans have come and work so well is because they do have somewhat higher intellect [...] With the English cauliflower harvesters that we used to use we'd be fighting a battle to try and maintain quality and that's hard work [...] whereas with the Eastern Europeans, generally, once we've set a standard they will stick with it [...] [We can] rely on them to produce quality."

(Director, East Midlands grower, April 2004, in Rogaly, 2008, p. 500).

Findlay et al. (2012), as well as Ruhs and Anderson (2010), similarly note that positive characteristics tend to be attributed to Eastern European labour migrants in contrast to domestic workers. Awareness of such judgements is crucial since they are likely to impact on recruitment decisions.

4 The Different Dimensions and Nuances of Forced Labour

The following chart and table draw on data from newspaper articles from between 2012 and 2016 and the May 2012 Joseph Rowntree Foundation Report on cases identified as forced labour in the UK food industry generally, as well as in horticulture specifically. In the following list, I note the different types of violations mentioned in the newspaper articles as well as the report. This list proves that forced labour does indeed take many different forms:

- i) Debt bondage;
- ii) Threats, as well as bullying;
- iii) Physical violence;
- iv) Overwork;
- v) Non- or underpayment of wages;
- vi) Deduction from or charges on salaries;
- vii) Documentation abuse/ Hijacking of identities;
- viii) Degrading working conditions;
- ix) Dangerous working conditions;
- x) Supervision;
- xi) Inhumane living conditions;
- xii) Arrangement of sham marriages; and
- xiii) Lack of food.

Interviews carried out between late June and September 2016 provide insights concerning which of these factors have contributed to Romanian labour migrants' experience of exploitation in Lincolnshire horticulture.

Conclusion

The first part of this chapter described the organisation of production in UK horticulture. Horticultural production in the UK is characterised by an intensive commercial production system. Despite satisfying a national demand, the import of horticulture produce in the UK has doubled in volume between 1988 and 2011. This rise may be due to cheaper fresh (fruit and vegetable) produce available outside the UK, whereby large retailers can make profits by importing produce from other countries rather than sourcing from farmers and growers in the UK. This assumption goes in line with the significant changes that the agricultural sector has experienced since the 1990s: the rise of retailers at the expense of independent greengrocers. As demand for produce in horticulture is considered to be volatile, and since growers and farmers now compete with counterparts located outside the UK, the demand for labour that has been provided by gangmasters has also been on the rise. This is because this labour is seasonal and flexible, and turning to gangmasters to provide temporary workforces means that farmers and growers are alleviated of the worry of managing frequent recruitment drives. The next part of the chapter explored the difference between product and labour supply chains, a distinction that tends to be overlooked but which is important given that labour abuses occur in labour supply chains and not in product supply chains. However, pressures and risks associated with product supply chains may have a real impact on working conditions in labour supply chains. The effects of product supply chains that may impact on labour supply chains are further complicated by the existence of a triangular employment relationship, which involves the firm hiring workers, the LMI and the workers. As stated, such employment relationships enjoy a poor reputation as they have been linked to incidents of exploitation. A brief review of different sorts of gangmasters in horticulture was provided, before concluding this part of the chapter with the various channels used by migrants to encounter employment in the UK's agribusiness. These channels included the now defunct Seasonal Agricultural Workers Scheme. This scheme is key for my analysis because of the fact (also see Chapter Six) that, between 2008 and 2013, it was open exclusively to Bulgarian and Romanian nationals to find employment in UK horticulture through a licensed labour provider. The next part of the chapter focused on the composition of the labour force in UK horticulture.

The motivations behind Romanian nationals taking up employment in horticulture was also scrutinised, in the context of a discussion that also explained how labour migrants displaced domestic workers in horticulture not because of work fatigue by the latter but because of strict quality criteria enacted by supermarkets that ask for a highly flexible workforce. Labour migrants tend to be more willing to accept such employment conditions precisely because work in horticulture is seasonal, in contrast to domestic workers who may favour more permanent working arrangements. The fourth and final part of the chapter then reviewed the different dimensions and nuances of forced labour.

Chapter Five

International and National Labour Recruitment Regulations

This chapter outlines the current state of play regarding the legal regulation of migrant labour recruitment processes. As such, it provides a backdrop at the level of UK and European law and social policy to my study of forced labour. The first part of this chapter explores the horticultural supply chains in developed economies. The second part addresses why the regulation of recruitment tends to fail. The third part outlines how subcontracting is a key structural factor in the market for recruitment. The fourth part investigates why a joint liability approach to eradicating forced labour may be the one that is best equipped to do so. The fifth part outlines EU legislation that regulates labour migration between EU member states. The final part then deals with both UK law and institutions that regulate recruitment agencies and address forced labour.

1 Context: Horticultural Labour Supply Chains in Developed Economies

The current organisation of global production has emerged with the rise of global supply chains (Wright and Kaine, 2015; Ruggie, 2013). This rise has precipitated the outsourcing of production and of labour supply (Barrientos, 2013; Strauss, 2013), and has been linked to the process of employment degradation. This is because larger firms use the superior market power they hold in contrast to smaller firms to negotiate financially beneficial supply arrangements (Wright and Lund, 2013; James and Lloyd, 2008). The phenomenon of degrading employment processes - in particular, the experience of these processes by workers at the end of (global) supply chains that tend to be located in developing economies - has received much attention from academic scholars as well as from political actors (O'Rourke, 2003; Vogel, 2008; Rodriguez-Garavito, 2005). However, the consequences resulting from the outsourcing of production and of labour supply within developed economies have received comparatively limited attention (James et al., 2015).

This discrepancy in the attention paid to degrading employment process in developing and developed economies is, no small part, due to degradation being more common in the case of the former - these being countries where firms tend to outsource their production because of their

(the countries') weak labour regulation implementation. More concretely, when designing policies to improve, in particular, the working conditions of labourers at the end of (global) supply chains that tend to be situated in developing countries, it is not an imperative to take into consideration employment degradation processes in developed economies, since the conditions of labourers at the end supply chains in developing or developed economies may differ. Nonetheless, the observation about the discrepancy in attention paid to the process of employment degradation in developing and developed countries is important, insofar that the phenomenon itself may be either downplayed or not acknowledged to exist in developed economies. Evidence from reports by the Joseph Rowntree Foundation (Allain et al., 2013; Scott et al., 2012; Skrivankova, 2014) and by international organisations (Sorrentino and Jokinen, 2014; Andrees et al., 2015), as well as academic contributions (Strauss, 2013; Fudge and Strauss, 2013; Sporton 2015; McCollum and Findlay, 2012), suggest that workers in developed economies also experience severe employment degradation in such a fashion that these workers can be reasonably described as having been forced into labour.

With regard to the horticulture sector specifically, which is a domestic-oriented supply chain, it comes as perhaps a surprise that no policies have been designed to regulate domestic supply chains here, given that regulating labour standards within domestic supply chains on a domestic/ national level poses less challenges than does regulating labour standards at an international level (Gibbons, 1998). Since the 19th century, social thinkers have called for the implementation of (international) labour standards to counteract/ regulate competitive pressures leading to the downgrading of employment conditions (Heintz, 2002). In 1919, the first six International Labour Organisation (ILO) conventions were adopted. These conventions set out rules concerning unemployment, night work for women, maternity protection, working hours in industry, a minimum wage, and night work for young persons in industry. In the context of UK horticultural supply chains, regulating labour standards is challenged by the outsourcing of employers' responsibilities to third parties and by the short-term employment of workers: through the outsourcing of employers' responsibilities it increasingly becomes difficult to identify the actual employer in charge of the workers; and enacting labour standards regarding seasonal workers turns out to be difficult because representation is challenged by these workers moving around significantly and leaving the country after a few weeks.

2 Why the Regulation of Recruitment Often Fails

To date, there is no international institution that has as its purpose the enforcement of standards for labour migration. However, there are several ILO conventions setting out labour standards. These include: i) the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, this setting out migrants' rights and seeking to protect these; ii) ILO Convention 97: Migration for Employment (revised 1949); and iii) 143 Migrant Workers (Supplementary Provisions) Convention (1975). Finally, the ILO's Multilateral Framework on Labour Migration also plays an important part in protecting and advancing migrants' rights (Gordon, 2015). The disadvantages of these conventions, however, are that: i) they are not binding, but rather may, or may not, be implemented at the discretion of a member state; and ii) they have been mainly ratified by source countries and not by any major destination countries. Conventions may be attempting to make up for a lack of an international authority able to enforce labour standards, but the conventions (unfortunately) do not succeed in this respect. This lack of an international institution overseeing the enforcement of labour migration standards is one factor why regulating recruitment fails. Other factors include: i) the resort to bilateral agreements to regulate temporary labour migration; ii) the lack of regulation of migration by source countries; iii) the organisation of production and the industry in question; iv) states legislating labour migration as a local process, instead of acknowledging the phenomenon as an international process; and v) the reluctance by countries of origin to give up their reliance on migrant remittances. Each factor will be considered individually in the following discussion.

First, bilateral agreements between source and destination countries (to regulate temporary labour migration) have gained momentum in recent years. The rise of bilateral agreements are a substitute for the dearth of legally binding standards concerning labour migration and recruitment. The International Labour Organisation has put forward several conventions, protocols and recommendations to regulate recruitment and fight fraudulent recruitment practices, forced labour and human trafficking. In the context of recruitment, the ILO Private Employment Agencies Convention (No. 181, 1997) and the related Recommendations (No. 188, 1997) both outline standards. The 2014 ILO Forced Labour Protocol and Recommendations stresses the significance of fighting fraudulent recruitment practices as a crucial component in eradicating forced labour. Although some bilateral agreements may in fact both regulate and outline employment standards, the majority of bilateral agreements tend to establish new channels of migration between countries of origin and destination countries instead of protecting labour migrants (Gordon, 2015).

Second, recruitment of labour migrants does not necessarily take place in the host country, but may indeed take place in the migrants' countries of origin. As such, in the terms of my own research, labour market intermediaries (LMIs) in Romania could be the first port of call for Romanians in finding employment abroad - including in Lincolnshire horticulture. However, in an age with strong internet penetration – 58% of the Romanian population uses the internet (Internet Lives Statistics, 2016) – work can also be encountered abroad through websites. In this vein, Autor (2009) lists job websites as another kind of LMI. He notes that virtual job advertisements tend to be a gateway for getting in touch directly with employers; as such, he suggests that offline and online job searches may go hand in hand. Underhill and Rimmer (2015) also point to the internet as one way for labour migrants to find employment. Taking the example of temporary labour migrants in Australian horticulture, these authors claim that the internet and social media play a vital part in finding employment. Websites such as Gumtree, Fruit Picking Jobs, Harvest Trail, and Harvest Bites Labour advertise job offerings in Australian horticulture. In the UK, meanwhile, websites such as Hops Labour Solutions, Concordia Ltd, and S & A Produce Ltd. carry job advertisements for working positions in British horticulture and agriculture. As such, recruitment regulations should not only focus on recruitment practices in countries of origin and destination, but also on virtual LMIs, such as job websites, offering work.

Third, the organisation of production and sectors may be another factor in hindering the regulation of recruitment. The organisation of current production is split into several supply chains. This split into different chains means contractors will employ suppliers to produce their product. As demand today is highly volatile, employment relationships between contractors and suppliers may be very short in terms of time. Also, as contractors may be in a position to choose from a range of suppliers, the working relationship between contractors and suppliers may be short-lived. Frenkel and Kim (2004), as well as Posthuma and Nathan (2004), point towards different contracting types – relational versus transactional – that either have a high or a low probability of supplier firms implementing codes of conduct that set out good labour practices. Considering that employment relationships between contractors and suppliers tend to be short-lived it is possible to deduce that codes of conduct have a very limited chance of being implemented. This lack of implementation contributes to the flourishing of forced labour. Moreover, given that horticulture is a sector with “low barriers to entry, minimal capital requirements and often no need for fixed offices, making it a breeding ground for fly-by-night firms” (Gordon, 2015, p. 8), it is challenging to know who exactly operates in these supply chains - in order for codes of conduct to be implemented at all levels.

Fourth, labour migration is a cross-border and international phenomenon. As such, labour migration needs to be regulated at an international level. However, as none of the ILO's labour migration standards are legally binding, governments in migrants' countries of origin tend to find themselves in a scenario where they have to legislate standards about labour migration as if it was in fact an exclusively local, and not an international, process. At present, the nation state remains the main locus for legislating law within its territory. As such, governments cannot legally regulate employers of labour migrants - LMIs, for example - located outside of their country. Fraudulent LMIs may take advantage of a government's lack of judicial power to charge recruitment fees to future workers from these countries in exchange for recruitment.

Fifth, countries of origin are reluctant to give up migrant remittances (Gordon, 2015). In many cases, remittances are crucial in supporting the economies of countries of origin. In 2013, remittances sent home by labour migrants to their developing countries of origin peaked: the World Bank (2014) estimates that, in 2013, USD 404 billion were sent home as remittances. Remittances can account for as much as 16.5% of GDP in El Salvador or even 52% of GDP in the case of Tajikistan (World Bank, 2014). Due to the important share of remittances in GDPs, many such countries are reluctant to better regulate recruitment practices out of fear that their citizens will become more expensive to employ and, hence, economically unattractive to employers. With prices increasing for their labour, employers in destination countries tend to employ labour migrants of other nationalities that are less expensive. In the case of Romania (and my research) specifically, remittances accounted for 1.7% of GDP in 2014 (World Bank, 2016). From 2011 until 2014, remittances sent to Romania decreased from 2.1% of GDP to 1.7% of GDP. The decrease in remittances may be due to the ramifications of the 2008 financial crisis.

3 Subcontracting: A Key Structural Factor in the Market for Recruitment

Chapter Three looks in more detail at the recruitment dynamics in horticulture. Still, it should be recalled here that unless an employer recruits his/ her workers directly him/ herself, workers are hired from a LMI. As LMIs may rely on informal labour recruiters to find employees, the employment supply chain becomes longer and longer. The elongation of the employment supply chain is an important challenge to recruitment reforms. Recruitment reforms apply to the formal economy, while targeting fraudulent recruitment and employment practices and implementing recruitment reforms in the informal economy - as well as down the supply chain - is very difficult. LeBaron and Lister (2015) argue that audit regimes tend to fail because corporations decide the

extent to which audits take place, e.g. how far down a supply chain inspection will take place. Indeed, Posthuma and Nathan (2010) and LeBaron and Lister (2015) suggest that corporations specifically welcome inspections into the first tier of the labour supply chain, where products are finalised; however, this focus on the first tier means that subcontractors, as well as recruitment agencies, are not subject to the auditing process. Moreover, LeBaron and Lister (2015) claim that auditing is a weak tool as: i) audits are usually announced to firms, who may force workers to say favourable things of the firm; ii) auditors tend to lack investigative powers wherewith they cannot investigate whether the facts presented to them by a given firm are correct; and iii) audits are seen as a check list confirming that firm X abides with standards Y and Z, and they are not well placed to investigate whether inappropriate things happen per se (LeBaron and Lister, 2015).

Bearing in mind these shortcomings to combat forced labour in supply chains, Posthuma and Nathan (2010), LeBaron and Lister (2015) and Gordon (2015) call for a new generation of audit approaches to protect labour rights, including a public-private joint liability approach to prevent forced labour in global supply chains.

4 Towards Joint Liability in Global Product Supply Chains

Considering the failings of auditing systems, Ruckelshaus et al. (2014), Prassl (2014), and Barenberg (2008) call for the sharing of legal responsibility in order to gain a better understanding of how power is distributed. At present, firms at the top end tend to subcontract their production. Subcontracting enables lead firms to save costs as well as to reduce risks associated with production. Saving costs and reducing risks tend to be results of the transfer of risk and legal responsibility from the lead firm to the subcontractor; workers compete for employment in a context that enables subcontractors to lower wages and production costs, as well as it lacking a need to pay benefits (Coe et al., 2010). Moreover, despite contracting out some parts of the production process, the lead firm retains control over the most important aspects that have been contracted out. As such, the lead firm can dictate the subcontractors' working mechanisms and end their collaboration if required standards are not fulfilled. The control flows in a top-down manner - so from the lead firm to the subcontractor - while the financial benefit flows up, meaning that the lead firms makes the biggest financial gain. Gordon (2015) claims that, considering these flows, liability for workers' treatment and payment should be enacted, since workers actually make the profits possible.

Barenberg (2008), as well as staff from the National Employment Law Project, claim that the actors that are best suited for changing the incentives of subcontractors are the actors located at the *top end* of the labour supply chain/ above the subcontractors in the supply chain (Ruckelshaus et al, 2014). They suggest that if end users face receiving strict penalties for fraudulent recruitment practices via some kind of ‘joint and several liability’, these end users may then want to change their incentives and behaviour as a result.

A joint liability approach is one way to potentially eradicate forced labour in supply chains. However, since my project investigates the degrading employment conditions of Romanian labour migrants in UK horticulture, it is also important to consider which laws specifically apply to the scenario of intra-EU labour migration.

5 EU Directives and Laws

5.1 *The Regulation of Seasonal Work in the EU*

Labour migration is important, both between EU member states and ‘third countries’, as well as within the EU. In 2013, 7 million EU citizens lived and worked in an EU country different from their EU country of origin. Such intra-EU labour migrants amount to 3.3% of EU workers (European Commission Memo, 2014). Within the EU, the UK and Germany are the top two destinations for EU labour migrants and third-country workers (European Commission Memo, 2014). The attraction of the UK in this regard may stem from the UK’s highly flexibilised labour market.

Different EU conventions, charters and directives prohibit forced labour and regulate work within the Union. These amount to:

- i) European Convention on Human Rights (ECHR);
- ii) European Charter of Fundamental Rights;
- iii) European Social Charter (ESC);
- iv) Treaty on the Functioning of the European Union;
- v) Temporary Agency Work Directive;
- vi) Posted Worker Directive;
- vii) Enforcement Directive;
- viii) Employer Sanctions Directive; and
- ix) Seasonal Workers Directive.

Article 4 of the European Convention on Human Rights, as well as Article 5 of the European Charter of Fundamental Rights, prohibits slavery and forced labour within the EU. Article 31 of the EU Charter of Fundamental Rights outlines the worker's right to working conditions which respect their health, safety and dignity. Forced labour is an employment situation that differs significantly from standard, fair and just working conditions as set out in labour laws and other regulations regarding remuneration, working hours, health and safety standards, leave entitlement, and decent, respectful treatment of workers. By placing workers into conditions of forced labour, LMIs violate Article 31 of the EU Charter of Fundamental Rights and so commit a criminal offence. Even if workers consent to exploitative employment arrangements resulting in forced labour, these workers remain entitled to decent working conditions according to a 'European fundamental rights' approach. Moreover, the fact that employment occurs under exploitative conditions constitutes a criminal offence and a violation of European fundamental rights (again, even if the worker consented to this employment arrangement).

Under Article 45 of the Treaty of the Functioning of the European Union, workers are guaranteed the right to move freely within the EU and to be protected from discrimination on the ground of their nationality. Similarly, Article 15 of the Charter grants every EU citizen the right to seek employment and to work in any EU country. Workers using the service provided by LMIs are granted - by Article 29 of the EU Charter of Fundamental Rights - the right to access a free placement service. Article 1 (3) of the Council of Europe's revised European Social Charter (ESC) means the right to work implies the obligation of State Parties to "establish or maintain free employment services for all workers". In relation to LMIs specifically, Article 7(1) of the ILO Convention No. 181 establishes a clear rule that such "agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers". Hence, it is the employer who should bear the costs of employment services. In 2013, the European Commission published guidelines – drafted by Shift and the Institute for Human Rights and Business – for the employment and recruitment sector on meeting the corporate responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights.

Five directives (outlined above) deal explicitly with the rights of contract workers. The first of these directives is the Temporary Agency Work Directive (2008/104/EC), which was proposed in 2002 but blocked by British, Danish, German and Irish governments until its enactment in 2008. This directive establishes the principle of equal treatment for temporary agency workers with regard to their basic employment and working conditions, compared with directly

employed workers. The Posted Workers Directive, meanwhile, concerns situations where workers, for a limited period, carry out their work in the territory of a member state other than the state in which they normally work. Member states are obliged to ensure that posted workers enjoy the minimum standards set out in Article 3 of the directive. This directive has been complemented by the Enforcement Directive (2004/48/EC), which emphasises the obligation of EU member states to perform effective inspections (Recital 27 and Article 10). Article 9 (1) of the Employer Sanctions Directive – the next directive under consideration - prohibits the employment of a worker in an irregular situation under “particularly exploitative working conditions”; Article 2 of the same directive defines “particularly exploitative working conditions” as conditions “where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers’ health and safety, and which offends against human dignity”. Denmark, Ireland and the UK opted out of this Directive, the UK doing so because of particular factors explained by the then Immigration Minister Damien Green:

“These included the creation of additional administrative burdens on both employers and the public sector in requiring employers to notify the authorities every time they recruit new third country national employees and in requiring compliance inspections. The directive also extended the legal definition of employment in a manner, creating further costs and liabilities to both employers and the authorities. This would mean, for instance, that enterprises utilising subcontractors might be held liable for instances of illegal employment by the subcontractor. The directive also guaranteed additional rights to illegally staying employees, including provision of back payments where an employee has earned less than the minimum national wage, which would be difficult to administer and would send the wrong message by rewarding breaches of immigration legislation.”

(Speech by Damien Green, House of Commons, 24 May 2011).

By opting out of this directive, Denmark, Ireland and the UK rejected the implementation of minimum standards on sanctions and measures against employers of irregularly staying third-country nationals. To date, all member states bound by the Employer Sanction Directive have put criminal provisions in place corresponding to article 9 (1) (c), with the exception of Romania (EUFRA, 2015). Finally, the Seasonal Workers Directive is highly relevant as concern about exploitation of third-country nationals is on the rise. This directive relates to sectors such as horticulture that are considered to be most prone to labour exploitation.

5.2 *British Referendum on Leaving the EU – what does this mean for EU Employment Laws?*

On 23 June 2016, the referendum about the United Kingdom exiting the European Union was won by the ‘Leave’ camp by a very thin margin, of 51.9% over the ‘Remain in the European Union’ camp. Although the referendum is not legally binding, the British Foreign Office proclaimed on 9 July 2016 that there will not be a second referendum on EU membership. At the time of writing, Article 50 – which sets in motion the exiting of the European Union - has been triggered on 29th March 2017. The UK is expected to leave the EU within two years of the triggering of the before mentioned article, that is to say by 29th March 2019. However, the exact terms which constitute the exit not been decided yet. As such, making assumptions about how ‘Brexit’ might, or not, impact on my research topic is highly speculative.

6 UK Law and Institutions Involved in Preventing Forced Labour

6.1 *UK Law*

To date, there are three laws regulating recruitment processes and labour recruiters. These three laws are:

- i) the 1973 Employment Agency Act;
- ii) the 2003 Conduct of Employment Agencies and Employment Businesses Regulations; and
- iii) the 2004 Gangmaster Licensing Act.

Since the 1960s and '70s, private employment agencies have been allowed, with some restrictions, to operate in the UK labour market. In the UK, the Employment Agencies Act from 1973 introduced licensing requirements; these requirements were removed in 1994. More recently, in 2003, the law entitled Conduct of Employment Agencies and Employment Businesses Regulations entered into force. Here, Regulation 12 prohibits the withholding or non-payment of wages to employees, while Regulation 6 prohibits the threatening of workers. In 2004, 21 Chinese labour migrants drowned while picking cockles on the Cumbrian/ Lancashire coast; this incident became known as the Morecambe Bay Cockling disaster and resulted in a desire to partially re-introduce licensing.

At the same time, debates by private and public sector actors gained momentum regarding ways to improve the regulation of LMIs that predominantly operate in UK low-wage sectors. In this vein, the Gangmaster Licensing Authority (GLA) was established in 2004. The task of the

GLA is to protect workers' welfare while ensuring that labour providers' activity is not unlawful. The Gangmaster Licensing Act 2004 established the following criminal acts: i) Section 12: operating as a gangmaster, a private labour provider in UK agriculture and horticulture, without a license; ii) Section 13: using an unlicensed gangmaster for labour supply; and iii) obstructing a GLA officer from their investigations. Additional UK legislation dealing with the criminalisation of forced labour is the 2012-13 Human Trafficking and Exploitation Bill. The first reading of the Bill took place on 15 May 2012; to date, the second reading has not been scheduled yet.

Aside from laws regulating both recruitment processes and labour recruiters, the following laws set out the criminal liability that exists for human trafficking, forced labour and slavery:

- i) the 2004 Asylum and Immigration Act;
- ii) the 2007 Serious Crime Act;
- iii) the 2009 Coroners and Justice Act;
- iv) the 2015 Modern Slavery Act; and
- v) the 2016 Immigration Act.

Section 4 of the 2004 Asylum and Immigration Act criminalised trafficking for labour exploitation; but, with the entering into force of the 2015 Modern Slavery Act, this section has been abolished. The 2007 Serious Crime Act, meanwhile, has established the parameters of criminal liability for human trafficking, forced labour and slavery. Section 71 of the 2009 Coroners and Justice Act also established the criminal liability of any person for placing an individual into slavery, servitude or conditions similar to forced labour. The perpetrator could be charged with up to 14 years of prison, a financial fine, or both. This section also expired, however, with the entry into force of the 2015 Modern Slavery Act. The Modern Slavery Act, then, explicitly deals, in a number of its sections, with slavery and servitude or forced labour. Section 1 states that in order to assess whether an individual has been the victim of slavery, servitude or forced labour, all circumstances have to be considered. Section 3 defines what is meant by the term exploitation. Section 5 outlines the penalties relating to the offences in Section 1. Sections 14 to 34 introduce trafficking and slavery prevention orders. Section 40 concerns the establishment of the Independent Anti-Slavery Commissioner. Section 41 sets out the tasks of the aforementioned Commissioner. Section 43 stipulates the requirement for public institutions to cooperate with this Commissioner. Finally, Section 47 states that victims of modern slavery, human trafficking, forced

labour, servitude and slavery have a right to receive civil legal aid services during their stay in the UK (Accountability Hub, 2016).

Besides these laws there are also several institutions in the UK that try to prevent, tackle and raise awareness about forced labour. The following paragraphs will give a short overview of these institutions.

6.2 Institutions

As has just been said, several institutions exist within the UK that aim to prevent, tackle and raise awareness about forced labour. The 2015 European Union Fundamental Rights Agency report claims that these institutions overlap in their tasks at times, resulting in confusion across institutions about who is responsible for which processes to prevent forced labour. Institutions that deal with forced labour include i) the police; ii) the National Crime Agency; iii) the UK Human Trafficking Centre; iv) the now-defunct UK Border Agency; and v) the GLA.

Regarding the police's work in tackling forced labour, it should be noted that it is not a standard practice to have a unit that exclusively focuses on forced labour. In 2013, the UK Human Trafficking Centre (UKHTC) was incorporated into the Organised Crime Command in the National Crime Agency. UKHTC has extensive expertise in issues of human trafficking and, as such, serves as a coordination point for the UK's response to trafficking. The UK Border Agency, meanwhile, ceased to exist in 2013, when it was incorporated into the UK Visas and Immigration division of the UK Home Office.

Overall, the GLA stands out as the most effective institution in tackling forced labour. As previously mentioned, the GLA was created following the 2004 Morecambe Bay Incident. The 2004 Gangmaster Licensing Act set out the GLA's task of operating a licensing scheme for gangmasters and labour providers within the following sectors: horticulture, agriculture, and shell fishing. The aim behind the establishment of the GLA was to better monitor sectors where incidents of forced labour are well known. On the one hand, the GLA inspects gangmasters and labour providers, while on the other hand, the GLA gathers information that may be shared with the police and the Director of Public Prosecution in order to prosecute criminals. If a gangmaster is found to operate criminally, the GLA removes their license and may attempt to prosecute them. Nonetheless, the GLA's main emphasis is on gathering information about forced labour. Innovative approaches by the GLA to monitoring and enforcement include: i) *extra-territoriality*: LMIs based in country X wishing to supply workers from this same country to low-wage sectors

in the UK economy have to apply for a license by the GLA; ii) *pre- and on-going screening*: in order for a LMI to be granted a license by the GLA, the LMI must fulfil eight requirements which have to be complied with at any time (these eight requirements constituting the GLA Code of Practice; if a license holder does not comply with any of the eight requirements, the GLA uses this lack of compliance as evidence that they are breaking the Code and their license can be revoked.); and iii) *an intelligence-led approach towards monitoring and enforcement*: specially trained officers collaborate with relevant UK regulatory bodies, and, on the basis of this, agencies with intelligence-led approaches are prioritised for conducting inspections.

Labour providers/ gangmasters have to adhere to and continuously implement these eight standards in order for their license not to be revoked. To elaborate, the requirements are as follows: a) the license holder has to act in a 'proper and fit' manner; b) it is mandatory for the license holder to comply with all relevant pay and tax rules; c) the license holder may not mistreat the workforce, either physically or mentally; d) in the event of the license holder providing accommodation to their workers, this accommodation has to be safe; e) workers must be able to take the rest periods, breaks and annual leave to which they are legally entitled; f) the license holder has to cooperate with the labour user so that day-to-day work responsibilities have been agreed and assigned, that an adequate health and safety risk assessment has been carried out before the beginning of work, and that risk of injury is properly managed, controlled and if possible prevented; g) the vehicles and drivers used to transport the workforce have to be road-worthy, legal and safe; and h) licensed LMIs are prohibited from charging fees to potential workers in exchange for their services. A significant problem regarding the GLA, however, is a lack of funding. Jowit (2012) reported that, in 2015, the GLA's funding had been reduced by 20%.

Forced labour occurring in sectors located *outside* of the GLA's remit is, meanwhile, monitored by the Employment Standards Agency Inspectorate (EASI) and Her Majesty's Revenue and Customs (HMRC). Additionally, other organisations that monitor forced labour in the UK include: i) Focus on Labour Exploitation; ii) the Forced Labour Monitoring Group; iii) the Wilberforce Institute for the Study of Slavery and Emancipation; and iv) the Human Trafficking Foundation. These organisations try to prevent the occurrence of forced labour by means of advocacy and education. Importantly, for current purposes, it should be noted that there are other institutions that tend to be overlooked but which still contribute in tackling and raising awareness of forced labour, and these are discussed in the paragraphs below.

i) Health and Safety Executive

The Health and Safety (HSE) is in charge of carrying out health and safety inspections in the UK. HSE is not tasked to investigate/ prevent incidents of forced labour. Nonetheless, its Field Operation Directorate has published a 'Topic Inspection Pack on Migrant Workers' that HSE staff are required to use as part of their work. Health and safety law does not include compliance, but does address factors that may suggest conditions of forced labour. These factors include: i) an absence of instructing workers about their rights; ii) excessive working hours; iii) hazardous working conditions; iv) deception regarding the content of employment; and v) workers being isolated from others.

ii) Employment Organisations

The Recruitment and Employment Confederation is an institution that aims to ensure that recruitment is undertaken in a fair fashion, by means of codes of conducts. The Association of Labour Providers (ALP) also aims at eradicating unfair recruitment processes. The ALP recently initiated the 'Stronger2gether' campaign that brings together labour providers, employers and workers to fight fraudulent recruitment practices and forced labour, through educating members about GLA regulations and about how to prevent exploitation. Finally, the Institute for Human Rights and Business attempts to educate businesses specifically about human rights.

iii) Workers' Organisations

The Citizens' Advice Bureau (CAB) is a general organisation that gives employment-related advice and guidance to employees and workers. Based on the evidence provided by exploited workers and employees, CAB recently published a report entitled 'Give us a break! The CAB's service case for a Fair Employment Agency' (CAB, 2011). Meanwhile, the Trade Union Congress (TUC) is the most famous institution endorsing workers' rights in the UK. In 2014, TUC published a list of labour migrants' rights entitled the 'TUC Migrant Worker Project.' (Nine years previously, the TUC had also published a report, written by Anderson and Rogaly (2005), entitled 'Forced Labour and Migration to the UK'.) Finally, the Migrant Rights Network is worth mentioning. This NGO aims at filling the gap between labour migrants and the TUC.

Conclusion

The first part of this chapter provided an overall discussion about the lack of work regulations that currently exist in respect of domestic horticultural labour supply chains, a situation observation that may come as something of a surprise, since one would assume that labour supply chains are more easy to regulate at the domestic level than at the global. Moreover, it was argued that scholarship tends to focus on labour outcomes in developing economies at the expense of employment conditions in developed economies. The next part of the chapter analysed why the regulating of recruitment specifically tends to fail. Five different reasons were provided here, which were as follows: including i) the rise of bilateral agreements, which are an obstacle to a global governance scheme; ii) the focus placed on recruitment in countries where goods and services are produced and not where labour is sourced from; iii) the splitting of product supply chains across countries where codes of conduct (designed to improve working conditions in labour supply chains) are unlikely to be implemented due to a lack of oversight concerning the different actors involved in the product supply chain; iv) issues with approaching labour migration as a domestic process instead of as an international one; and v) the importance of migrant remittances in keeping economies afloat. The third part of the chapter then further delved into the recruitment process by investigating subcontracting as an elongation of said process. The fourth section, meanwhile, explored one way to tackle forced labour in product supply chains: the joint liability approach. The fifth part then enumerated the different EU laws and directives regulating seasonal work in the EU, before the sixth and final part reviewed the different laws in the UK and the institutions involved in the process of tackling forced labour.

Chapter Six

The Seasonal Agricultural Workers Scheme as a Gateway into Forced Labour?

Accusations of forced labour in UK horticulture are well documented and have concentrated on the exploitative role played by gangmasters and labour providers.²⁹ Such accusations are the starting point for my analysis. However, it is particularly important, for current purposes, to point out that the exploitative role of gangmasters and labour providers can start with the actual recruitment process. Such routes into exploitation within the recruitment process can take several forms, such as the charging of recruitment fees that are so high, they may propel workers into situations of debt bondage,³⁰ and deceiving workers from the beginning by misportraying the nature of the work involved and the level of salary and related conditions (e.g. accommodation and living conditions) on offer. The risks associated with recruitment practices by labour market intermediaries (LMIs) of labour exploitation has indeed been taken up by the International Organisation for Migration, resulting in the establishment of the International Recruitment Integrity System Project: “a voluntary multi-stakeholder certification system for labour recruiters developed to support ethical recruitment of migrant workers” (IOM, 2017, p. 1). This chapter then attempts to contribute to knowledge in this particular area, by describing and exploring recruitment practices in UK horticulture, practices which do not necessarily amount yet to forced labour but, rather, may count as a gateway into this human rights violation. The selected time frame for consideration is 2008 until 2013. This is because during this time, Romanian nationals could only find employment in the UK through the now defunct Seasonal Agricultural Workers Scheme (SAWS). This scheme saw labour providers in the UK, and their affiliated gangmasters in Romania, channeling Romanian labour migrants into jobs in UK agriculture and horticulture. The chapter analyses the recruitment channels deployed by such gangmasters and labour providers, and considers which of these channels is more likely to place Romanian labour migrants into conditions of forced labour. Crucially my discussion also considers how employment practices,

²⁹ Labour providers match workers with contractors; however, workers are not employed by labour providers. In contrast, gangmasters hire (i.e. employ) labour and later place them with contractors.

³⁰ Debt bondage is both the most common form of modern slavery and the least known-about (Anti Slavery International, 2017).

firms' actions, and models with the intention of involving different actors, each aim at tackling forced labour in the labour supply chain. In exploring these issues, and the matter of gangmaster and labour provider recruitment practices more generally, the chapter draws principally on interviews with a range of participants: gangmasters and labour providers themselves, but also members of government institutions, trade unions, employer institutions, and non-governmental organisations. Indeed, my analysis relies as much, if not more, on non-gangmaster interviewees, partly because of the practical difficulties associated with accessing gangmasters in the first place (see Chapter Three: Methodology), but also because of the opportunities this affords to explore recruitment practices (and associated issues) from a number of perspectives. In this connection, the chapter also involves (as do all my data chapters) a dialogue between interview data and the literature, the latter being key throughout in informing my discussion and augmenting and verifying participants' narratives.

1 Recruitment in UK Horticulture

Recruitment practices in agriculture have already received some attention in academia. Underhill and Rimmer (2015), for instance, outline three different recruitment channels in the context of Australian agriculture. The first of these is the National Harvest Labour Information Service Australia (NHLIS), administered by the Department of Employment and Workplace Relations. NHLIS was established in 2003, when the Mildura and District Educational Cooperative were tasked by the Australian Government to both coordinate and disseminate information regarding employment opportunities in harvesting – with details of available jobs appearing both on the NHLIS website and in the form of promotional print material, and potential workers also able to make inquiries by telephone. The second recruitment channel, as identified by Underhill and Hill, concerns job websites advertising placements in Australian agriculture, as well as job advertisements on social media (both of these being posted by gangmasters). The third recruitment channel, meanwhile, comprises informal job offers conveyed, again, by gangmasters through a network of working hostels and caravan parks (see also Jarvis and Peel, 2013). Underhill and Rimmer (2015) also point out that differences exist between migrant and indigenous worker groups regarding which of these channels are most typically used to find employment. Labour migrants are more likely than are members of the domestic workforce to use the services of labour market intermediaries to find employment. This observation may be explained by the fact that domestic workers have a better knowledge about their rights and of labour markets, and do not face language issues as labour migrants may do. Moreover, there are sectors in which jobs are mainly

taken up by labour migrants because domestic workers do not wish to perform these roles. (Indeed, later in the chapter, I will discuss why domestic workers are less likely than labour migrants to take up employment in UK horticulture.) My analysis in this chapter elaborates on the different recruitment channels used specifically by Romanian labour migrants in respect of UK horticulture, with a focus on those channels that are regulated by gangmasters and labour providers – these constituting the most common ‘entry points’ for said workers seeking employment in this sector.³¹ To this end, the analysis draws on interviews with gangmasters and labour providers, the latter being UK-based while the former were from both the UK and Romania. However, as explained in my methodology chapter, I encountered more than one challenge in finding gangmaster participants that were willing to talk to me. Alongside this, then, the analysis draws on interviews with other parties who have been identified as relevant to understanding how such recruitment channels operate and how risks of migrants thereby falling into conditions of forced labour can be tackled. (A Table of participants can be consulted in Chapter Three: Research design).

The analysis of my own interview data revealed that gangmasters in the UK have a number of different recruitment strategies - as do labour providers in the UK who, in turn, rely on gangmasters in Romania. These strategies may be summarised as: i) informal, i.e. asking either family members or friends; ii) websites and social media; iii) presentations at universities across Romania – which also is an indicator of the workforce’s educational level; and iv) the now-defunct Seasonal Agricultural Workers Scheme (SAWS) that ended on 31st December 2013.

Two labour providers, LP: Rufus and LP: James, who had until recently been part of SAWS, specifically mentioned that they relied on gangmasters located in Romania for recruitment. I subsequently managed to speak with both these gangmasters, GM: Peter and GM: Anthony, carrying out a telephone interview with GM: Peter (who was located in Iasi, North Eastern Romania), and interviewing GM: Anthony (who was based in Bucharest) face to face. Both these participants mentioned the use of social media, and Facebook in particular, in attracting a workforce; interestingly, this not only involved the posting of job vacancies but also of announcements when presentations about work opportunities in UK horticulture and agriculture would be held at universities throughout Romania. As such, social media may not only be a direct recruitment channel (in the circulation of job announcements), but also may serve a facilitating

³¹ From 2008 until 2013 specifically, Romanian nationals could only find employment in horticulture by participating in SAWS.

role in respect of other channels of recruitment - in providing details of events (such as at a university) where more information will be made available to interested parties.

It is true to say that the different recruitment channels used by gangmasters and labour providers do not necessarily constitute a route into forced labour. However, academic literature has pointed to the risk that online recruitment bears of deceiving workers. Indeed, the risk of recruitment more generally leading into forced labour has been acknowledged by the International Organisation for Migration (IOM). In 2016, IOM launched the International Recruitment Integrity System, which aims “to bring transformative change to part of the recruitment industry pertaining to international recruitment where the business model is largely based on the exploitation of migrant workers” (IOM, 2017, p. 1). This initiative is a multi-stakeholder certification process for international labour market intermediaries to participate in on a voluntary basis. The IOM was, at the time of interview with one staff member (late July 2016), in the process of developing this scheme with a group of stakeholders, including the International Organisation of Employers, a variety of governments and other labour migration stakeholders. Asked what the incentives were for joining the scheme, IO: Letitia, who works on this particular project, replied that

“the motivation for them [recruitment intermediaries] is that they [ibid] can then disaggregate themselves from the morass of very unscrupulous intermediaries. There is a very uneven playing field for recruiters in the international landscape and this is a way for recruiters to identify themselves as being committed to principles of ethical recruitment, and so they can be recognised for this commitment. We are also in the schematic trying to also place - Create a space for employers to identify that they subscribed to ethical recruitment principles and that they demand for services – That they demand that recruiters that they employ do not charge fees to workers and are committed also to ethical work at principles.”

In the UK, the Association of Labour Providers, as well as the Recruitment and Employment Federation, has a similar voluntary certification scheme in place. If a member of these organisations violates the code of conduct, it is excluded. Non-voluntary codes of conduct are licensed by the now-defunct Gangmasters Licensing Authority.

2 Forced Labour and UK Horticulture

Pressed on the question of whether cases of forced labour as a result of gangmaster employment are known to them, I got varying answers from the gangmasters I interviewed. The two aforementioned Romanian gangmasters (GM: Peter and GM: Anthony), in addition to a participating gangmaster from Boston, GM: Rob, agreed that there are many such cases, while another gangmaster³² from my sample (again, Boston based but of Polish origin who was an agricultural worker himself previously), GM: Jonathan, claimed to not know of any. Despite these varying answers, all four of these gangmasters provided details of employment arrangements that indicate *minor* labour abuses. Minor labour abuses may be a gateway into major labour abuses. These four gangmasters mentioned: i) the paying of wages in cash to thus avoid taxes (GM: Jonathan); and ii) the operating of several gangmasters under one license, hence contradicting standards set by the Gangmaster Licensing Authority, or GLA – a (now-defunct) government agency (GM: Peter, GM: Anthony and GM: Rob).

Meanwhile, my other interviewees – these encompassing members of almost every participant group, and which included the aforementioned, non-gangmaster labour providers, Jonathan and Richard – agreed that agriculture, and by extension horticulture, is a sector prone to a whole spectrum of labour exploitation. All of these interviewees identified gangmasters/ sub-contractors as the source of forced labour while also acknowledging that these perpetrators do not act in a vacuum, but may themselves be subject to unfair treatment by growers and/ or farmers. The labour providers, James and Rufus, both, however, ruled out any such cases occurring within SAWS:

“[...] I find that highly unlikely, because the scheme ran by the Home Office was audited by the Home Office. People who operated the SAWS scheme were rigorously checked. An allegation of forced labour within SAWS I find hard to believe. However, in industry there is always a slim possibility of exploitation.”
(LP: James)

“[...] SAWS was managed by the Home Office, which kept a close eye on it, when it stopped being a student scheme; it was wider than that, so people really who came had so often aspirations to improve things for themselves. They wanted to be here to earn the money and then go back home again. So I haven't come across forced labour because SAWS was rather effectively run by the Home Office. It had licensed operators, who were audited by the Home Office and ran the scheme on behalf of the Home Office. There were close eyes on the scheme that was run by

³² My sample of gangmasters includes GM: Jonathan, GM: Anthony, GM: Theodore, GM: Peter and GM: Rob. My sample of labour providers includes: LP: Rufus and LP: James.

each of the operators. Each operator had to make sure that conditions on the farms were of certain standards. I think that helped prevent the situation of forced labour.”

(LP: Rufus).

For both labour providers, then, close scrutiny by the UK Home Office accounted for them being able to rule out cases of forced labour within SAWS – a view that was also shared by NGO staff members Andrea and Francis. However, interestingly, when carrying out my first round of interviews (in late June 2016) with Home Office staff members in London, I was told after one interview that there only used to be a couple of staff members in charge of the scheme. By ‘a couple of staff members’ was meant precisely three people, who were tasked to conduct routine visits to farms to monitor how participants in the scheme would be employed. Hence, whether a couple of staff members comprised a large enough resource to have dealt in the past with such an extensive programme (in 2012, 20,842 SAWS work cards were printed [Consterdine and Sahizer, 2012]) is questionable. This said, one of the then Home Office staff members in charge echoed LP: Rufus’s view that SAWS was well regulated:

“[...] We [Home Office Officials in charge of SAWS] were not aware of any cases [of forced labour]. I am not aware but there might have been cases. I am not aware of a problem with forced labour under the terms of SAWS. [But] [i]t is possible that people who were admitted under SAWS then went on to work for other employers and found themselves in forced labour situations. It would be more likely of forced labour outside SAWS/ with unlicensed gangmasters.”
(HO: Ronald).

It is perhaps not surprising that labour providers and Home Office staff members agreed that SAWS was a well-regulated scheme that excluded incidents of forced labour when the likelihood of such a scheme being reintroduced in the wake of the June 2016 ‘Brexit’ vote (which may result in the United Kingdom leaving the European Union by Spring 2019) is considered. By admitting that SAWS was flawed and that forced labour may have occurred within this scheme, it would call into question why such a scheme should be reinstated, unless it could guarantee the improvement of workers’ conditions. Yet, the implementation of such a scheme was seen as very likely necessary by labour provider interviewees, who, alongside employer representatives and gangmasters, all feared that, post-Brexit, there will be a dearth in available workers in agriculture/horticulture. This is because the majority of workers in this sector are non-domestic workers, meaning non-British workers.

On a side note, I asked several participants (HO: Michael, NGO: Francis, LP: Rufus, GM: Jonathan, LP: James, and GM: Theodore, another Boston-based gangmaster who wants to counteract the poor reputation gangmaster in the UK face) why British workers are unlikely to work in horticulture. I basically received two types of answer: i) a lack of work ethic, paired with a ‘too-generous’ benefit system; and ii) the structural nature of horticultural work. I found the most commonly given reason for explaining the dearth in British workers in horticulture, reason i), to be unfair and rude. However, such participants repeatedly claimed that the lack of work ethic was the case. HO: Michael, for instance, stated that:

“I think that almost all the employers we spoke to [...] all said that they would be happy to employ British nationals. Number one [why you do not find British workers in horticulture is that] the British either do not want to do it [the job] in horticulture, they do not want to live on the farm. In a sense, more important, the British do not work hard enough via piece rate to earn the national minimum wage. So, as you have got to pay the national minimum wage, the British do not work hard enough. So, I mean essentially the short answer to that is the work ethic.”

This view was echoed by LP: James, LP: Rufus and GM: Theodore. HO: Michael, however, also noted that, for a British national, actually finding employment through a gangmaster in Lincolnshire horticulture may be more challenging than anticipated because “[...] there [...] may be [...] some agencies which simply do not advertise jobs in Britain [in the English language]. They only advertise jobs in Poland in Polish. So, you cannot ever get any British workers.” GM: Jonathan indirectly backed up HO: Michael’s statement by saying that the only British national he ever employed had “soon quit”. However, such quitting was related to the British national being able to, perhaps, receive better pay by having a direct employment contract, in contrast to labour migrants: “We employed on one occasion a British national. The person soon quit. We do not have good experience with English workers. English people have another reason [why they do not wish to work for us]. They can work directly with farmers, but we are a labour provider. [British workers do not wish to work with us] [...] because we do not have permanent jobs. English people are looking for permanent jobs. For Polish people, it is sometimes not viable to get a permanent job.” As such, the ‘lack of work ethic’ argument slowly unravels and it transpires, rather, that language skills and knowledge about the labour market allow British nationals to rather have a direct employment contract with the contractor instead of having to go via an intermediary (in this case, GM: Jonathan).

EO: William rightly pointed out that the ‘lack of work ethic’ argument does not hold considering the popularity of working in the Australian agriculture and horticulture sector amongst British nationals. This work is seen as a stepping stone in order to explore Australia while also making a living. LP: Rufus conceded that the lack of British workers in horticulture may also be related to a lack of available agricultural education in the UK:

“Finally, in terms of work and education, we do not teach people enough to lead them into careers in horticulture. So, people tend to think: ‘I will work in a superior office or something like this.’ But I think the two really important factors are that it is seasonal work, so it is temporary, and it is not in the right place, not in the city.”

Moreover, NGO: Francis explained well that the location of horticultural jobs may be a significant impediment for British nationals outside the area to go to work there, as wages are too low to be able to afford going home from time to time: “You might say: ‘Why do people from Sunderland, where is a high level of unemployment, not come down to regions where there is labour shortage?’ It is at this point that I think the matter of monetary conversion rates starts to kick in. Travelling for GBP 300 from Sunderland to Norwich is not enough motivation. However, if you are from Portugal with a high level of unemployment, and you also have the background to work in horticulture, this might be a more attractive proposition.” Also, the isolated character of horticultural work should not be underestimated.

Newspaper articles have indicated that the number of migrant workers available to work in UK horticulture since the ‘Brexit’ vote has been falling –information that was confirmed to me by GM: Anthony, who answered like so when asked whether the UK is a popular country to work for amongst Romanians: “Not at the minute [early August 2016]. Not in the last one month. It [the United Kingdom] has stopped [being attractive to Romanian labour migrants]. Big change. People are very worried. I’ve had people who came back.” GM: Anthony explained the decision by Romanian workers to return from the UK in terms of a fear that they would suddenly require visas to work in the UK. (When this interview was carried out and at the time of writing this thesis, Romanian nationals in the UK did not need any visa to be part of the UK labour market since they were EU citizens with full rights.) An interesting point to note is the information provided by EO: Caleb: in the year before the ‘Brexit’ vote, farmers had already faced issues in recruiting enough workers. As such, it may not be the ‘Brexit’ vote *per se* that has led to a decrease in available workers in horticulture, but rather the structural nature of work in horticulture

more generally – ‘structure’ being, as we have seen, the second reason some participants (for instance, NGO: Francis and LP: Rufus) gave for explaining the dearth of British workers.

Despite the aforementioned reasons concerning why some participants may have painted a very positive picture of SAWS, NGO staff member Francis, with decades of experience of dealing with migrants’ rights in the UK, also backed the view of labour providers and Home Office staff by stating that:

“SAWS was actually quite a well-regulated scheme, for a number of reasons. One of them was that only a small number of labour providers got the contracts and were able to bring people over. Secondly, it was targeting a very specific group of workers, which were basically students. It was closely scrutinised, not just by the UK Home Office but by other people as well. They effectively had the name and addresses of the businesses involved in it. So, there was a lot of incentive to meet at least a certain standard. But once that level of scrutiny of scheme vanished, and people started to be recruited to work in agriculture through free movement provisions, then exploitation could thrive.”

As such, it can be concluded that participants from different spheres - such as the private sector (as represented by labour providers, LP: Rufus and LP: James), government bodies (as represented by the Home Office staff members) and civil society (for example, NGO participant Francis) - all agreed that SAWS was a well-regulated scheme.

SAWS was first established in the years immediately following World War II. SAWS was not based on a bilateral agreement between the UK and Romania. From 2008 up until it ending, the scheme “allowed fruit and vegetable growers to employ migrant workers from Bulgaria and Romania as seasonal workers doing short-term, low-skilled agricultural work. Workers had to be aged 18 or over” (House of Commons Library, 2016, p. 1). Significantly, in terms of arrangements between the UK and Romania on the recruitment and supply of workers, SAWS was not administered by a bilateral agreement between these two countries. As previously established by Gordon (2015), bilateral agreements are an obstacle in generating a global labour migration governance. Nonetheless, bilateral worker agreements may have the benefit of enabling the countries in question to establish jointly work and social standards. As such, SAWS, not being based on a bilateral agreement between the UK and Romania, could be viewed as contributing to the system’s weakness in terms of possible exploitation occurring, as only the ‘side’ where workers were being sent scrutinised labour providers.

Indeed, there is also the argument made by some academics that it will not have been easy to capture experiences of forced labour in general, due to a number of factors potentially acting as an impediment to (Romanian) workers reporting their situation: for example, a lack of language skills, a lack of knowledge about labour rights and/ or shame in self-identifying as a victim of such exploitation. Participants NGO: Andrea, T: Stephen and T: Ruby echoed this argument. NGO: Andrea, specifically, mentioned - in relation to labour migrants' vulnerabilities the risk exploitative work arrangements becoming the 'new normal':

"The lack of knowledge of language is a big issue [and] the lack of knowledge of rights is a massive issue to us. So yeah, we're trying to work in that space [of lack of knowledge and language], while trying to provide information about labour rights by [...] raising awareness for workers; the way that they are being treated is not okay. There's also a big issue with normalisation where workers think, 'Well, this is marginally worse, or similar to the job that I had.'"

This is not to mention those placements where there was no Romanian institution involved in SAWS, meaning that, in the absence of a direct contact person, reporting such abuses was not possible. Despite interviewees' shared opinion about SAWS and its prevention of forced labour, then, there is reason to believe that recruitment may still be a gateway into forced labour - including in the case of SAWS, as the next section further illustrates.

3 Recruitment as a Gateway into Forced Labour

The literature on recruitment indicates that charging fees at this initial stage may constitute one way into labour exploitation and subsequently into forced labour (UNODC, 2015; Andrees et al., 2015). Such a scenario has been linked to kinds of modern slavery such as debt bondage (Anti-Slavery International, 2015). Until 1997, private LMIs were globally banned. Since the passing of ILO Convention 181 in that year, however, LMIs have been able to operate legally. However, importantly, this convention explicitly bans the charging of fees.

The United Kingdom has neither signed nor ratified Convention 181. Nonetheless, in the UK sector in which I am interested, charging recruitment fees is illegal. By extension, gangmasters and labour providers that source labour workers from outside the UK cannot charge recruitment fees. In fact, the aforementioned GLA was tasked (from 2005 until 2016), in the capacity of its extraterritorial power, with ensuring that labour laws applicable in the UK were upheld when sourcing workers from outside the UK. The point is that the GLA, despite being tasked in

this way, did not sufficiently tackle the issue of recruitment fees being charged in labour migrants' countries of origin (e.g., Romania) - focusing their attention instead on being seen to tackle major/ more visible infringements. It is also worth noting that GLA focus on major infringements stands in contrast to the gangmaster interviewees' focus, i.e., on minor infringements rather than forced labour *per se*. The GLA tendency to prosecute major labour infringements in contrast to smaller ones can be explained by the fact that the tackling of modern slavery has become a benchmark of recent (Coalition and Conservative) governments - as testified by the passing of the 2015 Modern Slavery Act, 2016 Immigration Act and, in December 2016, Prime Minister Theresa May boosting the budget to tackle modern slavery by GBP 30 million. Another motive for focusing on major infringements is that the GLA's limited funding may be used to prosecute criminals in order to increase the perception of the government being very intransigent, and also as a means to recover funds to finance its functioning.

One research participant, Charles, who is a Romanian labour inspector, offered some key information about how Romanian workers may have been deployed in conditions of forced labour starting at the recruitment stage: at the time of interview (early August 2016), charging recruitment fees was not a criminal offence in Romania:

"Yes, the Romanian legislation act 156 allows the recruitment company to charge recruitment fees. It doesn't specifically say the amount of it; it could be 1 euro or 200 euros - I'm just bringing out numbers. The main problem is with this legislation that it's going to be amended as soon as this year is that it creates a very strange situation when you're sending into countries that do not allow this, like, for instance, the UK, which is all against any form of recruitment fees. I can understand their point of view; it opens Pandora's Box for debt bondage and beyond. So we had many discussions with the British on this topic."

(RLI: Charles).

As such, workers recruited in Romania and placed in positions within UK horticulture may have been charged a fee. This danger is fuelled by the SAWS not having been a bilateral agreement (as discussed earlier). As we have seen, of course, a number of interviewees stated that SAWS was a very well-regulated scheme. The participating labour providers, James and Rufus, claimed that they had been recurrently checked and audited in their practice, as had been their subcontractors based in Romania. Yet, while the aforementioned participants did not believe that labour exploitation/ forced labour of Romanian nationals occurred within the scheme, it is worth also reiterating the point made by Ronald, the Home Official participant overseeing the programme:

that ruling out such cases one hundred percent was not possible, as workers that had been recruited under SAWS may have changed employers illegally and found themselves in exploitative working conditions. Thus, while cases of forced labour per se may not have been recognised as having occurred under SAWS, fraudulent gangmasters who unlawfully hired Romanians *outside* the scheme to work in UK horticulture, alongside deploying workers in an illegal fashion may have charged them recruitment fees. The same line of thought applies to Romanian workers overstaying the time legally permitted within SAWS, of six months. By overstaying, Romanian nationals would have become undocumented workers – and undocumented workers are more prone than their documented counterparts to exploitation.

This section argued that despite some interviewees articulating the view that SAWS was proficient in preventing labour exploitation, there is evidence to suggest that it may have nevertheless served as a way into forced labour for some Romanian nationals in the UK, even at the recruitment stage. Continuing this line of argument, the next section reviews whether employment contracts, notably zero-hour contracts, in horticulture – including within SAWS specifically – could constitute another form of entry into this human rights violation.

4 Zero-hour Contracts as a Gateway into Forced Labour

Zero-hour contracts are defined as contracts where employers are not required to offer workers a minimum number of hours, while workers may – officially, at least – decline to work the hours that are offered them. Zero-hour contracts have been on the rise as an employment model in the United Kingdom since the 2008 financial crisis (Elliott, 2016). At present, the number of workers in the UK estimated to work under such arrangements is estimated at almost a million (Monaghan, 2017; Inman, 2016; Inman, 2016a). Zero-hour contracts are common in sectors that are subject to changing demands, such as catering, hospitality and construction. Historically, zero-hour contracts have also been used in agriculture, and by extension also in horticulture, due to what Rogaly (2008) refers to as “agriculture’s special relationship” with nature – meaning the necessarily seasonal character of much of the work.

Considering that zero-hour contracts do not offer fixed working hours, employees on such contracts face highly flexibilised and casualised working hours. As such, these workers experience a precarious form of employment that may be one way into labour exploitation, if not forced labour. (Indeed, in March 2016, the Government of New Zealand banned zero-hour contracts on

grounds that they are a burden on employees and that they foster unfair employment arrangements (Roy, 2016).)

I asked several participants to describe contractual terms between gangmasters and workers in UK horticulture. Answers varied and did not provide a homogenous picture. By reviewing the transcribed interviews, I gathered that: i) zero-hour contracts are indeed common in horticulture; and ii) under SAWS, workers deployed in both agriculture and horticulture were not employed on such contracts. NGO staff member Francis and Home Office staff member Ronald respectively illustrate these two points below, with NGO: Francis also mentioning a risk posed for growers and farmers in relying solely on this employment model, notably a dearth in available labour:

“Field workers tend to operate on the basis of zero-hour contracts. However, because it fluctuates so much on a day-to-day basis, the only way you can cover yourself is by being registered/ known to a number of gangmasters as somebody who is available to do the work. With the zero-hour contract, you make yourself exclusively available only if there is work. [...] The risk is [...] that the gangmaster would send out his 500 text messages and then only get 20 people replying.”

HO: Ronald confirmed that the Home Office made sure that SAWS workers had a minimum of working hours: “Under SAWS, this was quite a regulated scheme; the operators of this scheme were allowed to recruit workers on the basis of contracts that they entered with the Home Office and those contracts included minimum requirements in terms of guaranteeing minimum hours of work”

However, HO: Ronald conceded that there may have been breaches. When asked about the Home Office’s initiatives to ensure that there would be no breaches, he explained that “we had a small team in the Home Office that was responsible for the management. I think we had about three staff and they would conduct routine visits to farms to monitor how participants in the scheme would be employed. There was monitoring activity.” As set out under SAWS, workers were neither paid by piece rate or fixed working hours, but by a fixed amount. As such, the UK Government proved to be well aware of the risk associated with paying workers according to such conditions and so thwarted the danger of underpayment of wages as well as of flexibilised working hours – both of these being potential indicators of forced labour (ILO, 2012).

This section clarified that zero-hour contracts are the norm within horticultural employment. However, these employment contracts were not used within SAWS. As HO: Ronald explained: “[Zero hour contracts were] not [used] to my knowledge.” Participants such as NGO:

Francis, LP: Rufus or LP: James all supported this statement. As such, SAWS was beneficial in avoiding exploitation, by providing Romanians and other labour migrants that participated in this scheme with a minimum of working hours - hence, not employing workers on zero-hour contracts. However, the picture thus presented is not to straightforwardly advocate for the scheme. As already argued, no reported incidents of forced labour does not rule out the existence of such incidents *per se*; and I continue this train of thought by now arguing that it is important to also pay attention to the efforts undertaken by different stakeholders, such as end users, trade unions and non-governmental organisations, who may help to tackle forced labour. As such, the next section explores other routes into forced labour: (status-quo-sustaining) auditing systems and restricted European Union citizenship.

5 Auditing Systems as a Gateway into Forced Labour

Auditing is an inspection by a third party to review a firm's accounts. Firms may audit their subcontractors on a number of different criteria – for example, in terms of labour rights, or safety. The efficiency of auditing systems has come under fire since the 2013 Rana Plaza Disaster, when an eight-story commercial building collapsed, resulting in 1,129 casualties; only a few weeks earlier, the building, called Rana Plaza, had been successfully audited for fire safety. Audits preventing labour abuses, nonetheless, have been on the rise. However, as Lebaron and Lister (2015) have demonstrated, audits tend to maintain a status quo rather than initiate changes. This is because they are not seen as a pass or fail test, but as a means to address issues in supply chains. As such, audits have a reputation of playing into firms' hands. In terms of my participants, however, it is noteworthy that one subcontracted labour provider in Romania, GM: Anthony, mentioned that, while participating in SAWS, other Romanian subcontractors who provided labour had decreased from several to his business alone because of failing audits:

“Well, there were many companies working with labour provider X in the United Kingdom at that time [when GM: Anthony opened his recruitment agency in Bucharest]. I am the only company who remained out of about 60 companies cooperating with labour provider X in the last 15 years. [...] Auditing, they [the other recruitment agencies providing labour provider X with workers] didn't get through the auditing processes. It's a very audited field [recruitment in horticulture] and very regulated. We've been audited four times over the past 12 months.”

When asked about who carried out the audits, GM: Anthony mentioned both state bodies and private sector actors: “[...] Once, by labour provider X: they [labour provider X] audit us every

year. And once by labour provider Y, which is our other big partner. We have three partners at the minute: labour providers X, Y and Z. Labour provider Z is a small agency. We don't do much work with [them]. Well, we probably supply them 50 people a year, not many." This suggests that strong regulations within SAWS, including audits, may indeed have played a key role in thwarting labour abuses, exploitation and forced labour. Indeed, such a picture of the scheme would chime with the positive account offered by the aforementioned NGO staff member Francis. At the same time, an interviewee from an employer organisation, William, made the point that the auditing business had got out of control:

"[...] a food producer factory had an audit, and the audit came along and said, 'You got your electric sockets above the ground. These sockets should be sunk so that the plug sits below the ground.' So they went through a process of readjusting in the factory. The same bloke came around three months later on, on behalf of another customer, and said, 'You have got them buried below the ground and they should have them above the ground.' And that's how silly it has got. So you have got different companies sending the same people or different people in for either the same things or different things. Say you supply four different retailers, you get four different audits on multiple areas. You get audited on food safety, labour, etc. Say you have got people coming in every week doing another audit for another person, then that's where it got out of hand."

(EO: William)

This lack of having one well-defined auditing system contributes to rendering the efficacy of audit systems *per se*, relative to the purpose of such tools. Firms, then (or so the argument goes), may audit for a variety of things just for the sake of auditing, rather than for the sake of improving conditions for workers. This argument has already been voiced in academia by Lebaron and Lister (2015); and it was echoed in my research by participant RC: Sophie, a representative from a large UK supermarket chain, who said that audits were not a pass-or-fail test. While it may not be wise to take this idea too far (the question then arises as to what the actual purpose of audits is), it can be argued that end users maintaining relations with faulty suppliers may potentially lead to an improvement in workers' employment conditions in the long term, if the end user chooses to work closely with his or her subcontractor to fix the problems that audits may turn up; the full extent to which plays out in practice is, however, open to question. Another issue is that there is no shared or consistent vision in setting out fixed standards that have to be complied with by firms. As such, standards may vary from one firm to another. As such, standards may vary from one firm to another – as referred to in EO: William's narrative [or quote] above. Considering – as explained earlier – that only three Home Office staff members controlled the implementation of SAWS's standards, there is some doubt over whether or not all employment practices were in

line with the standards set out by SAWS. Also, as explained in this section, audits do not necessarily improve workers' situations. While controls carried out by the Home Office and by labour providers were discussed, it remains questionable whether such controls were helpful; and it is notable that, across interviewees, no particular examples of auditing systems under SAWS were provided. The next section discusses the reasons why restricted European Union citizenship may be a route into forced labour.

6 Curtailed European Union Citizenship as a Gateway into Forced Labour

Previous studies have documented that EU nationals can be fed into conditions of forced labour. As such, the move for A2 nationals - i.e. Bulgarians and, more relevantly, Romanians - from restricted labour market access to full EU citizenship as of 1st January 2014 does not, it can be argued, diminish the risk of finding themselves in exploitative working conditions. This observation was echoed by NGO staff member Francis, who works specifically with a UK charity focusing on migrants' rights. "[...] But once that level of scrutiny of the [SAWS] scheme vanished and people started to be recruited to work in agriculture through free movement provisions, then exploitation could thrive." (NGO: Francis). While one may conclude that A2 nationals were more prone to forced labour under SAWS, with respect to their curtailed EU citizenship and the restriction of related rights, it seems that EU citizenship status neither protects nor endangers workers. However, restricting labour market access of not-yet-full EU member states to work opportunities in sectors that are highly prone to exploitation (notably agriculture, cleaning, and construction) increases the workforce's vulnerability.

Moreover, there is another aspect to this observation of free movement provisions and exploitation. Caleb, a research participant from a union representing employers' interests, mentioned that since the end of SAWS, farmers and growers faced difficulties in finding enough workers to sustain supermarkets' demands and horticultural production. In this context of a growing dearth of workers, and the imposition of ever-strict quantity and quality criteria by supermarkets, one can deduce that labour migrants in general who work in UK horticulture face even greater pressure to deliver horticultural produce in a narrow time frame. While I have been writing up this analysis, the British newspaper *The Guardian* featured an article on the gloomy forecast of farmers concerning the future of their businesses. This gloomy forecast relates to the lack of workers. When carrying out my interviews, I asked some of my participants whether they think 'Brexit' may have an impact on labour exploitation. I asked this question not because I

thought that farmers, growers and gangmasters are racist, but because of my anticipation that a lack of workforce, coupled with a steady, and non-diminishing, demand for vegetables and fruits could see workers' regimes further intensifying. Trade union participant Ruby could not see the phenomenon of labour exploitation in relation to Brexit decreasing. Academic participant Norbert, meanwhile, conceded that he did not know whether Brexit would have an impact on labour exploitation. In his view whether or not there would be an impact depends on the Government:

"[...] If the Government decides to somehow increase the extent to which EU citizens have rights in the labour market, whether it is in terms of benefits or other things, so it is already the case that they have different rights. If the Government decides to accentuate that exploitation, of course is more likely to occur. If they decide not to, it won't. I am not sure it was Brexit which led to an increase in reporting of racist and xenophobic activities. I think it was the campaign in which both sides resorted to saying they will be tough on immigration, as if immigration was a cause of economic problems. Both sides conceded to that unfortunately. And I think this contributed to a legitimisation of xenophobia, but I do not think there is anything automatic about it."

As has been established, then, EU citizenship does not automatically shield nationals from exploitation.

Conclusion

This chapter firstly reviewed the different recruitment channels in UK horticulture, alongside explaining why labour migrants may rather choose one recruitment channel over others, in comparison to British workers. The second section then focused on the occurrence of forced labour in UK horticulture under the now-defunct SAWS scheme. While no actual cases were revealed in participants' narratives of the scheme, subsequent sections addressed possible other gateways into forced labour that may have existed within SAWS. These possible other gateways are recruitment, employment contracts (not in the sense of being written or not, but relating to the number of working hours), controls carried out within SAWS, and restricted EU citizenship.

Chapter Seven

What Routes into Forced Labour?

On 1 January 2014, the Seasonal Agricultural Workers Scheme (SAWS) ended. Since then, Bulgarians and Romanians, also known as A2 nationals, have been free to become an integrated part of the UK labour market without any restrictions. However, for such migrants, enjoying the same labour rights as other European Union (EU) nationals³³ has also carried with it the risk of being subject to kinds of labour exploitation that are specific to these new circumstances. Whilst, as argued in the previous chapter, SAWS was not necessarily a guarantee that labour exploitation could never happen³⁴, the situation post-SAWS has seen changes occur that potentially represent an increased risk of exploitation - and of entering into conditions of forced labour. Indeed, two of my research participants, NGO: Francis and EO: Caleb, explained the exploitation of EU migrants in terms of the free movement provisions that kicked in for Romanians with the dissolution of SAWS, as well as a lack of available workers in horticulture since 2015. As such, Romanian migrants who have been exploited within UK horticulture from 1st January 2014 onwards will have used the services of *gangmasters* and/or *labour providers* to gain employment; and, moreover, it can be argued that some such instances of exploitation are best viewed in the context of these new kinds of working relationships. Significantly, gangmasters and labour providers are parties who are no longer closely scrutinised by the Home Office, but who may or may not, depending on their (il)legal status, be checked by the Gangmasters Licensing Authority (GLA; latterly, the Gangmasters and Labour Abuse Authority, or GLAA). This means that lawful gangmasters are those who hold a license issued by the GLA/ GLAA that enables them to operate legally in the sectors covered by this governmental agency. Meanwhile, illegal gangmasters are those who work in the black economy and, as such, are not monitored by the GLA/ GLAA.

³³ To date, it is only Croatian nationals who do not yet fully enjoy the rights associated with EU citizenship. As of 1st January 2021, Croatians will enjoy the same rights as other EU citizens.

³⁴ As demonstrated in the previous chapter, during SAWS - when the labour market was open exclusively to A2 nationals as a transition agreement before enjoying full EU citizenship rights - no cases of forced labour of Romanians were recorded. Participants NGO: Francis, HO: Ronald, and LP: Rufus explained this seeming absence of forced labour in terms of the scheme being well managed by the Home Office. However, as I also argued in the previous chapter, a number of factors - namely, the lack of dedicated Home Office staff, along with a lack of funding for the GLA, and SAWS also not being based upon a bilateral agreement between the UK and Romania - may have rendered the detection of cases by government institutions problematic.

Indeed, whether Romanian workers have become post-SAWS victims of forced labour through gangmasters – both legal and illegal – will be explored in this chapter.

This chapter, then, first investigates forced labour as a result of gangmaster employment, before scrutinising two key pieces of legislation that may actually contribute to the existence of forced labour in the UK. The first of these is the 2015 Modern Slavery Act (MSA), which sets out that businesses with a turnover of GBP 36 million and above have to disclose the steps they have undertaken to keep their supply chains free of forced labour in England and Wales. ‘Supply chains’ here does encompass both *product* and *labour* supply chains.³⁵ UK horticulture is dominated by four large supermarkets, who account for 76% of the retail market (Promar International, 2013): Tesco’s (29.9% market share), Asda (17.5%), Sainsbury (16.9%) and Morrisons (11.5%). Among the ‘Big Four’, only Tesco’s had in 2016 a yearly turnover (GBP 54,433.000) above the reporting threshold outlined in the MSA. As such, from the ‘Big Four’, only Tesco’s had to abide to the rules set out in the MSA. The second piece of legislation that will be reviewed is the 2016 Immigration Act (IA). This is because this particular Act actually serves to put those workers who should be protected from exploitative working arrangements by MSA at risk. It seems as if the MSA is more directly linked to gangmasters than is the IA, in the sense of requiring large business that use gangmasters’ services to monitor how workers are being treated. The IA may appear at first glance less relevant, then, to the link between gangmasters and forced labour; however, when looked at fully, the IA stands out because of its articulation of the offence of working illegally. This offence may target workers who are working illegally in lower tier of supply chains; and, significantly for current purposes, employment opportunities in horticulture are located in the lower tier of supermarkets’ supply chains.

1 Forced Labour as a Result of Employment by Gangmasters

From 2008 up to the end of 2013, the only Romanian workers being exploited by a gangmaster would have been those who were undocumented. This is because, during that period, documented Romanian workers could work, exclusively and lawfully, under SAWS through a labour provider appointed by the Government. Since 1 January 2014, Romanian nationals no longer need to apply through SAWS to work lawfully in the UK as they now enjoy full EU citizenship. As such, cases

³⁵ The difference between product and labour supply chains lies in their focus – on either product or labour as object. In other words, while the chains can be the same ones, the focus of the object (product or labour) differs. For the purpose of my thesis, the focus is on labour supply chains.

of forced labour involving Romanian nationals today may involve gangmasters and other unregulated labour providers.

Interestingly, a media analysis of articles, which I found on the Association of Labour Providers website (where cases of criminal gangmasters are listed), reveals no recorded cases whatsoever of forced labour involving Romanian labour migrants. However, this does not paint a strictly accurate picture. During his interview in early August 2016, one of my participants, LI: Charles, indeed highlighted the potential role of gangmasters and unregulated labour providers in cases of exploitation, with him afterwards providing me with a link to The Guardian's website. This link took me to a noteworthy press release detailing how a Romanian gangmaster who had supplied workers into conditions of forced labour in the UK. Thus, post-SAWS, there has been only one recorded case of forced labour involving Romanian victims. The case was recorded in 2015.

It is worth noting that forced labour may take several forms. The International Labour Organisation (ILO) (2012) indeed lists eleven forms: i) abuse of vulnerability; ii) deception; iii) restriction of movement; iv) isolation; v) physical and sexual violence; vi) intimidation and threats; vii) retention of identification documents; viii) withholding of wages; ix) debt bondage; x) abusive working and living conditions; and xi) excessive overtime. Interestingly, amongst this wide range of indicators of forced labour, the ILO do not list the matter of tax avoidance. Nonetheless, it can be argued that this latter practice may be a slippery slope into labour exploitation, if not forced labour, because workers cannot accumulate any wealth in the long run (alongside no money being paid into either pension or health insurance schemes on their behalf). As such, workers are unable to build up any savings, meaning they have to work continuously to make a living. In this context, workers become 'adversely incorporated' (Phillips, 2013), whereby they have to take up unstable and poorly remunerated employment arrangements that they cannot reject because being reminded of their disposability. The next section, then, begins by addressing tax avoidance as a potential slope into forced labour, and this is precisely because it was a matter that was raised in my interviews with gangmasters - namely, GM: Jonathan and GM: Anthony. This section continues by investigating another possible form of forced labour that came up in my interviews with charity participant CA: Shaun from the Monitoring Group: notably, expensive and abusive living conditions that can be seen as a way into debt bondage. Finally, the section discusses how practices may be consolidated with respect to the two aforementioned, relevant pieces of legislation: the Modern Slavery Act and the Immigration Act.

2 Expensive and Abusive Living Conditions that May Lead to Debt Bondage

To begin with, it is worth noting that the one and only ILO (2012) forced labour indicator that has come up in my interviews is expensive and abusive living conditions. By the term ‘expensive living conditions’ is meant rent prices located way above the average price. The cheapest property (flats) that I found online, on the English website *Right Move*, was GBP375 (as of: 13 June 2017). Most other listed properties, meanwhile, tended to be in the range of GBP500 to GBP600. In order to further highlight the extraordinary renting prices in Boston, making a comparison with another English market town of the same size is a reasonable exercise. Boston has a population of 41,340 (Civic Pride Website, 2017). Bridgewater, meanwhile, is a town located in Somerset with a comparable population to Boston at 41,276 (Civic Pride Website, 2017). The average price for renting a flat in Bridgewater is between GBP400 to GBP500. Comparing the renting prices for flats in Boston and Bridgewater thus suggests that prices in Boston are much higher when compared to other market towns. Whether a seasonal worker in agriculture/ horticulture with a low wage is able to afford such costs is questionable. As such, it may be deduced that seasonal workers probably tend to share rooms to afford the high cost of renting. Reports (ILO, 2012), as well as newspaper articles (Lawrence, 2016; Gentleman, 2014; Lawrence, 2015), have highlighted what abusive living conditions may look like: for example, the ILO report defines ‘abusive living conditions’ in terms of overcrowded and unhealthy places lacking a private sphere. Articles by *The Guardian* newspaper (Lawrence, 2016; Gentleman, 2014; Lawrence, 2015), moreover, have shown that the provision of such living conditions by gangmasters is not uncommon.

Participant CA: Shaun captured the main problem Boston faces in terms of forced labour: abusive living conditions paired with high rental costs. As explained above, the ILO lists abusive living conditions as one indicator of forced labour. These high costs may be explained by several factors: first, property prices across the UK more generally have risen between 2008 and 2015; second, Boston specifically is the town outside of London that has experienced the most important influx in migrants in the last decade. Between 2004 and 2014, the population in Boston increased by 389% (Lincolnshire Echo, 2015; Migration Observatory, 2017). Such a significant rise in population – even if residents are only in Boston on a short-term basis because of seasonal work in the area – means that building accommodation that is sufficient to meet the accompanying increase in need is a challenge. According to CA: Shaun, in this context, the housing situation in Boston is at best problematic:

“[...] the additional pressure in the Boston area, because we have huge demand for housing, is that those wages that they [migrant workers in horticulture] get may not be a full week’s wage. They are not guaranteed 40 hours a week. You are spending so much money to actually have a roof over your head [...]”.

In order to afford rent, workers may choose to take on debts to some degree. However, if these same workers are not properly paid, reducing their debts becomes challenging, wherewith they become stuck in a debt bondage situation. Debt bondage is considered to be one form of modern slavery (Anti Slavery International, 2017). This form of modern slavery “occurs when a person is forced to work to pay off a debt. They are tricked into working for little or no pay, with no control over their debt. Most or all the money they earn goes to pay off their loan. The value of their work becomes invariably greater than the original sum of money borrowed. They face coercion, violence, intimidation if they try to leave” (Anti-Slavery International, 2017).

3 Tax Avoidance

As mentioned above, tax avoidance may not count as an indicator of forced labour *per se*; however, this practice may be considered as a route into labour exploitation. This is because workers are not insured and have not received any payments into a pension fund. In the short term, the salary they receive without paying tax may be larger than the salary of the worker who pays tax; however, in the long term, those workers avoiding taxes are worse off as they cannot afford to stop working. As such, they become, as mentioned earlier, what is called ‘adversely incorporated’, meaning these workers have to accept the employment opportunities that are offered to them. These opportunities tend to be insecure and dangerous, while the workforce is reminded about their disposability (Phillips, 2013). Participant GM: Jonathan linked the walking out of several workers in recent times to tax avoidance – such workers presumably feeling that not paying tax will benefit them (even though, for the reasons just given, this is actually, in the long term, a potential route into exploitation):

“Last year, GLA inspected me, because last year we had a problem with three workers. They had gone to another gangmaster; this gangmaster had a licence and still has a licence but does not pay adequately. This gangmaster tends to pay cash. And we still have a problem with another gangmaster, who has a licence, but pays half full tax and half no tax. I lost six or seven workers that have gone to them. Workers pay tax and national insurance contributions. The other gangmasters pay exactly the same. Gross 500 GBP. Worker pays 70 GBP tax and 80 GBP

insurance = 350 net income. If 250 is given in cash and only 250 GBP is officially taxed (30 tax plus 20 insurance) then the worker's income is 450 GBP. [...]"

When asked about how this illicit practice could be detected, GM: Jonathan conceded that this is very difficult. One way to undermine this illicit practice (both from the viewpoint of another interviewee, GM: Anthony, and in my own opinion) could be to increase the number of labour inspectors or to move the focus of what was at the time of interview the Gangmasters Licensing Authority (GLA) - from major infringements to smaller infringements. An increased number of labour inspectors would allow gangmasters to get checked more regularly. As labour inspectors are tasked to also look at tax records, tax avoidance may be easier detected in the process. GM: Anthony, in turn, mentioned that the GLA does not pay enough attention to gangmasters located in Romania and their payment of taxes:

"They [GLA staff members] could check more agencies [gangmasters] here, because some agencies [...] pay less tax than they should and it's not fair on the agencies that do pay tax. I know agencies recruiting 2000 people and they paid tax on 1000 people [...]. So [...] they [GLA staff members] need to look into fairness of competition. I am happy to compete with anybody but they need to pay the same taxes I do."

GM: Anthony also explained that uncovering gangmasters in Romania who are engaged in tax avoidance does not take much effort and requires only internet access:

"It's easy to check. You get the tax code of the company. You go to the Ministry of Finance website and you see exactly who pays what tax. You get the turnover for the company - let's say GBP 400,000 - and if you only pay profit tax of GBP 1000, this means you don't like paying taxes. We have such colleagues. I had a look - Well, I didn't because I'm always busy, but one of my colleagues said: 'Do you know how much tax this agency paid last year?' 'I don't know.' He said, 'Let me show you.' [...] The turnover was huge and the profit tax was small. Farmers were always saying [...]: 'Why is this agency charging us this amount and you charge this?' [...] We cannot go below because we can't sustain a business, but you can do it if you pay less tax and you try to avoid the other costs."
(emphasis added)

The practice of not paying taxes goes back several years, as illustrated by GM: Theodore, who had been working as an accountant for gangmasters in Boston in the 1990s, and who thought that gangmasters enjoy an inappropriate reputation. He claimed that:

“people [...] provided fictitious gangmasters’ fictitious purchasing invoices to gangmasters to offset the VAT. Many a time. That was the big fraud; it was very easy because in those days it was very easy to obtain a VAT number.”

When asked about money laundering, GM: Theodore conceded that indeed such practices occurred. He explained thus:

“There was a sort of money laundering at the time; farmers were prepared to do anything to obtain a suitable invoice. So it didn’t matter whether it was for true work. So that they could pay a sum of money, if that makes sense, in cash, not against the invoice provided. So that’s a sort of money laundering but not really. [...] Up until - don’t hold me to the exact date but [such practices continued] up until the early 90’s, I can’t remember when. In 2004, the GLA started. A bit earlier there were other things [that] came into play; there was some stupid ideas by HMRC, really stupid. They were [the] Revenue then, not HMRC, Inland Revenue. They came up with the idea - and this was so stupid - that the farmer will be responsible for tax deductions of the workers, the gangmaster or labour provider responsible for the national insurance. It wasn’t right - Because the employer, i.e. the gangmaster, had to, by law, be responsible for national insurance, he didn’t have to be responsible for tax; and that’s actually still the case today, I think. It was so stupid. I mean what are you going to do: run two payrolls? It was absurd and it went right down to the last minute. The NFU, the national farmers union, said ‘Don’t be stupid’ and they are very powerful in England and nothing happened.”

The activity of money laundering has been linked to organised crime (UNODC, 2017; Ferragut, 2012). According to the United Nations Office for Drug and Crime (2017, p. 1), money laundering “is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence.” The highly lucrative character of money laundering explains the focus of the different British governments over the years on organised crime groups.

Since the end of SAWS and the beginning of free movement provisions, the UK Government has enacted legislation that deals with practices of modern slavery and reforming the GLA. These two pieces of legislation, as mentioned earlier, are respectively known as the 2015 Modern Slavery Act and the 2016 Immigration Act. I argue, however, that both Acts, in certain respects, actually support the process of forced labour rather than tackle it; and the sections that follow outline the various ways in which this can be considered to be the case.

4 Key Legislation #1: Modern Slavery Act

In 2015, the Modern Slavery Act (MSA) became law in England and Wales. This Act has been hailed as innovative and putting the UK on the front line in tackling issues of forced labour, but criticisms persist - amongst others, regarding visa regimes for migrant domestic workers and the semantics employed within the official documents (Fudge, 2015; 2016; Martin, 2016; Robinson, 2015). The MSA applies to every business in the UK. However, the reporting requirements concerning transparency in supply chains (notably, for our purposes, concerning the sourcing of workers) only applies to those companies that have an annual turnover of GBP 36 million or more. Any company hence could make a modern slavery statement; however, for companies above the set threshold it is a must. The MSA was put forward by members of the Modern Slavery Human Trafficking Unit (MSHTU) in the UK Home Office. MSHTU was founded in late 2013. Prior to 2013, there existed a team split across different units in the Home Office that was tasked with monitoring incidents of labour exploitation. In 2013, the then Home Secretary Theresa May decided to make a step change in the way the UK dealt with modern slavery and human trafficking.

In late June 2016, I interviewed HO: Henry, who was involved in the drafting of this legislation. When asked about the MSA's history, he conceded that Home Office staff members are not, in the first place, subject specialists and they relied on consultancies. I was surprised to learn that Home Office staff involved in the drafting of the MSA held degrees in science. Certainly, in order to join the Home Office, staff members must go through a rigorous selection; however, I would have assumed that staff members working on such a sensitive topic as modern slavery would have a background at least in a social science. In my view, such a background could lead to a better tackling of the issues at hand, due to the tailored expertise that thus would be involved. Participant AC: Gerald, meanwhile, explained the reliance of the Home Office on consultancies as follows:

“They’re very cautious. I mean they are in territory where they are having to run to catch up. [...] Modern slavery ended up on their doorstep kind of by accident, and so the civil service people who go in there are having to run. And, of course, every three to four years they move onto something else; they might move onto the environment or low cost electric bulbs or something completely different or the foreign office. [...]”

AC: Gerald also pointed out a specificity of the UK Civil Service: in order to get promoted, Home Office staff should change department every couple of years. While this process is usual procedure – it is not considered problematic by the Home Office as that is how promotion is always done – it does mean that every HO official must start work from scratch and needs time to become acquainted with their new department and the matters at hand; this process may impede on the adequate tackling of pressing issues, with those staff members who do possess considerable, appropriate knowledge no longer a part of the department. AC: Gerald described his work with one staff member that, in the end, was needless:

“[...] The woman I worked with very closely [...], who was the labour lead on modern slavery during all the debates leading up the Act, is now a junior foreign office minister so there’s no point in me talking to her. So all that work that I did with her has just gone. It’s even worse with civil servants because if you want to get a good career in the civil service the one thing you know you have to do is keep moving. [...] If you end up in the ministry of water or the ministry of Coca Cola or something, forget about slavery; that’s just a step on the journey. [...]”.

As such, it remains to be seen whether Home Office policy to tackle modern slavery is indeed useful. The discussion that follows retraces the motivations behind those provisions of the MSA that specifically seek to address issues of transparency in supply chains - or what is called the Transparency in Supply Chains clause. At the same time, the problems associated with this clause will be considered.

4.1 Transparency in Supply Chains Clause

For the purpose of my thesis, this clause is key because it sets out the tasks that businesses with a turnover of at least GBP 36 million have to do in order to demonstrate that their supply chains are free of modern slavery. Most relevant in this respect is the fact that, as mentioned earlier, UK agriculture is dominated by four large supermarkets, Tesco’s, Sainsbury’s, Asda and Morrison’s. However, only Tesco’s is obliged by law to disclose the steps undertaken to keep its supply chains free of forced labour because of its yearly turnover being above the aforementioned threshold. Regarding the emergence of this particular clause, participant HO: Henry said:

“[...] The Transparency Supply Chain section came about because ministers were clear that we had to engage with the private sector. Evidence was clear that modern slavery in the private sector and supply chains was an issue to address. We thought about voluntary measures to fight modern slavery but a lot of businesses said that they wanted to have legislation in this field. They wanted legislation that required all businesses of a certain kind [to declare] what they have done about

this issue. The concern that we had [was] that the large businesses were engaged in this already; if they said 'We have taken all the actions on modern slavery', often that would create a negative publicity. So there was actually a big call from the business community to create legislation on this issue to revive transparency across the board. The reason why California helped us a lot is, we wanted to learn from the Californian experience, so we drew a lot on the work they have done but we also wanted to make sure that our legislation did not impose a whole set of new burdens on multinational corporations [MNCs]. [...]"

The reference made to the 2010 California Transparency in Supply Chains Act suggests that the UK Government took this specific piece of legislation as inspiration. The 2010 Californian Act came into effect in January 2012. Criticisms about this act include the 'too-high' threshold of firms with a turnover above \$100 million, the fact that focus is on not criminalising forced labour but rather on disclosing such incidents, and a lack of guidance regarding how to tackle incidents of forced labour. Similar criticisms have also been made about the MSA. As such, whether the MSA indeed differs greatly from the California Act is questionable. It also remains questionable as to why the UK Government decided to implement a piece of legislation mirroring the shortcomings of the Californian Act.

During HO: Henry and HO: Ivan's interviews, I asked them why only businesses with a turnover of GBP 36 million or above had to outline the undertaken steps to keep their supply chains free of extreme labour abuses, and how this threshold was established. HO: Henry answered as follows:

"[...] We chose this [threshold] in alliance with the definition of large businesses of 2006. When we drafted this policy, we did not want to put [an] extra amount of burden on small businesses below that threshold. Small businesses may not have the resources to audit factories abroad, for example ... [W]e did not want to put big burdens on them which they could not handle. Our feedback from the consultation with businesses was to apply the policy first to large businesses with a turnover above 36 million pounds. We still think this will have a ripple effect on smaller businesses as smaller businesses very often supply larger businesses and if the larger businesses are obliged to respect legislation then the idea is that they will ask their smaller suppliers to adjust that."

However, while large businesses may have tended to have turnovers of at least GBP 36 million in 2006, it is worth inquiring whether this threshold holds true following the 2008 financial crisis. Indeed, as we have seen, HO: Henry could not explain to me why MSHTU had taken on the particular definition of a big business that they had, beyond offering the argument that small businesses are linked to large businesses by supply chains – and that, as such, small businesses

with a lower turnover would otherwise be ‘unfairly’ targeted. I was not satisfied with this answer in light of the fact that small businesses are not necessarily linked with large businesses, and also considering that labour exploitation is more likely to occur within smaller, rather than larger, businesses. As such, whether the MSA is an effective tool to tackle modern slavery in supply chains remains to be seen. Indeed, HO: Henry also stated for himself that MSHTU first has to see how the MSA works.

Participants offered various views about the MSA in general and the Transparency in Supply Chain clause in particular. NGO: Andrea, T: Stephen, EO: Daniel, TT: Nathan, NGO: Francis, and EO: Kimberley all listed as advantages of the MSA the following: the bringing of different legislation all together into one piece; the transparency requirement by businesses to publish an online report outlining the steps undertaken to keep their supply chains free from modern slavery (the report having to be signed off by the company on behalf of its board of directors); and that think tanks can go and talk to companies and encourage them to undertake more work around best practice because someone at the executive level needs to take responsibility for these steps. Participants welcomed the development that means the transparency clause is no longer just the responsibility of some sustainability department, but that it will actually become much more embedded in the business operations and processes of companies. The UK is the first European country to implement this sort of legislation. Hence, one could say that the UK is at the forefront of the European fight to tackle this issue. Despite participants’ attribution to the MSA of these positive aspects, this legislation is not free of potential disadvantages. The section below first outlines problems associated by participants with the MSA in general, before proceeding to explore disadvantages linked to its Transparency in Supply Chains clause specifically.

4.2 *What is Wrong with the MSA and the Transparency Clause?*

- *Problematic Terminology*

First, many different concepts are used in the MSA. These concepts include ‘modern slavery’, ‘human trafficking’ and ‘labour exploitation’. The concept of modern slavery has been criticised on grounds of lacking a clear definition. Participant NGO: Andrea voiced her concern in this regard:

“the use of the word slavery is high problematic. Generally, there is still a lot of confusion and a lot of different views on what slavery means today, both in the legal field but also in public perception and awareness. So that is an issue, and it conflates a lot of different things together and it muddles things, so that’s a big problem.” She concluded by claiming that modern slavery, as a term, is in fact an oxymoron

This criticism has been echoed by academics such as Fudge (2015) and O’Connell Davidson (2014), who also both claim that the term remains mostly associated with the exploitation of women and children for sex work. Moreover, the terms ‘modern slavery’, ‘human trafficking’ and ‘prostitution’ reveal particular moral underpinnings that result in an (albeit important) focus on sex work instead of also addressing the role of other forms of labour exploitation in other sectors. In order to remedy these conflations, NGO: Andrea suggested, then, using one term, ‘human trafficking’ (even while she acknowledged the connotations of the term as deployed in the Palermo protocol, as referring specifically to *movement* of persons).

- *Means to Deport Undocumented Workers*

In respect of this particular act, there is a national referral mechanism (NRM)³⁶ in place that provides the “framework for identifying victims of human trafficking or modern slavery and [for] ensuring they receive the appropriate support [...] [and] [...] through which the Modern Slavery Trafficking Unit collect data about victims [of modern slavery]” (National Crime Agency, 2017). However, this NRM has come in for some criticism. Participant T: Stephen explained thus:

“[...] In their first report, they [NGOs] picked out things like ‘Far more EU people who claim they were trafficked were found to be trafficked than non-EU’, because if they’ve been trafficked then it opens up the possibility that they could remain. So if they’re non-EU, yeah, ‘You haven’t been trafficked so you’re out.’ Obviously they could go home even if they’ve been trafficked but it should be a matter of choice. There are broad issues like [...] around, well, ‘Who actually are these first responders?’ Where again, if you’ve got the immigration service in a key role, that they are under political pressure to get as many people out of the country as they can.”

³⁶ Issues surrounding the NRM are discussed in more details in the third finding chapter.

As such, the NRM has been criticised on grounds of its closeness with the Home Office. This closeness actually impedes the Modern Slavery Trafficking Unit in collecting data, as well as there being the possibility that victims who are not EU nationals may decide not to come forward out of fear of being deported instead of being assisted. As such, the already difficult gathering of data in the field of modern slavery is further hindered by governmental political expediency.

- *Targeted Businesses Under the Transparency Clause*

As previously established, the Transparency in Supply Chains clause only applies to firms with a yearly turnover of GBP 36 million or above; firms with a lower turnover may publish a modern slavery statement but such a statement is not mandatory for them. While large businesses must ensure that their supply chains are free from human rights violations, it thus remains questionable whether smaller firms down the supply chains are also reached. Participant CA: Shaun made an observation in this vein, saying that “it’s [the clause] trying to hit the big people but the smaller people just go under the radar as we would call it.” Therefore, it can be seen that not all participants shared the Home Office’s view – as outlined by HO: Henry - that the Transparency in Supply Chains clause is able to target small firms that are linked via supply chains to large businesses.

In order to ensure that the entire supply chain is scrutinised, the ‘chain liability’ approach has been put forward. This approach forces private employment agencies to implement a due diligence before placing workers with contractors. IO: Aglaia mentioned, as a possible disadvantage of such an approach, the following issue:

“Of course, there are a lot of challenges in terms of implementation [of a chain liability approach] and how it should be implemented in [the first] place. First, I think there are challenges in terms of proof to really make sure you have a strong case when you come back to [your home country after having been posted abroad]. So, if you are in front of a Filipino court you have to bring some proof that are often back in the country of destination. In the case of migrant workers, this can prove very challenging. So, there hasn’t been a lot of cases of successful joint liability worldwide from what I studied until now. So not only [do] we have to take into account that this chain liability scheme has still to be reasonable. [...] The idea is to push better due diligence processes between the recruiter and the employer. We also know that it’s extremely challenging for the recruiter to do an efficient due diligence [assessment] of the employer specifically in the migration

context. So obviously the fines and the whole system of sanction should be studied very carefully in order to not stop any business [...] because of this scheme.”

It can thus be argued, in line with the viewpoint articulated by my participants, that the idea , the idea of the Transparency in Supply Chains clause as a means to target businesses and their supply chains is a good and crucial starting point in attempting to combat forced labour, especially in the lower tier of the supply chains. However, as IO: Aglaia noted, there is still room for improvement.

- *The Transparency Clause’s Lack of International Outlook*

While the Transparency in Supply Chains clause has been hailed as a victory, it only applies to businesses’ supply chains on UK territory. As such, labour abuses in the supply chains of British businesses outside the UK do not fall under the remit of the MSA. (While this aspect does not make a difference for UK horticulture – UK horticulture is a national supply chain whereby abuses occurring within this supply chain are covered by the Transparency in Supply Chains clause under the rules described above – it is fair to highlight its relevance for sectors selling goods that were produced outside the UK, but *within UK businesses’ supply chains*; this is a scenario where neither the MSA nor the transparency clause apply and which means that any incidents of forced labour cannot be penalised.)

- *Managing a Central Register as Determined by the Transparency Clause*

Modern slavery incidents recorded under the MSA are collated in a central register of reports. While the establishment of such a central register has been welcomed, there is one major problem associated with the management of this facility. Participant NGO: Andrea explained as follows: “I do not think it [the transparency clause] goes far enough; there is no central repository of reports. The one central register that exists is managed by an NGO, so it is not being monitored by the Government at all.”

The fact that the central registry is managed by an NGO without governmental oversight/control is potentially problematic because whether one NGO on its own can influence businesses’ behaviour to be in compliance with the law is questionable. NGO: Andrea further explained what the lack of governmental oversight entails:

“NGOs and trade unions, basically civil society, we are the ones who are supposed to be holding corporates to account. So we are supposed to be putting up the pressure when the Government is not. So that’s a problem, the fact that the only thing that will happen to a company if they don’t comply is that the Secretary of State may ask for an injunction. An injunction is basically a court order asking the company to comply. If the company does not comply, it can be held in contempt of court and be made to pay a fine.”

The lack of oversight by the Government means that the MSA is rendered toothless. While businesses are required to publish a report, the report may be literally a blank sheet of paper; there is little pressure by the Government to make companies comply with the Act. As such, modern slavery can further prosper without businesses running the risk of facing severe penalties.

- *The Role of Courts Under the Transparency Clause*

The Modern Slavery Act sets out as punishment for criminals a life sentence. This penalty is unique and represents a radical reform when compared to those previous pieces of legislation that dealt with labour exploitation in the UK. While this penalty reform has been very much welcomed by several participants, AC: Gerald and HO: Michael both noted (despite their contrary jobs) that court rulings regarding severe forms of labour exploitation have, in the past, been problematic in the UK. AC: Gerald explained as follows:

“So, one very serious case called Operation Ruby [...] was a real setback. The police had freed 30 or so workers from a particular establishment in the middle of Britain, but these people were apparently free; they could go to the shop and buy cigarettes and all the rest of it. But psychologically and emotionally and financially, they were completely constrained; they weren’t free in the sense that you and I would understand it to make decisions about what they did. The judge threw the case out of court, saying that these if these people are free to go and buy cigarettes then they clearly weren’t slaves. The police had spent a lot of money preparing this case and it looked like it was going to be an extremely unhelpful precedent but fortunately some other cases came along. [...] The judiciary, particularly judges but also magistrates, need much more training than they have at the present time because I don’t think they understand the nature of modern slavery. Now she [Theresa May] has said that the training is coming, there’s guidance and all the rest of it, but we have to wait and see. At the moment, I would say that, in many cases, the sentences that have been given are too small. The fines that are being given are far too small; they send out very bad messages.”

HO: Michael backed up this observation, specifically in relation to the experiences of GLA staff: “[...] unfortunately, they [GLA staff members] don’t get supported by the courts when they take cases to court; courts don’t impose proper sentences.” Both quotes point towards the lack of training by judges and magistrates, a historical but ongoing issue, when dealing with incidents of severe labour exploitation. As such, the first lesson to be drawn may be to offer further or more specific training to these officials so that they are better equipped when dealing with such serious human rights violations. At the same time, the question arises as to whether or not judges and magistrates in the UK are pressured politically. If this were the case, then judges and magistrates would not have much room for sentencing criminals according to their own judgement, but rather would have to follow prescribed political expediency by the UK Government. Considering that the United Kingdom decided in June 2016 to leave the European Union, there may be a race to the bottom to keep businesses in the UK, as the Government may fear that any significant relocation of such businesses overseas will result in a decrease in job opportunities. As such, it remains to be seen whether businesses will be prosecuted by judges without the influence of political expediency. Following on from this section about the Modern Slavery Act, the next section explores issues related to the 2016 Immigration Act, as the piece of legislation that sets out the remit of the reformed GLA, now known as the Gangmasters and Labour Abuse Authority.

5 Key Legislation #2: Immigration Act

On 1st October 2016, the Immigration Act also became law, redefining the structure, powers and remits of the GLA. Indeed, with the passing of this Act, the GLA changed its name to the Gangmasters and Labour Abuse Authority (GLAA). This name change represented an acknowledgement that labour abuse does not only occur within the sectors previously covered by the GLA (notably agriculture, horticulture, shell fishing, food processing and packaging), but also within other sectors (such as cleaning and nail bars) In other senses too the GLAA was equipped with additional powers, including: i) appointing a Labour Abuse Prevention Officer, tasked to investigate cases of labour exploitation across the UK labour market; ii) increasing or decreasing the remit to tackle labour exploitation in the UK labour market (meaning that sectors in which the GLAA can carry out investigations may be added to, or dropped from, its portfolio); and iii) the establishment of the Director of Labour Market Enforcement to guide the GLAA, alongside the National Minimum Wage Unit and the Employment Agency Standards Inspectorate. In the words

of participant HO: Timothy the newly established GLAA is comparable, if not exactly similar, to labour inspectors on the European continent:

“[...] we [the Home Office] have equipped the GLAA with new powers so they [GLAA staff members] won't be a labour inspector in a European sense, but we [the Home Office] hope to get the advantages of [a] labour inspector approach from the reforms that we are making to the GLA.”

Participant HO: Dominic reiterated this claim by making a comparison with continental models of labour inspectors: “So [the GLA is], therefore, then becoming an organisation with a greater police power in addition to [their] compliance inspection powers and licensing. And some people might say, ‘Well, that’s a bit annoying combination to have’, sort of a labour inspectorate with police powers, but there are more like this like in the Netherlands. All investigate the forced labour offences in the[se] countries. In Italy, the reverse: they come after the 1930s; the labour inspectorate could not be with labour inspectorate in Sicily and so they decided to give their special command unit of the Carabinieri labour inspectorate powers. So they are now a police of labour inspectorate as opposed to a labour inspectorate with police powers. So there are models around that you can pick on and say, ‘I can see why they had done these changes to the GLA.’”

Discussion about the GLA in the previous chapter focused on highlighting four problems – financial constraints; a focus on major labour infringements at the expense of smaller infringements that could lead to forced labour; a narrow remit; and problematic intelligence sharing - mentioned by participants in relation to the GLA’s efforts to tackle (severe) labour exploitation. Attention now turns to the participants’ views of the newly established GLAA, and to discussing additional issues that were raised concerning the effectiveness of governmental responses to labour exploitation in respect of this institutional context.

5.1 What is Wrong with the GLAA?

- *Lack of Funding*

On 1st October 2016, the GLAA came into force. Problems that have previously been associated with the GLA also came up when participants were asked about their views on the new body. The first two problems that GLA and GLAA share are a lack of financial endorsement by the Government, and political expediency. As mentioned by participant HO: Timothy in the section about the GLA in the third finding chapter in the section outlining institutional failures that contribute to the continuous existence of forced labour in UK horticulture, a

lack of funding may be traced back to austerity cuts enacted by British governments since the 2008 financial crisis, as well as the challenge of retrieving money from crime as suggested by participants NGO: Jeremy and NGO: Jacob. Participant HO: Michael, meanwhile, mentioned another interesting factor that contributes towards the lack of funding for the GLAA - the increase in funding of Her Majesty's Revenue and Customs (HMRC).

Besides collecting taxes, the HMRC is tasked to oversee the implementation of the national minimum wage. The increase in funds for HMRC's activities may be explained by the introduction in 2016 of the national *living* wage, a situation which has led to an increase of the national minimum wage. From 2020, the national minimum wage for workers aged 25 or over will be increased to GBP9 per hour. In agriculture and horticulture, the minimum wage will also rise to this level, while pension contributions and holiday pay will be made compulsory. As previously mentioned, the HMRC's task is also to collect taxes. One way to exploit workers is to pay wages in cash and not pay the necessary taxes. Participant GM: Jonathan, as we have seen, illustrated that this practice had led him to lose a number of workers over the past years.

- *Political Expediency*

I will not further elaborate on the financial problematic because, since 2010, the UK has undergone austerity cuts that have not spared any government bodies whereby the GLA(A) suffering in this respect is not institutionally unique - as explained by HO: Timothy:

“Since the financial disturbance in 2008, all UK public services have had to make efficiencies, whether it be the police - Well, certain budgets have been ringfenced where we're providing essential services like education and health, for example. The rest of the UK public service, including our military, law and order departments and so on, have had to make efficiencies so the country is able to live within its means; and the GLA is not immune from that. So, efficiencies can be opportunities to think about ways of doing things better; so, they have to be regarded as not just a threat but also as an opportunity, and that's the reality that all public servants have to work with.”

The political expediency criticism, meanwhile, reveals a relationship to the Home Office that, while not new, is characterised nonetheless by a greater closeness. The criticism comes from the fact that the outline of the GLAA's Director of Labour Market Enforcement is located within the same piece of legislation that makes undocumented work a criminal offence. Both

outline and offence are situated in the 2016 Immigration Act. As such, it is possible to inquire whether the Director of Labour Market Enforcement will, when investigating a case, take the legal status of a supposed victim of (severe) labour exploitation into account. If this was the case, it remains to be seen which status would be prioritised: the status of victim or of (undocumented, working) offender. In respect of the latter, the undocumented worker faces a 51-week prison sentence and the seizure of wages. As such, undocumented workers may refrain from coming forward and denouncing unscrupulous working practices by gangmasters out of fear of being prosecuted. It appears that the legislative closeness between the Director of Labour Market Enforcement and this particular clause in the Immigration Act plays into the hands of criminal gangmasters - as explained by participant NGO: Andrea:

“A big concern for us are obviously the illegal working terms [of the Immigration Act] and the fact that working undocumented without the right permit is going to be a criminal offence in this country and punishable by 51 weeks of imprisonment and seizure of wages. That’s very worrying because it now gives employers, who used to tell workers, ‘If you come forward, you’ll be put in prison’, credibility as this threat has become reality.”

Much of the literature has pointed out that labour migrants are more likely to be exploited than the indigenous workforce (Dwyer et al., 2011; Andrees et al., 2015; Anderson and Rogaly, 2005). This may be due to a number of reasons, including: i) lack of language; ii) lack of knowledge of labour rights; and iii) suspicion regarding authorities. Many of my NGO participants - Andrea, but also Jeremy, Jacob and Francis - echoed this view. Bearing in mind that labour migrants are more likely than indigenous workers to be employed in informal settings (Dwyer et al., 2011; Cillo & Perocco, 2008), the 2016 Immigration Act thus actually puts those who are already vulnerable, and who require more protection, at further risk.

- *Structural Problems*

A final issue raised by participants follows on from the above point about growing closeness with the Home Office, and concerns the structure of the GLAA. The GLAA has to report to both the Home Secretary as well as to the Secretary from the Business, Energy and Industrial Strategy Department. Participants EO: William, EO: Kimberley and HO: Dominic voiced their concerns that having two bosses raises the question about who actually is in charge of the body.

Conclusion

This chapter investigated forced labour as a result of gangmasters. Tax avoidance, while not itself a form of forced labour, has been linked to the process of money laundering. Money laundering, in turn, is known to be a method used by organised crime groups to transfer illegal money. Again, organised crime groups have been linked to both human trafficking for labour exploitation and forced labour (Europol, 2015). These links - from tax avoidance to organised criminals - may explain why the British governments have sought to focus on major instead of minor labour infringements. The only official indicator of forced labour, meanwhile, that came up in my interviews was the abusive and expensive housing experience of workers in Boston, Lincolnshire. The second part of this chapter then scrutinised two pieces of legislation that came into power after the end of SAWS: the 2015 Modern Slavery Act and the 2016 Immigration Act. While both Acts attempt to protect vulnerable workers, data gained from interviews evidence that there are significant flaws in these pieces of legislation that result in heightening workers' vulnerabilities instead of protecting these workers from forced labour. The UK Government attempted to tackle a very important issue in addressing forced labour, and it continues to do so. However, the means by how the tackling should unfold, it seems clear, are flawed.

Chapter Eight

Factors that Account for the Fostering and Maintenance of Forced Labour

The continued existence of forced labour in UK horticulture is due to a number of factors. These factors are outlined and discussed in this chapter. This chapter differs from the previous two findings chapters in exploring factors that came up in interviews that are not directly related to the now defunct Seasonal Agricultural Workers Scheme, but that may account, broadly speaking, for forced labour. This chapter discusses in its first part issues surrounding the term ‘forced labour’. It is necessary to problematise the term because forced labour, as a process, tends to be seen in criminological terms (as an act requiring prosecution) or at least as a phenomenon that is apart from everyday labour market relations. As such, whether seeing forced labour from a unilateral perspective or divorcing the process from its necessarily broader, socio-economic context, the tackling of this issue becomes challenging. The second part of the chapter, meanwhile, addresses the matter of cultural conflicts experienced by labour migrants from the former Soviet Union, something which have been highlighted by a number of participants. Cultural conflict has been linked to suspicion towards state authorities by labour migrants from this part of the world. Therefore, some participants claimed that this ‘sort’ of labour migrant may be less inclined to reach out to state authorities to report having been placed into conditions of forced labour. Arguably, this reluctance to report may, moreover, help to contribute towards such conditions being rendered durable. The third part of the chapter then highlights institutional failures within the now defunct Gangmaster Licensing Authority, the National Referral Mechanism and trade unions. These institutions are tasked to protect workers from seeing their rights violated, and in failing to do so, including because of a lack of resources, political expediency and/or the abolition of solidarity action, forced labour may continue to thrive. The fourth part demonstrates how both supranational policies and codes of conducts may sustain forced labour. The fifth and final part of this chapter explores forced labour as an embedded economic structural process. To this end, policies, codes of conducts and market relations are explored to understand how they can sustain forced labour.

1 Issues With the Term ‘Forced Labour’

For the purpose of my thesis, I have adopted the definition of forced labour set out in the 1930 Forced Labour Convention.³⁷ My choice here is a pragmatic one: this convention has been ratified by 178 countries and, especially relevantly, by the countries I am interested in - that is to say, the United Kingdom and Romania. Moreover, in 2014, the Convention was supplemented by protocols to include slavery-like practices. As such, the definition goes beyond its initial content. Despite these pragmatic reasons for my engaging with the terminology of the 1930 Convention, however, there are criticisms of this definition, notably the fact that it is not embedded in an account of market relations. In line with this lack of understanding of the way in which forced labour may also be a structural phenomenon, it has tended to be conceived exclusively and definitively as a criminal process, at the expense of investigating what could be referred to as its ‘root causes’ – that is, the bigger, sociological, picture. While, the muddling of the terms ‘modern slavery’, ‘human trafficking’ and ‘labour exploitation’ was a topic of discussion in Chapter Six,³⁸ the term ‘forced labour’, in contrast, appeared to be understood and articulated in a straightforward sense by my participants when asked how they would define it. In other words, all participants seemed to have working definitions of forced labour on which they could easily draw and/or they never problematised the term (aside from one participant in the academic expert group; see below). Participants from the Home Office, trade unions, think tanks and civil society all referred to the 1930’s Convention, while the 2013 Guiding Principles on Human Rights and Business was also sometimes mentioned. Additionally, TT: Nathan answered that his think tank

³⁷ This Convention defines forced labour in Article 2, Point (2) as: “(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character; (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.” (Forced Labour Convention, 1930).

³⁸ This discussion was mainly in connection to the academic literature, and less so one that was partaken in by interviewees. Only participant NGO: Andrea mentioned her dissatisfaction with the muddling of terms. NGO: Andrea advocates dropping the term modern slavery in favour of human trafficking, if the movement component of the current human trafficking definition is removed. At present, human trafficking is defined by the EU Directive 2011/36/EU as “the recruitment, transportation, transfer, harbouring or receipt of persons, including exchange or transfer of control over that person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”.

follows the ILO definition, while HO: Henry and HO: Ivan both said that they use the non-legal definition of forced labour set out in Article 4 of the European Convention of Human Rights (ECHR).³⁹

As mentioned above, there was one participant who, from the beginning of his interview, voiced his frustration with the term forced labour. Notably, it was AC: Norbert's view that how the phenomenon is conventionally portrayed – that is, as isolated from labour market relations – was a significant mistake:

"[...] It [the term forced labour] relies on a notion of exploitation, which is not really described or defined. The point is that there are plenty of labour abuses which apparently do not qualify as exploitation or where it is judged that the worker themselves have sufficient other choices [available] to avoid this if they want. All of these assertions seem, to me, open to question. I do not doubt that there are some very extreme cases where peoples' liberty is physically restrained. But even neither the ILO [International Labour Organisation] nor the EU [European Union] think that this is enough to define – They think that the definition of forced labour goes beyond that [physical restriction]. [...] The term forced labour is used to establish a type of labour exploitation which can be clearly separated from the rest of the labour market. I do not think that this is really true. This implies that there are separate solutions to that, which do not involve regulations of the rest of the labour market or indeed empowerment of labour unions. Personally, I doubt that. So, I suppose this is the problem that I have with it. These are all attempts to say: 'No, there are some extremes that need to be specially dealt with, ideally by controlling the borders apparently and the rest of the labour market is okay.' And I do not see much evidence to support that assertion."

(AC: Norbert; emphasis added).

AC: Norbert raises here several points that need to be considered. First, there is the focus on major labour abuses at the expense of minor labour abuses.⁴⁰ While incidents of forced labour may exist in any country of the EU, it is safe to say that minor labour infringements – such as lack of holiday pay and working overtime, for example – are more likely to occur. The profile of such labour violations remains low. Second, the definition of forced labour provided by the ILO and the EU seems to poorly capture the phenomenon in question, removing it as it does from the labour market context. A point made by Lerche (2007) is that 'forced labour' relies on an ahistorical model rather than describing the contemporary, empirical reality. Third, suggesting that

³⁹ It should be noted that in the event of the United Kingdom leaving the European Union, the UK will still remain bound by the ECHR.

⁴⁰ This point has already been elaborated in the previous data chapters. Explanations provided by participants to justify this focus ranged from the potential money to be retrieved to fund government bodies, to the UK Governments' fight to tackle organised crime.

forced labour is exclusively linked to criminals by disregarding its embedment in labour market relations means that we are prevented from actually understanding how this phenomenon comes about as a result of firm-to-firm and employer–employee relations. This is one of the gaps this thesis has sought to address. AC: Norbert also suggests that by isolating forced labour from labour market relations, institutions that, in the past, have been key in fighting for workers' rights (notably, trade unions, joined by non-governmental organisations in more recent times) are sidelined, their efforts not being recognised. Finally, AC: Norbert mentions, with an ironic tone, the closure of borders as a (misguided) means to thwart incidents of forced labour. He may, or may not, have been referring to the then Government's idea of significantly reducing immigration following the 2016 'Brexit' vote. However, ideas of reducing immigration to the UK are not new, as evidenced by prior policy announcements made by David Cameron (Helm, 2015). However, these announcements were never implemented because, as part of the European Union, the United Kingdom could not suspend free movement. Such a step would have been a violation of one of the four fundamental freedoms of EU membership. Linking forced labour to open borders adds nothing to discussions about the phenomenon and further adds to populist portrayals of foreigners who have come to the UK as being criminals. Moreover, linking incidents of forced labour to foreigners in the UK is to shift focus from labour market relations - and to render invisible the processes of exploitation that routinely occur within them.

This discussion of the term forced labour leads me to question whether it is adequately defined or embedded in the nuanced reality of the phenomenon. By 'adequately' I mean whether the term may not benefit from being more inclusive and more precise in its definition. Nonetheless, the benefit of the 1930's understanding of forced labour remains that here is a definition that exists in contrast to the broad term of labour exploitation. (It was only in 2015 that the European Agency for Fundamental Rights put forward a definition of 'severe labour exploitation' as no other definition had hitherto existed.) It remains a challenge to strike a wholly successful balance between definitions of the term that are either 'too narrow' (i.e. running the risk of excluding instances of forced labour that have not yet been considered or researched) or 'too broad' (which arguably contributes to a watering down of what we understand the term to mean, such that it may begin to lose its explanatory power).

The next section explores how issues related to migration may contribute to rendering conditions of forced labour durable. Considering that work in horticulture is typically carried out by non-domestic workers, labour migrants tend to be more prone to forced labour. This is, in

part, because of the nature of the sector (see my discussion about ‘layered vulnerability’ in Chapter One). As such, the section below addresses the problems labour migrants may face in their destination country, including potentially facing a culture clash accentuated by their Romanian origin.

2 Migration

The topic of migration came up in several interviews. For instance, NGO: Andrea, speaking in relation to the 2016 Immigration Act, mentioned that “[...] to be honest, it was a really hard one to fight because no one really wants to talk about migrant rights in this country.” Meanwhile, the agency for which NGO: Francis works advocated a progressive migration approach. By this term, he meant the following:

“At its simplest level, it is acknowledging the fact the state, like the UK and developed economies, depend on immigrants. Immigration is necessarily an imperative feature of social life. Working with this fact is the proper thing to do. It generates a list of issues that needs to be discussed, that need to be assessed. But we do not need to approach it [viewing it from the mindset] that it is posing insolvable problems, but rather [that we need] to work together to come [up] with better policies.”

As such, NGO: Francis indirectly meant that issues relating to labour migrants are not sufficiently taken into account or made public. This may be related to the tendency by the UK media to paint a negative picture of migration. Indeed, some studies suggest that fear of migration to the UK may have been a decisive factor in citizens voting ‘Leave’ in the aforementioned 2016 ‘Brexit’ referendum (Bulman, 2017; Goodwin and Milazzo, 2017).

Regarding labour migrants in the UK, NGO participants Francis, Jacob and Jeremy all also referred to the culture conflict experienced by labour migrants from Eastern Europe (hence, from the former Soviet Union) when they come to the UK. This culture conflict pertains to a lack of trust in official workers’ institutions such as trade unions - as explained by NGO: Francis:

“[...] if you were dealing with people, who were coming from the former Soviet Union, there was also a degree of suspicion. So, we [Francis’ NGO] organised sort of training sessions with trade union organisers. We got them to meet them [trade unionists] with labour migrants, who want to join trade unions, and we broker conversation between them [labour migrants and trade union representatives] to be able to make an appeal for people to join the unions.”

Trade unions and NGOs have been trying to educate labour migrants about their rights in the UK by providing leaflets (something discussed by T: Ruby and T: Stephen), alongside brokering drop-in sessions (as suggested by NGO: Francis). The next section touches upon a topic that has already been discussed to some extent: institutional failure. Chapter Six, which dealt with possible incidents of forced labour after SAWS, has also already discussed shortcomings of the newly reformed GLAA. The section below now specifically highlights shortcomings that have been associated with its predecessor, the GLA. Other institutional failures that are dealt with here too relate to the National Referral Mechanism by the Home Office and the problems experienced by trade unions in reaching out to non-standard workers.

3 Institutional Failures

As a factor in rendering conditions of forced labour durable, institutional failure is not to be underestimated. Institutions that have been mentioned by interviewees as failing in their duty to protect workers cover both government bodies (such as the GLA/ GLAA and the Home Office) and institutions representing workers' rights (e.g. trade unions). As referred to in Chapter Seven, the reform of the GLA, resulting in the GLAA, was welcomed by a wide range of participants, including Home Office, NGO and think tank staff members, alongside labour providers. However, the GLAA actually inherited some problems that had previously been associated with the GLA, a body to which we will now turn our attention.

3.1 The Gangmaster Licensing Authority

In order to tackle labour exploitation, the GLA was established in 2005. The 2004 Gangmaster Licensing Act set out the GLA's task of operating a licensing scheme for gangmasters within the following sectors: horticulture, agriculture, shellfishing, and food processing. The aim behind the establishment of the GLA was to better monitor sectors where incidents of (severe) labour exploitation are well known. The body was tasked with inspecting gangmasters, which included gathering information that may be shared with the police and the Director of Public Prosecutions in order to prosecute any criminal infringements. If a gangmaster was found to have operated criminally, the GLA would respond by removing their license and potentially seeking to prosecute them. Nonetheless, the GLA's main emphasis was on gathering information about incidents of forced labour specifically. Innovative approaches by the GLA to monitoring and enforcement in this context included: i) *extra-territoriality*: labour market intermediaries (LMIs) based in

country X wishing to supply workers from this same country to low-wage sectors in the UK economy had to apply for a license from the GLA; ii) *an intelligence-led approach towards monitoring and enforcement*: specially trained officers collaborated with relevant UK regulatory bodies; on the basis of this, agencies with intelligence-led approaches were prioritised for inspection; and iii) *pre- and ongoing screening*: in order for a LMI to be granted the aforementioned license, they must have first fulfilled eight requirements which had to be complied with at any one time (these eight requirements constituting the GLA Code of Practice; if a license holder did not comply with any of the eight requirements, the GLA used this lack of compliance as evidence that they were breaking the Code and their license could be revoked).

Gangmasters had to adhere to and continuously implement these eight standards in order for their license not to be revoked. To elaborate, the requirements were as follows: a) the license holder has to act in a ‘proper and fit’ manner; b) it is mandatory for the license holder to comply with all relevant pay and tax rules; c) the license holder may not mistreat the workforce, either physically or mentally; d) in the event of the license holder providing accommodation to their workers, this accommodation has to be safe; e) workers must be able to take the rest periods and breaks and also annual leave to which they are legally entitled; f) the license holder has to cooperate with the labour user so that day-to-day work responsibilities have been agreed and assigned, that an adequate health and safety risk assessment has been carried out before the beginning of work, and that risk of injury is properly managed, controlled and, if possible, prevented; g) the vehicles and drivers used to transport the workforce have to be roadworthy, legal and safe; and h) licensed LMIs are prohibited from charging fees to potential workers in exchange for their services.

Overall, participants saw the GLA model of licensing gangmasters as important in tackling labour exploitation in the sectors covered by this body; the quotes below provide examples in this vein:

“[...] The GLA is doing a good job in terms of developing the expertise and bringing gangmasters to justice [...] so there has been some progress”
(NGO: Andrea).

“[...] We think they are a very good organisation [...] so, although it has not always been a smooth journey, on the whole the activities of the GLA are supported by the major supermarkets because it protects them [the supermarkets] from risk and being undercut by unscrupulous operators”
(TT: Nathan).

“[...] We think the GLA has done a very good job in terms of providing enough resources for enforcement. So that is really important because what we want is a situation with compliant agencies and labour providers who are allowed to succeed and who are not undercut by unscrupulous businesses”

(EO: Kimberley).

These views are echoed in reports by international organisations such as the European Agency of Fundamental Rights (2015), the International Labour Organisation (see Andrees et al., 2015) and Eurofound (2016), where the GLA is repeatedly cited as a best practice model for regulating LMIs in sectors that experience severe labour exploitation. However, this broadly positive perspective on the GLA's efficiency was complexified by a number of factors. Participants supported, to varying degrees, the reform of the GLA in the terms of the 2016 Immigration Act (whereby it has become the GLAA) – especially the possibility of extending licensing remits. Meanwhile, several concerns nonetheless persisted about the functioning of this new institution and the undocumented working offenses outlined in the Act. Moreover, despite the very existence of the GLA/ GLAA signaling acknowledgement by the UK Government of the problem of labour exploitation, participants voiced concern about the extent of political commitment to addressing this problem - such criticism touching on a number of issues. Each of these issues will be now elaborated separately.

- *Workers' Rights*

First, participants mentioned a general lack of political will in tackling labour exploitation. This lack of political will, it was argued by the two trade unionists participants (T: Stephen and T: Ruby), ran like a thread through the Labour and subsequent Coalition Governments. In 2010, the Labour Government (under Gordon Brown, who succeeded Tony Blair as party leader and Prime Minister for the last three of Labour's thirteen years in power) was replaced by a coalition consisting of Liberal Democrats and Tories. Under the Coalition Government, calls for expanding the remits of the GLA by construction unions were resisted, while the GLA remit actually decreased with the forestry sector falling away. Another significant development included the losing of trade unionists' place on the GLA Board (something to which the two aforementioned interviewees could testify – see, for example, T: Stephen's account below):

“[...] with the Coalition Government coming in, we [trade unionists] lost our position as Board members and we have not regained any kind of similar position in

the new Gangmasters and Labour Abuse Authority [...] so we are now part of what is called the Worker Liaison Group [...] that's obviously more of a consultative body whereas the Board was kind of decision making and steering the work of the GLA and could flag up problems in a kind of authoritative way" (T: Stephen).

Losing their spot on the GLA Board may at first glance not be problematic given that trade unions were offered a place on the Worker Liaison Group. Nonetheless, whether an institution tasked with tackling (severe) labour exploitation and protecting workers from such processes does indeed act in workers' best interests is questionable when it sidelines those tasked to speak up for them - trade unions. As such, the GLA may have been driven by political expediency rather than by concern for workers. The extent to which this observation is correct remains to be seen, but nonetheless, it is one that, for the moment at least, can be made.

- *What Counts as Exploitation?*

Second, trade unionists, gangmasters and a staff member of a charitable organisation mentioned the GLA's bias towards prosecuting gangmasters involved in gross abuses of labour constituting organised crime, in contrast to gangmasters committing smaller infringements. Forced labour is, according to the International Labour Organisation, a highly lucrative phenomenon (ILO, 2014). This bias leads - according to NGO: Andrea - to fewer prosecutions of criminal gangmasters more generally. This statement is supported by the fact that, in 2014, prosecutions by the GLA fell by 84% (Travis, 2014). This sharp decrease may be explained by a low number of labour inspectors and a move from tackling all sorts of labour abuses and infringements to tackling organised crime specifically. This move turned out to be very upsetting for two of my gangmaster participants. The first gangmaster, GM: Jonathan, regularly saw his workers leaving to instead work for another gangmaster who paid in cash (thereby avoiding taxes), while the second gangmaster, GM: Rob, complained about being undercut by several gangmasters operating under one license.

The tendency by the GLA to prosecute gangmasters involved in major labour infringements in contrast to smaller ones may also be explained by the following two factors: financial constraints and a lack of staff. These two reasons were put forward by NGO staff members, as well as one gangmaster and a Home Office official. The Home Office official, HO: Timothy, put the financial constraints experienced by the GLA in the broader context of austerity cuts enacted by UK governments since 2010. During the Coalition Government's

term of office, public spending decreased by 3.0% in real terms (Institute for Fiscal Studies, 2015). In the case of the GLA specifically, Jowit (2012) claims that, from 2015 to 2016, this body will see its budget reduced by 20%. As such, financial constraints may in part be explained by the then Government's decision to reduce public spending.

"Since the financial disturbance in 2008, all UK public services have had to make efficiencies, whether it be the police – Well, certain budgets have been ringfenced where we're providing essential services like education and health, for example. The rest of the UK public service, including our military, law and order departments and so on, have had to make efficiencies so the country is able to live within its means, and the GLA is not immune from that. So efficiencies can be opportunities to think about ways of doing things better; so they have to be regarded as not just a threat but also as an opportunity, and that's the reality that all public servants have to work with."

(HO: Timothy).

Another explanation for the GLA's dearth in funding was given by NGO: Jacob:

"The biggest problem is that they are not properly funded. [...] [P]art of the problem often with the law in this country is that the money generated from crime belongs to the UK Government, of which one portion of the money will go back to the investigating authority [...] [T]he trouble within this area [agriculture, horticulture, shellfish gathering and food processing] is that it is fairly difficult to recover the money that has been made. [...] So where they are having lots of success is with the criminal prosecutions, where I think money will be coming back. They are not able to generate income by themselves."

(NGO: Jacob).

This explanation also indirectly links with the aforementioned bias towards prosecuting gangmasters involved in organised crime rather than gangmasters committing labour infringements that are considered to be relatively minimal. Also as mentioned above, organised crime in the sense of forced labour is hugely lucrative, generating over USD 150 billion per year according to the ILO (2014). As such, targeting organised crime gangs, alongside aiming for the prosecution of criminals, is potentially a means for the GLA to sustain itself financially.

- *Narrow Remit*

The third issue raised by participants centered on the GLA's narrow remits. The expansion of remits under the GLAA has been welcomed by most participants. However, as one Home

Office official made clear, the GLAA enjoys the power to extend its remits, but may also decide to decrease them – and, indeed, the latter is more likely to be the case if financial constraints continue to persist. Also, with the option of expanding or reducing remits, there is a risk of focusing on sectors where organised crime has been documented, while other sectors where labour exploitation also occurs - but at a different scale of intensity - are not covered.

- *Intelligence Sharing*

The fourth issue raised by participants, regarding intelligence sharing, has to be scrutinised. First, intelligence *gathering* of (severe) labour exploitation incidents is problematic at best. This may be due to a variety of reasons, such as victims being afraid of coming forward and/or not even self-identifying as being a victim. And, as Home Office official HO: Henry correctly noted, this problem is not unique to the UK. However, the poor *sharing* of intelligence among actors is also at best problematic and renders difficult an understanding of how gang-masters exploit labour (migrants).

3.2 *Home Office*

Another government body that has been highlighted as not adequately protecting the people it is tasked to protect is the Home Office, specifically in relation to its National Referral Mechanism (NRM), which, alongside the 2015 Modern Slavery Act and the 2016 Immigration Act, has come under severe criticism. The Organisation for Security and Cooperation (OSCE) in Europe defines the NRM as “[...] a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society” (OSCE, 2004, p. 15). The NRM came into force in the UK as of February 1st 2008. T: Stephen paints a rather negative picture of the NRM and its first responders⁴¹:

“So as part of the National Referral Mechanism, you’re meant to receive legal advice. But normally service providers [...] will refer you to [the] immigration [office] because that is victims’ first kind of concern: ‘Am I going to be removed

⁴¹ First responders are “agencies and organisations with a responsibility to identify and interview a potential adult or child victim of modern slavery” (College of Policing, 2017, p. 1). The National Crime Agency lists as first responders agencies and organisations from the public sector such as the UK Border Force, police forces, social services, and the Immigration and Visa branches of the Home Office, alongside certain non-governmental organisations.

from this country now?’ [This] is a very valid concern. [...] This was not a concern for European victims.⁴² Very often they did not get legal advice and there is also a dearth of firms that are able to provide the service because getting access to legal [advice], although you’re meant to have access to legal aid as a trafficking victim, actually getting access for compensation cases is very, very difficult. So, there are very few firms that can actually do that work. In many regions of the UK, there’s just no firms that are doing that work. So, it’s very - The likelihood that a victim will actually get that type of advice has been very low.”

In the same vein, NGO: Andrea states that often victims that *qualify* to be referred to the NRM often are not aware of the existence of this mechanism: “We [her NGO] have been trying to do work on that and trying to deliver that kind of information and raise awareness with service providers that this is an option and people should know about it.” As such, it is not only potential victims who are unaware of the services provided by the NRM, but also it seems as if service providers do not necessarily know what victims of labour exploitation look like. Human trafficking is still very much linked to sexual exploitation at the expense of labour exploitation. (This latter point is discussed in relation to the GLAA in Chapter Seven.)

Returning to trade unionist Stephen, we are offered another glimpse into the problematics of the NRM – its closeness to the Home Office:

“It [the NRM] has been much criticised as there’s a group of NGOs, including anti-slavery international, who were formed to monitor this whole area. In their first report, they [the NGOs] picked out things like, ‘Far more EU people who claim they were trafficked were found to be trafficked than non-EU’, because if they’ve been trafficked then it opens up the possibility that they could remain. So, if they’re non-EU citizens [and it turns out they] have not been trafficked [they are] out. Obviously, they [non-EU citizens] could go home even if they’ve been trafficked but it should be a matter of choice. There are broad issues like that around, well, ‘Who actually are these first responders?’ Where again, if you’ve got the immigration service in a key role, [...] they are under political pressure to get as many people out of the country as they can [...]. There’s been enormous underfunding and that is not going to change in supporting the whole of this mechanism, including providing choices for people who have found to be trafficked. So, historically, I don’t think this is going to change. So, when these issues about really giving real choices to trafficked people are raised, when people were going through the response from the Government, [they] have a regard for finances but also of policies of Government. Well, the other policies of Government that sprung to my mind was net migration; namely, [the] more people who are trafficked from

⁴² By ‘European victims’ T: Stephen meant victims that are also citizens of the European Union. Considering that the UK will remain a member of the EU until at least 29 March 2019, EU citizens cannot be deported due to the free movement provision that is one of the four fundamental freedoms in the EU.

outside the EU, the more possibility that you're going to add to these figures [...]."

As such, first responders may be under pressure from the Government to implement political expediency at the expense of victims' needs.

3.3 Legal Aid

Legal aid is a financial assistance provided by government to "help meet the costs of legal advice, family mediation and representation in a court or tribunal" (UK Government, 2017, p. 1). In April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 became law in England and Wales. Howard (2014) reported that since the aforementioned Act becoming law, civil legal aid had decreased by more than half compared to the year before the passing of the latest Act. In some categories of law, state funding had been halted. For the purpose of my thesis, the categories that are most important include: i) employment cases that do not contradict the 2010 Equality Act or that are not linked to human trafficking; and ii) immigration cases that are different from detention and asylum issues.

A point mentioned by NGO: Andrea that also came up in the interview with CA: Shaun was legal aid. He explained that:

"It's really frustrating for us and really frustrating for them [the workers]. But, for instance, if you have an employer (and a lot of people are working for agencies and gangmasters, etc.) - You have an employer who withholds your holiday pay, for instance; let's say that amounts to £200 in that week. Your redress according to the system that we have in this country is you can take it to the workforce tribunal. Guess how much that costs you? Nearly £200. If you put your head above the parapet and complain about it, you never get any work again. Now that's wrong but actually proving stuff and actually doing something different is very difficult because that's the process. Now, that's not to say that the process is right; and we feed all this information up centrally to our main national body and they use it to try and amend laws and stuff at [the] national level. But that's the redress you have in this country and unfortunately it doesn't work for those people in this part of the country which is unfortunate."

When asked how the situation could be ameliorated, he explained as follows:

"[...] I think it was 2014 workforce tribunals [that] were free. Then there was a charge introduced and, interestingly, I heard a government minister, I think it was about 18 months ago, 6 months, after the charge had been introduced, said that 'The number of workforce tribunals being asked for has gone down dramatically,

therefore working practices have improved.' It's like, 'No, it's just that it now costs £200.' If someone withholds £200 of holiday pay and it costs £200, you're not going to do anything; it's not worth it. If you happen to lose, guess what? Now, to a certain extent, they introduced a charge to stop frivolous workforce tribunal complaints, but I think it's probably gone too far the other way. So how could you do it? To a certain extent you'd then be into what's called means-testing; like, 'Can you afford to take the tribunal case?''

As such, victims of forced labour may still receive legal aid. However, whether the amount of legal aid offered is sufficient for victims to go forward with their claims remains to be seen. And whether victims of forced labour can go forward with their claims in the light of the offered legal aid amount is an issue that needs to be looked at by the Government precisely because it is not doing so at present.

3.4 Trade Unions

In the United Kingdom, trade unions have been witnessing decreasing numbers of members since the 1970s (Crouch, 2004). This trend is unfortunate given that trade unions precisely take their power from their members (Crouch, 2004). The increasingly weak position of trade unions in the UK has been the topic of much discussion. This trend has also been noted across Europe (Crouch, 2004). While trade unions have overcome the past challenge of recruiting non-domestic workers, problems related to the inclusion of non-standard workers, meaning temporary and seasonal workers, came up in my interviews. AC: Alexandra and T: Gloria both shared the opinion that trade unions are stuck in the past. Whether the 'stuck in the past' argument is adequate, however, is debatable. As discussed in Chapter One: Literature Review, trade unions have found it challenging to embrace migrant workers as members for a number of reasons, including: i) the quandary over whether or not trade unions should support employers' efforts to recruit workers from abroad; ii) suspicion on labour migrants' part regarding trade unions; and iii) the embracement of non-standard employment forms, such as temporary labour. In the case of seasonal labour, a similar argument may be made: perhaps trade unions are reluctant to embrace this sort of employment arrangement as this may lead to a 'normalisation' of such work. By the term 'normalisation' is meant a rendering a process regular. In agreeing to represent workers in such employment arrangements, trade unions may fear contributing to a casualisation of employment for the other workers they represent. While the just provided explanation may apply to some extent to account for the trade unions' reasoning, T: Stephen, T: Ruby and NGO: Francis each stated that trade unions do try to reach out to seasonal workers, via either workshops or leaflets that are available

in several languages. Moreover, seasonal workers may also be circular labour migrants.⁴³ This means that workers may have a greater exposure to labour market rules than those seasonal workers that only carry out one posting. Hence, the claim by AC: Alexandra and T: Gloria is put into perspective.

AC: Norbert provided two further explanations as to why trade unions may fail to protect workers that are at risk of forced labour: i) a lack of resources; and ii) the illegality of solidarity action.⁴⁴ As the introduction of this section explained, trade union membership in the UK has decreased over the years.⁴⁵ Bearing in mind that trade unions are sustained by membership subscription, a decrease in members goes hand in hand with fewer financial resources. Few(er) financial resources mean that trade unions, despite being willing to make attempts to reach out to seasonal workers, cannot do so. The second explanation, the banning of solidarity action, goes back to the Thatcher Government that lasted from 1979 to 1990. AC: Norbert explains that solidarity action was a means for workers in more powerful positions to strike and ask for an improvement in employment conditions for workers in less powerful positions. Applying this mechanism to the horticultural supply chain would mean that lorry drivers, who transport packed vegetables and fruits from the pack houses to the supermarkets, could have solidarised with seasonal workers in horticulture. AC: Norbert states that today the only way a trade union can take industrial action, apart from having had a secret voting ballot with their members, is to have an industrial dispute with a specific employer against who they wish to take action. As such, it has become unlawful for trade unionists to call on other workers working for other employers in the supply chain. The outlawing of solidarity action also brought with it a trend towards individualisation

⁴³ Circular labour migration is defined as “a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries” (European Commission, 2007). This means, in the case of Romanian nationals working in UK horticulture, that Romanian nationals repeatedly return to the UK to work in horticulture after their previous employment has come to an end.

⁴⁴ The European Foundation for the Improvement of Living and Working Conditions defines solidarity action as “the right [...] the employees’ associations and workers have [...] to support and co-strike with another group of workers who are taking industrial action, even though their own organisation is not directly involved in the dispute” (Börjesson and Gustafsson, 2016, p. 1).

⁴⁵ In June 2017, it was reported that union membership in the UK had reached an all-time low (Topping, 2017). The UK Department for Business, Energy and Industrial Strategy announced that trade union membership in 2016 had fallen by 4.2% when compared to numbers from the previous year. The decrease of 4.2% equals to a loss of 275,000 trade union members. This decline is considered to be the sharpest annual decrease since trade union membership statistics had been recorded by the aforementioned department. Interestingly, the decrease in union membership was more pronounced in the public sector, where, as of June 2017, 3.6 million workers were unionised (a decrease of 209,000 compared to the previous year); meanwhile, in the private sector, the decrease was less sharp in falling to 2.6 million workers (a decrease of 66,000). Union leaders blamed, for the overall decrease and divide between private sector and public sphere, the spreading of employment opportunities in the so-called gig economy that has been paralleled by a decrease in qualitatively speaking more secure and stable job opportunities in the public sphere (Topping, 2017). The all-time height of union membership was in 1979 when 13.2 million workers were unionised.

of employee groups within trade unions, arising from a fear by such groups of being made redundant if they were to get involved in other groups' disputes. AC: Norbert explained as follows:

“The most effectiveness of trade unions used to be their members' strength. They could still do it to see whether the employer goes to court against them and sometimes they do. But they are usually rather reluctant to do this, because it is a high-risk strategy. It is certainly for a union to encourage its members to support workers working for another employer without running foul of the law. Any workers engaged in taking part in industrial action which was in solidarity with another group of workers would be risking dismissal, and they would not have any legal protection.”

AC: Norbert claims that, in order not to jeopardise workers' jobs by them supporting the cause of other employees' groups, trade unions have been looking at more corporate campaigning in involving employers. How do these two points provided by AC: Norbert, however, relate to the trade unions' failure to tackle forced labour in horticulture? First, seasonal workers may be less likely to be unionised because of the short and isolated nature of their employment. Hence, trade unions face significant challenges in reaching out to the kind of workers that are exactly considered to be prone to forced labour, whereby tackling this process becomes challenging. Second, by suspending the solidarity principle, no other unionised workers' group is in a position to support the improvement of working conditions of workers located in the lower tier of supply chains, where, again, research has demonstrated that forced labour is likely to occur. As such, seasonal workers, in terms of any efforts they might make to claim better working conditions, are left without the support of other workers' groups that could have greater leverage. Because of these two conditions, forced labour may continue to thrive.

The next section moves away from looking at institutional failings in terms of scrutinising actors, to instead looking at how policies at both a supranational level (those that have to be implemented unless EU member states ask for an opt out) and at a voluntary level (i.e. codes of conduct) contribute to rendering forced labour durable. While the role of actors is important in understanding how institutions may fail on different grounds to fight this human rights violation (e.g. political expediency and/ or lack of funding), policies also play a key role in fostering the perseverance of this process, by either driving down wages, leading to a precarisation of work, and by being implemented on a voluntary basis, whereby their efficacy may be hollowed out by lacking teeth. Considering that labour market relations are also governed by policies, it is key to understand how these may advance the existence of forced labour.

4 Policies

4.1 Supranational Policies and Codes of Conduct

By supranational policies is understood policies that, as referred to above, have been decided on at the EU level. EU member states have to implement EU law, while the implementation of directives is at member states' discretion. AC: Norbert linked the race to the bottom in wages, including in the UK, to EU law, notably the Lisbon Treaty:

“Low pay is institutionalised across Europe, partially as a result of the Lisbon Treaty, but also because of the general spread of deregulation and neo-liberal economic policy. The Lisbon Treaty enshrined the notion of ‘competitiveness’ being [key] for labour market policy, which is just another way to say driving down effective wages and reducing things like Hartz IV in Germany [...], these are just part of the process. I mean, in the UK we had successive governments who believed that you need to deregulate the labour market to increase employment and competitiveness, by which they mean drive down wages and increase profits. But this is not what they ever say. I am not sure to what extent forced labour, if that is a separate phenomenon, is institutionalised, but I think that deregulation of the labour markets and attacks on labour unions, on their capacity to organise, certainly leave people in a much weaker position in the labour market. And that allows that process of super-exploitation, driving wages down to very close to the cost of reproduction. [...] But of course, this is much easier, if much of the cost of reproduction is carried out in a lower wage economy than the work [that] is being done.”

As such, AC: Norbert felt that neo-liberal policies by the European Union had led, to some extent, to a fall in wage-levels. This view has been echoed by various scholars. There also have been self-regulating initiatives in the business world to tackle forced labour. While these initiatives should be welcomed as they do represent the awareness and willingness of businesses to tackle an important issue, problems with such codes of conduct remain. To this end, the section below explores how these codes may, in fact, be conducive to forced labour. Codes of conducts are voluntary in nature; as such, whether businesses implement them is at their discretion. Since the production of goods and services today involve several actors down the supply chain, it is a-not-to-be-underestimated challenge to keep track of the implementation of codes of conducts as end user firms may not even be aware of the different actors involved in their supply chain. Moreover, as discussed in Chapter One: Literature Review, the nature of employment contracts between end user and sub-contractor firms (relational versus transactional contracting) may indicate whether subcontractors are more or less likely to adhere to codes of conducts. In relational contracting,

subcontractors have long-term working contracts with end users, whereby there is no need to outcompete other firms. In such scenarios, subcontracting firms are more likely to adhere to codes of conducts as profits are not made in tight time windows and there is a certain level of security. Meanwhile, under transactional contracting arrangements, employment contracts between end users and subcontractors are defined by the fact that subcontractors are under pressure to produce the required goods and services within short time frames. Implementing codes of conducts in such short time frames is highly unlikely to occur. The next section provides the views of AC: Norbert and EO: William on codes of conduct.

AC: Norbert and EO: William both blamed codes of conduct for the perseverance of forced labour. While EO: William pointed out the sheer variety of codes of conducts that water down serious attempts to tackle forced labour because greater attention may be paid to less important issues, AC: Norbert highlighted the risk of codes of conducts turning law into something voluntary, alongside alluding to the low probability of codes of conducts being implemented in transactional contracts (as discussed in Chapter One). AC: Norbert explained that:

“There would be no incentive to implement codes of conduct even if you thought that the supermarket was serious about them. Which frankly most people know. They go through the motions but if [you have] got short-term contracts it is unlikely you are going to put a lot of resources into implementing codes which may not be applied 9 months down the road. It interests me that some of the codes of conduct seem to obey the law. This is incredible: why does this have to be in a code of conduct? The reason it does [is] because in Britain there is no external enforcement of these rights. If the workers do not attempt to enforce them, no one is going to do it; except the GLA, of course, do, while strictly speaking they are not supposed to. They are here to issue and suspend licenses.”

From AC: Norbert’s quote one may also understand that codes of conducts may actually undermine law. If this statement was correct, then law no longer would bear any significance, whereby workers are inhibited from claiming their rights. As such, victims of forced labour may be further deterred from coming forward, as the process of claiming their rights would be very difficult. The previous two sections explored how institutional failings and policies may contribute to the existence of forced labour. The last section of this chapter aims at redressing a gap that often has been noted about forced labour: its distance, as a concept, from notions of market relations. This conceptual detachment from market relations can to a certain extent be traced back to institutional failings and policies that, against their efforts, do not strengthen workers’ positions but actually render this position more precarious. In order to tackle forced labour, then, understanding market relations is key.

5 Market Relations

5.1 Nature of Contracts

Interview data showed, to participants' knowledge and understanding, that there is no hard-and-fast rule about the length of contracts between supermarkets and farmers/ growers. AC: Norbert, who was present at a number of GLA Board meetings almost a decade ago, confirmed that in the horticultural supply chain a variety of contracts are used between farmers/ growers and supermarkets. This variety is not only subject to customers' preferences, but also to the wider economic situation. This means that in a time of recession, when people are likely to spend less money, contracts tend to be different when compared to times of economic prosperity. During prosperous times, people may be more likely to spend greater amount of money on food, be it in terms of quantity and/ or quality, while in times of recession, they may prefer to spend less. AC Norbert explained as follows:

"[...] There were all sorts of different practices. Some supermarkets look for contracts for several years but obviously, when times are tight, they are able to have much reduced contracts. So, they are always balancing continuity of supply, which of course is very important to them. But again their ability to vary the contract at very short notice and when there is a lot of supply on the market, that is what they are trying to get away with; and when they are competing with other supermarkets to corner a particular production, they will sign a longer contract. It seems to be a matter of the market conditions of any given time."

On the flip side, NGO: Francis claimed that the use of short-term contracts in horticulture would not be the norm. However, the length of contracts does not say anything about whether or not farmers and growers are treated in a fair manner. By 'fair' is meant standards that allow them to make profits and not to sell their produce just at the cost of production - or even lower. NGO: Francis hinted at the strict conditions farmers/ growers face from supermarkets:

"The aim [by supermarkets] is to get a legally binding agreement, a predictable quantity and price, and quality as well. The contracts are complicated. Supermarkets have their leverage to change subcontractors by clauses in the contract when they feel someone has not been provided the goods and the quality they anticipated. They would go elsewhere."

As such, the horticultural supply chain does indeed qualify as a captive value chain - as discussed in Chapter One (see the outline of the different value chain types provided by Gereffi et al. (1995)) and Chapter Five (about the organisation of production in horticulture). The quote by

NGO: Francis confirms an understanding that supermarkets control very closely the supply chain and set complex and strict quality criteria for produce, and is a claim that has been echoed by other interviewees, including EO: William and EO: Caleb. The cost for farmers and growers in swapping end users - in this case, supermarkets - is difficult and may represent a financial loss; meanwhile, for supermarkets, the changing of providers is done more easily as this possibility is enshrined in clauses. The harsh reality of what it means to stay in business for farmers and growers is explored below.

5.2 Production Costs and Responsibilities

EO: William depicted the situation in which farmers and growers have found themselves, whereby surviving as a business is beyond challenging:

“We [farmers, growers and supermarkets] got into a situation where they all try to outcompete each other. And the way they do it is by offering cheaper and cheaper prices. So, we got to a situation where most of them [supermarkets] are selling produce for round about the cost of production or lower than the cost of production. That is putting a huge amount of pressure on the grower [and farmer] base. Now there is a lot of people [who] say: ‘They [farmers and growers] do not need to sell stuff so cheaply.’ And it is getting ridiculously cheap. Consumers get a fantastic deal. The consumers would not know whether a kilo of potatoes would be 29, 39 or 49 pence. But it makes a massive difference to the growers [and farmers].”

EO: William also explained the driving down of prices in terms of consumers’ lack of oversight. At the same time, he blames a lack of political will to better regulate this race to the bottom. EO: William’s claim echoes HO: Henry’s statement about the UK Government not wanting to impose too many regulations on multinational corporations when drafting the Modern Slavery Act, and the Transparency in Supply Chains clause in particular (see Chapter 7 when HO: Henry was asked why the transparency clause exclusively applies to businesses with a turnover of or above GBP 36 million). Coming back to EO: William now, he explains the lack political will in the following terms:

“There is a lack of political will, but if you have the choice of imposing additional costs onto your voters/ electorate, would you do it? Probably not. Every week you are looking at your inflation figures; the only thing that is keeping that in check is the cost of food. So, anything I do to the cost of food will come back and haunt me with increased inflation. Everything is so interrelated now. I just cannot see them [government officials] doing very much.”

Bearing in mind that, since the ‘Brexit’ vote, inflation has been rising in the UK, chances of putting up prices of food at levels that would enable growers and farmers to earn more than the cost of production is unrealistic. Indeed, if profits in horticulture are as low as they are described as being by the various aforementioned participants (EO: William, AC: Norbert and NGO: Francis), farmers and growers are likely to hand down pressures and risks along the supply chain to gangmasters in order to stay in business. Hiring labour from licensed gangmasters will be more cost intensive than hiring labour from unlicensed gangmasters. Therefore, growers and farmers may resort to labour from unlicensed gangmasters to keep costs at bay.

Conclusion

This chapter firstly reviewed participants’ perceptions of forced labour. Issues only came up with one interviewee, AC: Norbert, who lengthily criticised the term on grounds of it placing exclusive focus on major labour abuses, of it divorcing such labour abuses from labour market relations, and of it overemphasising the prevalence of prosecution. The second part of the chapter then briefly addressed pitfalls of labour migration. This was because several participants mentioned that labour migrants from the former Soviet Union tend to be rather suspicious of authorities such as trade unions. This suspicion is problematic as trade unions are the main authority able to fight for workers’ rights. The third part of the chapter outlined institutional failures, by reviewing problems associated with the now defunct Gangmaster Licensing Authority (GLA), the National Referral Mechanism (NRM) and trade unions. Problems related to the GLA included a lack of political will, the question of what counts as labour exploitation, a too-narrow remit, and issues with intelligence sharing. Issues mentioned in relation to the NRM, meanwhile, were its closeness to the Home Office and its role as a possible means to deport persons. Finally, trade unions, it was argued, lack members and, by consequence, funding, while the suspension of solidarity action means that workers in a precarious position cannot count on the support of other workers to assist them in fighting for better employment conditions. The fourth part, concerning policies, dealt with the consequences of the Lisbon Treaty for wage levels across Europe, while a discussion on codes of conduct explained how the latter may be hollowing out law. Finally, the fifth part of the chapter explained how the nature of contracts between supermarkets and farmers/growers, as well as low production costs, may serve as a means to place workers into conditions of forced labour. In sum, then, this chapter has provided a multi-dimensional view on how forced labour in labour supply chains persists. This multi-dimensional view demonstrates that forced labour is not a unilateral issue, but that several factors come together that put workers at risk of

being extremely exploited. In order to tackle the process in question, these different factors - amounting to: what definition to adopt; labour migrants' culture; institutional shortcomings by the Gangmaster Licensing Authority, the Home Office / National Referral Mechanism and trade unions; policies that are tasked to increase competition among firms; and sustainability in supply chains and the nature of market relations - have to be assessed and scrutinised. Approaching forced labour from a criminological perspective by strengthening legal frameworks (ala the passing of the 2015 Modern Slavery Act and the 2016 Immigration Act) is one way forward, but if done so exclusively, this fails to capture the process in its full form and so fails to adequately tackle it.

Concluding Remarks

Some Conclusions about Drivers of Forced Labour in Lincolnshire Horticulture

In recent years, studies about forced labour in supply chains have pointed to the decisive role played by labour market intermediaries (LMIs) in exploiting workers (2013; UNODC, 2015; EUFRA, 2015). For relevant discussions, see Andrees et al., 2015; Kim and Frenkel, 2004; UNODC, 2015). The exploitation of workers by LMIs may start with the actual recruitment process (see UNODC, 2015; Andrees et al., 2015). Other routes into forced labour as a result of employment by LMIs include deception and abusive living conditions. While it is important to fully understand these different routes and to criminalise them, it is paramount to also acknowledge how institutional failures may contribute to their existence. Indeed, in this thesis, I have sought to add a greater nuance to understandings of forced labour in labour supply chains by highlighting this little considered aspect: more specifically, the failings of institutions that are tasked with tackling this process. As a starting point, it is key to recognise the efforts by governments and their related agencies in attempting to protect workers from the adverse outcomes of forced labour. This basic consideration allows us to review the key agencies and legislation in the field as it contextualises how forced labour in labour supply chains is viewed by governments. The economic and social dynamics of value chains and labour markets are likely to influence the demand for labour to produce goods and services within specific time windows and according to strict quality criteria. As such, forced labour should not just be about the analysis of a criminal process, but, alongside this, the analysis of everyday labour market dynamics, government regulations, firm-to-firm relations and non-firm actors that aim at protecting workers from being severely exploited.

In this thesis, I have considered the case of Romanian nationals that have, via LMIs, been placed within a role in Lincolnshire horticulture between 2008 and 2015. From 2008 until 2013, Romanian nationals could exclusively find employment in horticulture in the United Kingdom via LMIs (in the framework of the now defunct Seasonal Agricultural Workers Scheme). Since the phasing out of the transitional agreement between the United Kingdom (UK) and Romania in 2014, Romanian nationals are free to enter the UK labour market without any restrictions. My

fieldwork suggests that during 2008 to 2013 there were no cases of Romanian nationals that were exploited by LMIs in Lincolnshire, while from 2014 until 2015, one case made the headlines. The lack of recorded cases does not, however, indicate that such incidents did not occur. Institutional failures hint at the existence of forced labour in Lincolnshire horticulture. Important factors appear to include: a lack of labour inspectors and an overemphasis on organised crime. These elements should be understood both at regional and national levels. The rest of this chapter is comprised of four sections. The first section sketches the phenomenon of forced labour in UK horticulture at the national level, to remember the context in which my research took place. The section that follows, meanwhile, explores the phenomenon at a more regional level, in respect of my case study of Lincolnshire. The following section provides a summary of the different drivers of forced labour in Lincolnshire horticulture. The next two sections are essentially concerned with the contributions offered by the empirical research that has served as the central element of the thesis: the first of these sections is concerned with the more practical implications of the study, by which I outline policy recommendations based on my main findings; the second section, in contrast, considers where the research sits in relation to the academic literature specifically, and particularly in terms of theoretical understandings of forced labour limitations of the thesis, while at the same time exploring some of the possible avenues that have been opened up for future research.

1 Forced Labour in UK Horticulture

My thesis set out to answer three research questions. These were: i) what is the role of LMIs in global production?; ii) what are drivers of forced labour in Lincolnshire horticulture?; and iii) how do institutional failures contribute in rendering forced labour durable? Reports published by Joseph Rowntree Foundation (Lalani and Metcalf, 2012; Scott et al., 2012), the Trade Union Congress (Anderson and Rogaly, 2005) and Focus on Labour Exploitation (Robinson, 2016, 2015; FLEX, 2017; 2015), in addition to academic material (notably work by Barrientos 2011, 2013; Phillips, 2013; Lebaron, 2011; and Lister, 2015), plus websites such as *The Forced Labour Monitoring Group* (a joint initiative by academics from the University of Liverpool, Durham University, and Hull University) and *BeyondSlavery*, all provided a basis to set out my research questions. Importantly, it became clear to me that part of the reason why forced labour is common in the horticultural sector specifically may lie in how the sector is structured. Demand in horticulture is seasonal and short-lived wherewith production has to be carried out within tight time

frames and according to very strict quality criteria (Rogaly, 2008). Structural features of the sector itself also contribute to the exploitation of workers' vulnerabilities (Underhill and Rimmer, 2015). The focus on migrant workers thus came about because work in the horticultural sector tends to be taken up, in large part, by such labourers. This is related to working conditions in horticulture, notably wage levels, length of working contracts, and (up until 2016) a lack of pension contributions.

Incidents of forced labour in UK horticulture also have been linked to employment conditions as operated by gangmasters. As explained earlier in the thesis (see Chapter One), gangmasters are labour market intermediaries operating in agriculture that have enjoyed a renaissance since the 1990s after having disappeared in the middle of the former century (Strauss, 2013). Participants recounting of the link between gangmasters and forced labour paralleled identified accounts in media coverage, reports and academic material. However, no precise information about the extreme exploitation of Romanian nationals was provided. This may be, as previously mentioned, because of labour migrants being afraid of coming forward due to: a cultural suspicion towards state authorities (this tends to be the case for labour migrants from the former Soviet Union); a lack of English language skills and knowledge about workers' rights; being exploited while technically breaking the law regarding their right to remain, whereby their status as offender may be prioritised over that of victim; or because participants did not think of the labour exploitation of Romanian nationals as being in any significant way different to the exploitation of other labour migrants. Crucially, however, several other drivers of this process in Lincolnshire *were* identified. Moreover, failures by institutions and policies also came up as factors helping to explain forced labour in UK horticulture. Therefore, my research provides novel insight into factors contributing to workers' exploitation, including that of Romanian labour migrants. The next two sections of the chapter provide an overview of these findings, with the first section discussing the different drivers of forced labour that my research uncovered, and the second section highlighting the institutional failures that emerged as having salience for understanding the continued existence of forced labour in UK horticulture.

2 Drivers of Forced Labour in Lincolnshire Horticulture

One significant driver of forced labour recognised in my thesis is that of minor labour abuses, with such minor labour abuses potentially constituting a slippery slope into major ones. In the context of Lincolnshire horticulture, participants GM: Peter, GM: Anthony and GM: Rob, all based in Boston, Lincolnshire, identified two specific minor abuses. The first of these was the payment of wages in cash so as to avoid paying taxes. This is true for gangmasters, who thus avoid fees that they would have to pay for employing their workforce, and for workers, who specifically do not have to pay income tax and health insurance. While this situation may appear to be a win-win situation for both parties, this is not the case: all are breaking the law by operating from within the black economy and hence they face prosecution. Gangmasters may see their licence being revoked (the GLA/A licence afforded by the Gangmaster and Labour Abuse Authority, formerly the Gangmaster Licensing Authority) and may be barred from operating in future in the sectors covered by the GLA/A. Other gangmasters, meanwhile, may suffer from the poor reputation that has been linked to unlawful colleagues. Moreover, workers that work in the black economy may experience a real risk of being deported under the 2016 Immigration Act, where working unlawfully has been constructed as a serious offence. As such, if workers were to be victims of forced labour, it is likely that they would not receive assistance in claiming their rights as victim because of the fear that their conflicting statuses (victim versus perpetrator) would lead to their deportation. The second minor abuse identified by the aforementioned participants was that of several gangmasters operating under one GLA/A licence; when this occurs then it becomes difficult to know, and therefore monitor, the exact number of gangmasters' labourers. As such, reaching out to workers at risk of forced labour or to those who are currently experiencing this human rights violation becomes increasingly complicated.

A second driver for forced labour that was identified in my research concerned the matter of recruitment fees. Convention 181 by the International Labour Organization (ILO) prohibits the charging of recruitment fees. The danger of recruitment fees as a gateway into forced labour for workers has been recognised by several international organisations, such as the International Labour Organization (see Andrees et al., 2015), United Nations Office for Drug and Crime (see UNODC, 2015), the Organization for Security and Cooperation in Europe (see Combatting Trafficking in Human Beings Task Force) and the International Organisation for Migration (see the International Recruitment Integrity System Initiative). This is because charging recruitment fees that are disproportionately high may propel workers into a situation of debt bondage, which is one form of modern slavery. The non-governmental organisation Anti-Slavery International

(2017) defines debt bondage as the situation “[...] when a person is forced to work to pay off a debt. They are tricked into working for little or no pay, with no control over their debt.” (p. 1). In August 2016, when I carried out a round of interviews in Bucharest, LI: Charles stated that Legislation Act 156 enabled recruitment agencies in Romania to lawfully charge fees for services. The amount of these fees was not subject to regulation, whereby these could range from one to 1000 Romanian Leu. Hence, the risk for Romanian labour migrants that used the services of recruitment agents at home to find employment abroad was/ is real.

A third driver of forced labour in Lincolnshire horticulture identified in my study was the use of zero-hour contracts. These contracts are highly flexible, whereby workers do not have a minimum number of working hours per week. The use of this sort of contract has been on the increase generally since the 2008 financial crisis (Webb, 2016; Chakraborty and Weale, 2016; Monaghan, 2017; Inman, 2016), but because of the structure of the horticultural sector, here it has become even more commonplace. This is because demand for fresh produce is seasonal and subject to changes according to customers’ preferences. As farmers and growers cannot afford to maintain a large workforce at all times, they rely on labour supplied by gangmasters to supplement the core workforce. Considering that the turnaround time to deliver fresh produce is very short (on the one side, because of the nature of demand and, on the other side, because of the short-lived existence of fresh produce), enforcing workers’ rights and employment conditions that are not deemed to be exploitative is challenging.

A fourth driver for forced labour that emerged in my research concerned the inadequacies of efforts by businesses to monitor and manage labour abuses. In order to tackle forced labour in labour supply chains, many businesses have voluntarily embarked on auditing systems/ codes of conduct. While these initiatives should be welcomed for demonstrating businesses’ awareness and efforts to advance sustainable supply chains management, such initiatives are frail because of their non-mandatory nature. The vast variety of auditing systems and codes of conducts puts firms under pressure to comply with several expectations that differ in importance, e.g. expectations about ‘sockets’ and labour rights. Moreover, research (LeBaron and Lister, 2015) on auditing systems has shown that these voluntary controls are a means to maintain the status quo; they do not constitute a fail or pass test for firms. This claim has been supported by participants NGO: Andrea, AC: Gerald and M: Sophie.

A fifth driver for forced labour in respect of Lincolnshire horticulture concerns the fact that Bulgarian and Romanian nationals, also known as A2 nationals, could only find employment in this sector in the UK between 2008 and 2013 via a labour provider. Horticulture, belonging to

the broader, agricultural sector, is itself a sector that is constructed on the exploitation of workers' vulnerabilities (Underhill and Rimmer, 2015). Work in agriculture in general is considered to be dirty, demeaning and dangerous (ILO, 2018). As discussed in Chapter One, Underhill and Rimmer (2015) talk about the existence of 'layered vulnerabilities' for labour migrants in Australian horticulture. The term stands for several factors that are responsible for the spectrum of experiences in the working conditions of different labour migrants (Underhill and Rimmer, 2015). Sargeant and Tucker (2009) sum up the factors as: i) those related to migration (such as migration status and whether the labour migrant is bonded to his/ her employer); ii) characteristics of labour migrants (level of education, skill, and language); and iii) conditions in receiving countries (unions, regulatory protection, and general social inclusion). Migrant workers are not a homogeneous group of persons, and this concept emphasises some factors may better explain labour migrants' vulnerabilities than do others, depending on the group to which an individual belongs. Considering that the majority of workers in horticulture are labour migrants, it is possible to say that the sector is built on the exploitation of labour migrants. Because of factors i), ii) and iii), labour migrants are more likely to be exploited than are British workers.

One final driver that could be discerned in my study concerned expensive and abusive living conditions. CA: Shaun confirmed that his Boston office received many clients who experienced such living conditions. In the case of Lincolnshire horticulture, Boston, which, as mentioned earlier in the thesis, is an English market town that is home to many workers in this sector, has comparatively high renting costs. As the demand for living space outnumbers the supply, landlords can choose to charge high rates that will be paid by workers anyway in order to be close to work. Also, in order to make ends meet regarding payment of rent, workers may decide to (or have to) share rooms amongst themselves. As such, workers may be exploited financially for their accommodation, alongside experiencing unpleasant living conditions.

Thus far, I have provided an overview of the different factors identified in my study that can be said to contribute to forced labour in UK horticulture, including in respect of the Lincolnshire context. While these factors are key to grasping how the process of forced labour may come about and continue, it is also important to understand how institutions that are tasked with taking care of the interests and welfare of workers fail to adequately address the process of forced labour – as my research has demonstrated. The next section, then, highlights those factors that I argue contribute to workers' exploitation, at the level of institutional shortcomings – my research having scrutinised different attempts by UK governments to tackle forced labour, such as the GLA/A legislation (including the 2015 Modern Slavery Act and the 2016 Immigration Act), as

well as governmental policies that have, in recent years, actively hindered positive progress (namely, by eradicating two of the means by which workers could claim better employment conditions: legal aid and solidarity action). Attention will also be paid to the role of trade unions in this context.

3 Institutional Failures

This section provides an overview of institutional failures that were identified from my interview data. Institutional failures denote shortcomings by agencies that are tasked with protecting workers from forced labour. In the context of my research, two institutions stand out: the government and trade unions. The government is the umbrella institution encompassing the Home Office that was involved in the drafting of the 2015 Modern Slavery Act and the 2016 Immigration Act, as well as the then GLA and its replacement, the GLAA. Legal aid is administered by the UK Government. Trade unions are by definition workers' representatives and are not part of the government. Based on my data, I now provide an overview of how shortcomings by both governments and trade unions in the UK may contribute to the existence of forced labour.

In 2005, the Gangmaster Licensing Authority was established following the 2004 Morecambe incident (see Chapters Five and Six for discussion on the GLA). While this has to be acknowledged in a positive light, as an effort by the government to take on the task of fighting labour exploitation in sectors highly prone to this process, it seems clear from my research the effort did not go far enough. Participants NGO: Andrea, HO: Ivan, HO: Henry, NGO: Jacob and NGO: Jeremy listed as problems related to the GLA the following points: a lack of political will in tackling forced labour by the Home Office – the institution the GLA was affiliated with; issues with the focus on exploitation; a too-narrow remit; and intelligence sharing. These points are now briefly elaborated, each in turn.

The lack of political will of the Cameron Government manifested itself in one workers' organisation losing its seat on the GLA board. As such, there was, according to participants T: Steven and T: Ruby, no more workers' representation on the GLA board. Whether tackling as sensitive an issue as forced labour is possible without consulting and joining up with workers' representation is debatable. This is because trade unions are ideally the first place to which workers turn if they experience challenges with their employer. The question of what officially counts as exploitation is a fair one considering that participants NGO: Jeremy and NGO: Jacob gave evidence that investigations mainly concern cases where there is a likelihood of retrieving

money, such as in organised crime/ money laundering, and that this is at the expense of other labour exploitation cases. This situation can be explained perhaps by the fact that money retrieved from criminal acts goes back to the government - in this case, probably to the GLA. Considering that since the 2008 financial crisis, austerity cuts have targeted all sectors and institutions, focusing on crimes where money can be retrieved is a beneficial way to finance the GLA. Several participants - NGO: Andrea, NGO: Jeremy, NGO: Jacob, AC: Gerald and NGO: Francis - mentioned that the remit of the GLA used to be too narrow in the light of evidence that other sectors, such as cleaning, catering and hospitality, were also prone to labour exploitation. The final point raised in relation to the GLA was an issue with intelligence sharing. While communication between different government agencies was mentioned as not being of a high standard (participants NGO: Jeremy and NGO: Jacob), it is fair to say that intelligence sharing in the field of forced labour, which may well also occur in the black economy, is problematic in any case. Intelligence gathering in this respect is equally difficult.

Taken together, then, these problems relating to the GLA point to the need for further research into the black economy, and, more specifically, regarding the following aspects: i) the working mechanisms of the black economy in general; ii) how working in the black economy may lead to forced labour; and iii) how workers, who previously may have been working lawfully, transition into the black economy and become victims of forced labour. Putting an emphasis on prosecuting fraudulent gangmasters and undocumented workers may be one way to go in efforts to tackle the black economy; however, in order to effectively do so, more research into this sphere is needed, as prosecuting does not treat the root cause but merely the symptom.

In October 2016, the GLA became the GLAA as set out in the 2015 Modern Slavery Act. The will to reform the GLA was welcomed by many participants. However, concerns about its functioning already existed before the GLAA actually came into existence (I carried out my interviews between June and September 2016 and the GLAA saw the light of the day in October 2016). Issues mentioned in relation to the GLAA included: structural problems, with two directors heading the agency; financial problems; the possibility of remits being dropped; and police-style powers, meaning that GLAA staff members can now arrest gangmasters that behave in a criminal way. The discontinuity between the GLA and GLAA means that the process to tackle forced labour has been further challenged.

This now brings us specifically to the first of the two pieces of legislation relating to the GLA/A: the Modern Slavery Act, which, in the months leading up to the GLA's aforementioned reformation, became law in England and Wales. While, as noted, its passage represents a move

forward in recognising workplace exploitation, my research found participants articulating a number of concerns about its efficacy in practice. Such criticisms included Home Office staff members not being subject specialists and, related to this, the established practice within this institution of workers routinely being moved from one department to another, whereby the quality of work put into this legislation may have suffered. It should be noted that Home Office staff members go through a rigorous process before being selected. This process entails several tests, to ensure that only the best-qualified persons are hired. When it comes to dealing with an issue that should be viewed from a multi-dimensional perspective, meaning taking into account social, economic and political factors, and which arguably requires a social science background, having a background in the natural sciences may be an obstacle. The fact the Home Office staff change department every couple of years means that stakeholders who are working together with the Home Office on a topic do routinely have to start from scratch. Participant AC: Gerald considered the work with one Home Office staff member to be wasted, not because of the replacement's lack of competence, but because of the staff member moving to another department that was not related with the work that s/he did previously. Other criticisms related to the muddling of terms, notably 'human trafficking', 'modern slavery' and 'labour exploitation', and the Act being a hidden means to deport workers.

As mentioned, the Modern Slavery Act contains the Transparency in Supply Chains clause. Also as mentioned, this clause is one that has also not gone without criticism, including in terms of its exclusive focus on large businesses. However, it is worthy of note that one interviewee, HO: Henry, precisely defended the clause on this front, arguing that its focus may be justified by the fact that large businesses are connected to medium and smaller enterprises by means of supply chains. By the Home Office targeting large businesses, HO: Henry anticipated that medium and smaller businesses would, by default, also be targeted. While this reasoning seems logical, evidence/ studies suggests that this not always the case (OSCE, 2009). Indeed, in the production process of fresh produce, retailers, transport, food processing firms, growers and farmers are involved. This is a very basic assumption of a fresh produce value chain. In addition to the produce value chain/ product value, the labour supply chain also comes in. This is because farmers and growers may rely on labour supplied by gangmasters to pick fresh produce at short notice. As such, the supply chain, now stretching from retailers to workers in the field, encompasses a wide range of actors. It remains to be seen whether retailers in this case are fully aware of all the actors that are involved in their supply chain.

Emerging from this focus on large business is a second criticism of the transparency clause that targeting those businesses with a threshold above GBP 36 million considerably narrows down the number of enterprises that have to disclose the steps undertaken to keep their supply chain free of forced labour. In this context, while the Modern Slavery Act applies to all business in the UK, the Transparency in Supply Chains clause applies only to a certain few. Participants AC: Gerald, NGO: Andrea and T: Stephen also criticised the fact that while it is mandatory to disclose the actions taken to tackle forced labour, the disclosure can comprise a blank sheet of paper. As such, whether this disclosing measure is such a powerful tool remains questionable. Additionally, the Transparency in Supply Chains clause merely applies to supply chains in the UK. Businesses whose supply chains stretch across other countries are not included and do not have to abide to the clause. Finally, incidents of forced labour in supply chains of business of and above GBP 36 million are collated by a non-governmental organisation. While no interview was carried out with staff members of this particular NGO, participant NGO: Andrea voiced her concern about this institution not having enough leverage to hold the government to account.

Another set of perceived institutional failures concerning the GLA/A arises from the second of the two pieces of legislation that my research scrutinised: the Immigration Act, which became law in England and Wales in 2016 as part of the GLA reform. Again, the reform was widely welcomed among my participants, but did not go without criticism – for instance, targeting the workers that should be protected by the GLAA. NGO: Andrea voiced her worries about the prioritisation of perpetrator status over victim status resulting in undocumented workers facing prison sentences and seizure of their wages. Considering that workers located in the lower tier of supply chains tend to work in the black economy (whether knowingly or unknowingly), their scope to be exploited increases. There is a cruel irony to the fact that while being exploited, these workers also technically break the law and, as such, face prosecution.

Institutional failures conducive to conditions of forced labour can also be identified in government policy in areas external to the remit of the GLA/A: legal aid and solidarity action. Firstly, then, the lack of free legal aid during the study period from 2008 to 2015 meant that many workers that had been exploited could not prosecute their exploitative employer because of not being in a position to afford legal fees - as stated by participant CA: Shaun. While victims of forced labour may now receive some financial assistance, it remains to be seen as to whether this amount is enough to go forward with their claims, as the process of proving forced labour may

be lengthy. Secondly, meanwhile, and as mentioned by interviewee AC: Norbert, is the suspension of solidarity action in the UK. Is this suspension a failure by trade unions to keep up with its principles or a failure by the government in curtailing workers' rights? In my view, the suspension of solidarity action represents an institutional failure on the part of both institutions to some extent; in any event, this ban challenges workers' rights and solidarity. The previous two sections provided an overview of the findings from my interviews. The next section provides some analysis concerning how these findings may inform policy.

4 Policy Implications

The previous section discussed drivers and institutional failures. I wish to consider now the implications of these for policy and so here I discuss the broad themes that I have deduced as being fruitful for further investigation to tackle the process of forced labour in Lincolnshire horticulture.

The first policy recommendation concerns tackling minor labour abuses in the form of tax avoidance, as has already been enacted by the UK Government in 2016: this has seen the budget of the HM Revenue and Customs (HMRC) increased, in contrast to that of the GLAA. HO: Michael provided this information already beforehand when I interviewed him in late June 2016. The increase in HMRC budget represents a step forward insofar that fraudulent companies not paying the correct amount of taxes in relation to the number of workers they employ can be more easily targeted, as this office has now a greater amount of funds to investigate claims. However, the increase in funding does not mean that it will be easier to detect workers engaged in the black economy - a point that was raised by three gangmasters in my study.

The second policy recommendation is to aim at better understanding drivers that result in workers moving from the legal to the illegal economy. For instance, whether this move from one sphere to the other is voluntary remains to be seen. Chain liability may be one way forward for companies to ensure that both their product and labour supply chains abide by law. However, so far this sort of approach (as per the Transparency in Supply Chains clause contained in the 2015 Modern Slavery Act) may not give evidence about what companies do to ensure that workers do not transition into the black economy - a point which was raised by NGO: Andrea (see my discussion about the need for more research about black market dynamics, earlier in this chapter).

The third policy recommendation is to acknowledge forced labour as a structural economic phenomenon that also should be seen as a result of corporate governance and sectorial characteristics. Corporate governance of supply chains in sectors that are characterised by volatile demand is likely to lead suppliers to hire additional workers to supplement their core work force. This is because of the seasonality of this demand, meaning suppliers cannot afford to maintain a large enough workforce to respond to spontaneous demands. Hence, suppliers rely on gangmasters for additional labour. By requiring retailers to impose less harsh quality, time and quantity requirements onto their suppliers, the conditions for forced labour may be weakened.

The fourth policy recommendation is to further investigate how sectors produce vulnerabilities for workers. Underhill and Rimmer (2015) work on ‘layered vulnerabilities’ in Australian agriculture specifically offers many insights more generally as to why labour migrants are more likely to be exploited than are domestic workers (see related discussion in Chapter One). In this vein, my findings list high recruitment fees, zero-hour contracts, the non-mandatory nature of systemic checks, curtailed EU citizenship and expensive and abusive living conditions as factors that all may advance forced labour in Lincolnshire horticulture (further work is needed to explore one or more (or all) of these factors in more depth).

The fifth policy recommendation centres on how the UK Government can more effectively tackle forced labour on its territory. While the passing of the 2015 Modern Slavery Act is to be welcomed, this piece of legislation lacks teeth. As such, despite its existence, workers may still be exploited in supply chains in the UK. The passing of the 2016 Immigration Act poses, indeed, a threat to exploited undocumented workers. As such, it is necessary to review these two pieces of legislation.

5 Contributions of the Research

This section outlines the contributions of my thesis to research in the field of forced labour, value chains, supply chains and horticulture. While much of the UK media – ranging from *The Guardian* and the British Broadcasting Corporation to *The Telegraph* — have, to date, provided ample coverage of incidents of forced labour in UK agriculture and horticulture, only one particular research project — commissioned by the Trade Union Congress in 2005 relating to extreme labour exploitation in Lincolnshire horticulture — stands out: the working paper by Anderson and Rogaly (2005). In this working paper, Anderson and Rogaly report about extreme exploitative working conditions in Lincolnshire, including the charging of recruitment fees and the existence

of abusive living conditions and hazardous employment conditions. Their contribution is key as it has offered a first glimpse into the process of forced labour in Lincolnshire (although differently framed from mine, by placing a greater focus on human trafficking approached from a legal angle). Since this initial contribution, however, there has not been any other study conducted about the extreme exploitation of workers in Lincolnshire horticulture; as such, my thesis claims novelty in the sense of contributing a new piece of empirical research based on extensive expert interviews on the topic of forced labour in agriculture in general and horticulture in particular. While Anderson and Rogaly rely on data generated from interviews with seasonal workers and employers, my research offers additional insights based upon its target group. No previous study, to my knowledge⁴⁶, has attempted to interview such a large sample of diverse ‘experts’ emanating from the public and private sectors. My research, then, ‘joins the dots’ between these different participants and their various perspectives and sets of knowledge, and it, therefore, provides a unique picture of forced labour in Lincolnshire horticulture.

My research also contributes to understandings of forced labour in horticulture in that it puts firmly on the (European) map a process that tends to be associated with the result of poor supply chain governance in least developed or developing countries. (By the term ‘least developed country’ is understood “low-income countries confronting severe structural impediments to sustainable development. They are highly vulnerable to economic and environmental shocks and have low levels of human assets” (UN, 2018), while the term ‘developing country’ is understood as countries characterised by low, lower middle or upper middle incomes.) While it may be correct that forced labour may be more common in such countries, this is because they may have weaker labour laws than do developed countries, in order to attract foreign firms to produce goods in their territory. (Production of goods may either occur by outsourcing production facilities or by subcontracting their production to other firms located in least developed or developing countries to keep production costs at bay.) As such, the dominant view is that forced labour occurs only or primarily in countries where labour laws are weaker. However, extensive newspaper coverage has revealed that forced labour also exists within developed countries in the European Union, such as in the UK. In the case of the UK specifically, awareness about forced labour first arose — as explained in Chapters Four and Five — with the 2004 Morecambe Bay cockling disaster, which led to the passing of the Gangmaster Licensing Act and the establishment of the Gangmaster Licensing Authority. The ILO estimated that, in 2012, 880,000 persons

⁴⁶ My claim here rests on browsing the electronic catalogue of the British library where theses are stored and by keeping up to date with recent publications in the field.

were subject to extreme exploitation within Europe; this number has surpassed the one million line in 2016, according to ILO estimates. Therefore, this thesis precisely helps in debunking the myth that extreme labour exploitation is endemic to least developed or developing countries, by focusing on such employment conditions not only in Europe but also within the EU.

In this geographical and sociological economic context, the thesis has also contributed to relatively new theoretical approaches that seek to understand the relationship of forced labour to the governance of supply chains in horticulture. The process of forced labour has, until very recently, tended to be approached from a criminological point of view. This formerly dominant approach may be explained by the fact that it was only in the early 2000s that an international framework to tackle trafficking in human beings was enacted (see the Palermo Protocols). This international framework was, and still is, rooted in criminology. Since the mid-2000s, however, two economic sociological approaches — global value chain (GVC) theory and global production network (GPN) analysis — have been applied to gain a different understanding of forced labour (see Chapter Two). The two approaches go beyond the criminological approach by aiming to understand what pressures LMIs in the supply chain endure, where this pressure comes from, and how it translates into working conditions for the labour force. While only very limited research (McGrath, 2013; Phillips, 2013) has applied either one or the other theory to the process of extreme labour exploitation, my contribution encompasses both theories.

It is true to say that GVC theory has served to provide greater understanding of how forced labour may come about as a result of supply chain governance and, specifically, in this context, the role of firm-to-firm relations in perpetuating this process. However, it has, as an approach, also been subject to criticism for not paying enough attention to local and/or national particularisms in processes of forced labour that may not be captured by focusing on firm-to-firm relations. The latter criticism is something I find to be particularly salient and valid insofar that I believe, and importantly have demonstrated in my research, that other non-firm actors also try to tackle the process in question — hence, the need to scrutinise the efforts made by such non-firm factors. In the framework of my case study, where GVC theory has been combined with GPN analysis, it can be seen that NGOs, trade unions, and the media, as well as the UK Government, have been undertaking significant efforts to raise awareness about forced labour and to tackle it. Moreover, as such, GPN analysis does not only provide insights into national particularisms, but also into *regional* ones. GPN analysis enables researchers to make observations at the level of intra- and inter-variation. Investigating both inter- and intra-variations of forced labour in any country, irrespective of its economic development status, is key to gaining a better grasp of the

process in question. Hence, the findings of my research have potential applicability for understanding forced labour both within different regions across the UK and between EU countries.

GPN analysis, then, allows us to investigate the process of forced labour by looking at how non-firm actors try to tackle this process.⁴⁷ In this connection, a key aspect of the contribution of my research lies in it having highlighted the asymmetry between economic and social development. While the agricultural sector is a highly developed/ mechanised sector, social standards in protecting workers lag behind. Considering that indigenous workers would already be prone to labour exploitation in this particular sector because of structural features and problems experienced by institutions tasked to protect workers, (seasonal) migrant workers are at an even heightened risk of being exploited because of the seasonality of their work, and their lack of language skills and labour market knowledge. As such, my research findings expand GPN analysis by further highlighting the discrepancy between economic and social development that leads to the extreme exploitation of workers. Indeed, the observation that economic development does not necessarily go hand in hand with social development is something to be learned from my research.

6 Limitations of the Study, and Suggestions for Future Research

Inevitably, as with any empirical study, there are some limitations associated with my research. One such issue has concerned accessing particular types of expert for interview. When I was preparing my fieldwork and experiencing difficulties in recruiting Lincolnshire gangmasters (as per my discussion in Chapter Three), I was told by two participants, one from an employer organisation and the other one from academia, that incidents of forced labour in Lincolnshire was an over-researched issue. Because this topic has been the subject of one research project (see Anderson and Rogaly, 2008) and news media coverage (see Lawrence, 2016a, 2016b, 2016c, 2016d, 2015), gangmasters, they claimed, would not be willing to talk to me. While, indeed, research has been carried out in the broad field of forced labour and migration in the UK, no study so far had investigated cases of Romanian nationals that have been supplied into conditions of forced labour in Lincolnshire horticulture. Nonetheless, the perceived overemphasis on this geographical region as being prone to such human rights abuses may have played a key factor in many

⁴⁷ GPN analysis also scrutinises how other conditions — e.g. housing, and hazardous working and employment conditions — may, either taken together or individually, account for extreme exploitation.

gangmasters' decision not to participate in my study. There does not seem a solution to this limitation. This is a problem inherent to researching a publicised topic in a particular, publicised geographic area.

Following on from this, I was unable to secure interviews with a big enough sample of gangmasters to provide a representative view of gangmasters on the link between LMIs and forced labour. As such, findings on how gangmasters may place workers into conditions of forced labour are mainly based on data gained from interviews with participants that were not gangmasters. Future research seeking to understand more about forced labour by more fully utilising gangmaster perspectives could usefully attempt to build relationships of (pragmatic) trust with gangmasters and access potential interviewees by word of mouth, or snowball sampling. Because of a limited amount of time – my fieldwork schedule was tightly organised (see Chapter Three) and I had not anticipated that reaching out to gangmasters would prove to be as challenging – I could not build up trust-based relationships with gangmasters to the extent I would have liked to. Nonetheless, I managed to secure the recommendation of one gangmaster, through which I was able to achieve an interview with another one (again, see Chapter Three), a situation that was significant to me in suggesting that a certain level of trust had been established between us, and in suggesting the importance of such trust building. Therefore, approaching gangmasters and building relationships of trust is possible and should be pursued in respect of future research.

Another issue relating to my research – and also, incidentally, involving gangmasters – concerns not so much a methodological problem *per se* as a finding that is suggestive of an area for future exploration. The process of forced labour has been high on the agenda of a range of international, intergovernmental, non-governmental, employers' and workers' organisations, as well as those of governments. When conducting interviews with gangmasters, however, I was given several illustrations of what would be considered to be minor labour exploitation cases, such as cash payments by employers. As such, I came to understand that the term 'forced labour', even if frequently used in media and by staff members from international, intergovernmental and non-governmental organisations and governments, did not mean the same thing for participants that did not emanate from these groups of interviewees. While this finding is not inherently problematic in terms of my research, I reached the conclusion that more research is needed into the link between LMIs and labour exploitation. Given that cases of forced labour are necessarily extreme, it may be possible to conclude that they are less likely to occur than are cases of minor labour exploitation – and more research is needed to understand why this is the case and why the focus tends to rest on major infringements of labour law.

One last issue, which I will now discuss, concerns the final direction of my study. My research set out to understand whether and how Romanian nationals may have been supplied by gangmasters into conditions of forced labour. While this risk was and still is real for a number of reasons – the charging of recruitment fees being of main concern, alongside several others such as the use of zero-hour contracts – participants’ narratives lacked focus on the extreme exploitation of Romanians *per se*. This lack of focus may be traced to participants perhaps thinking that forced labour can affect any national working in horticulture and so that citizenship – whether this is EU, non-EU or curtailed EU-citizenship – does not matter when it comes to such exploitation. Therefore, my research provided insights into the process of forced labour as it affects seasonal horticultural workers more generally, with a couple of particularities that are specifically relevant to workers recruited through workers’ schemes. Indeed, when asking my participants specifically about the role of LMIs (regarding the supply of Romanians into conditions of forced labour in Lincolnshire horticulture), I introduced this question by giving interviewees a short overview of the Seasonal Agricultural Workers Scheme (SAWS) and the participation of Romanian nationals, asking them directly whether they have been aware of cases of forced labour under SAWS and the two years following its dissolution. However, while Romanian nationals may not have been extremely exploited in Lincolnshire (at least not to my participants’ knowledge), it remains the case that such exploitation of this group may still be occurring in other horticultural centres in the UK. As such, when reviewing the data that I collected from the interviews, I decided, in line with my supervisor, to readjust my research questions to focus rather on the drivers of forced labour, and, alongside this, the matter of institutional failings - in UK horticulture more generally, but with particular, yet not exclusive, emphasis on the Lincolnshire context.

Despite this necessary change of focus, however, it can be argued that there remains a tension between a particular group that supposedly is at high risk of (extreme) exploitation – Romanian nationals working in Lincolnshire horticulture between 2008 and 2015 – and ‘only’ finding actual evidence of one such case that occurred in Northern Ireland (as said earlier, in a newspaper story about an unlicensed gangmaster who subjected his workers to ‘inhumane’ working conditions (Lawrence, 2014; BBC, 2016)), and that this potentially raises the question of whether the research is completely valid. There is also the objection that could be made to automatically assuming the usefulness and applicability of findings (about drivers and institutional failings) that are principally centred on the exploitation of labour migrants under workers schemes such as SAWS, to the experiences those labour migrants that are not required to go via such programmes. Indeed, findings from my research discuss, as mentioned in the paragraph above, drivers of forced labour that are not exclusive to Romanian nationals. Nonetheless, I claim

these factors may apply to other labour migrants who have taken up employment in UK horticulture via SAWS, as is the case with Bulgarian nationals. Bulgarian nationals were, as were Romanians, limited to employment in UK agriculture in the framework of SAWS between 2008 and 2013, and, since 2014, can freely integrate within the UK labour market. As such, while my research did not provide any actual evidence of exploited Romanians, Bulgarian nationals may have been exploited. Moreover, the tension about looking at one particular set of nationals without yielding national-specific results and recommendations is not as problematic as it might appear. Because of the 2016 ‘Brexit vote’, industry leaders have been calling on the Prime Minister to reintroduce an agricultural scheme similar to the SAWS, in the wake of a labour shortage. Prospective participating countries include Ukraine, Georgia and Moldova, and thus the findings from my research may apply to any nationals from such prospective countries, if a SAWS-type scheme was to be (re)introduced. As such, the aforementioned limitation is less acute than it might first appear; indeed, rather, it holds clues for the future.

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Annex

Deutsche Zusammenfassung

In dieser Doktorarbeit habe ich den Fall von rumänischen Staatsangehörigen untersucht, die zwischen 2008 und 2015 in Gartenbaubetrieben im britischen Lincolnshire eine Arbeitsstelle gefunden haben. Zwischen 2008 und 2013 konnten rumänische Staatsangehörige ausschließlich eine Anstellung im Gartenbau finden über eine Arbeitsvermittlung (im Rahmen des inzwischen aufgelösten Programms für Saisonarbeiter (SAWS)). Seit dem Auslaufen der Übergangsvereinbarung zwischen dem Vereinigten Königreich und Rumänien im Jahr 2014 steht rumänischen Staatsangehörigen der uneingeschränkte Zugang zum britischen Arbeitsmarkt frei. Meine Feldforschung - bestehend aus umfassenden Experteninterviews - deutet darauf hin, dass es in den Jahren 2008 bis 2013 keine Fälle rumänischer Staatsangehöriger gab, die von Arbeitsvermittlungen in Lincolnshire ausgebeutet wurden, während ein Fall von 2014 bis 2015 für Schlagzeilen sorgte. Der Mangel an aufgezeichneten Fällen weist jedoch nicht darauf hin, dass solche Vorfälle nicht aufgetreten sind. Im ersten Kapitel diskutiere ich die Literatur, die für die Beantwortung meiner drei Forschungsfragen relevant ist. In Kapitel zwei diskutiere ich die globale Wertschöpfungskettentheorie und die globale Produktionsnetzwerkanalyse genauer, um Zwangsarbeit als einen strukturellen Wirtschaftsprozess zu behandeln. In Kapitel drei erkläre ich die Forschungsmethoden, die diese Doktorarbeit verwendet, um Antworten auf meine Forschungsfragen zu finden, semi-strukturierte Interviews mit Experten und ihre Begründungen. In den Kapiteln vier und fünf erstelle ich einen allgemeinen Überblick darüber, wie der Gartenbausektor strukturiert ist und welche Regelungen die Beschäftigung im Vereinigten Königreich regeln. In Kapitel sechs, meinem ersten Befundkapitel, untersuche ich, ob das SAWS-Schema als eine Quelle von Zwangsarbeit für rumänische Staatsangehörige angesehen werden kann. In Kapitel sieben stelle ich die Frage, ob Fälle von Zwangsarbeit im britischen Gartenbau, an denen rumänische Staatsangehörige beteiligt sind, entdeckt wurden. Die Forschungsfragen zwei und drei werden in den Kapiteln sieben und acht beantwortet. In Kapitel acht versuche ich die Frage zu beantworten, wie die Bedingungen der Zwangsarbeit durch institutionelles Versagen gefördert werden können. In Kapitel neun beschreibe ich meine Dissertation mit einem kurzen Überblick über Faktoren und institutionelle Fehlschläge, die Zwangsarbeit fördern, mache politische Empfehlungen und weise auf Einschränkungen meiner Forschung hin.

English Summary

In this thesis, I have considered the case of Romanian nationals that have, a labour market intermediary (LMI), been placed within a role in Lincolnshire horticulture between 2008 and 2015. From 2008 until 2013, Romanian nationals could exclusively find employment in horticulture in the United Kingdom (UK) via LMIs (in the framework of the now defunct Seasonal Agricultural Workers Scheme (SAWS)). Since the phasing out of the transitional agreement between the UK and Romania in 2014, Romanian nationals are free to enter the UK labour market without any restrictions. My fieldwork - consisting of extensive expert interviews - suggests that during 2008 to 2013 there were no cases of Romanian nationals that were exploited by LMIs in Lincolnshire, while from 2014 until 2015, one case made the headlines. The lack of recorded cases does not, however, indicate that such incidents did not occur. In Chapter One, I discuss the literature relevant to answering my three research questions. In Chapter Two, I discuss global value chain theory and global production network analysis in more depth, to address forced labour as a structural economic process. In Chapter Three, I discuss the research methods this thesis uses to seek answers to my research questions, semi-structured interviews with experts, and their rationale. In Chapters Four and Five, I provide a general outline of how the horticultural sector is structured and what regulations exist that govern employment in the UK. In Chapter Six, my first finding chapter, I investigate whether or not the SAWS scheme can be considered a source of forced labour for Romanian nationals. In Chapter Seven, I ask the question of whether incidents of forced labour in UK horticulture involving Romanian nationals have been detected once they benefited from full EU citizenship. Research questions two and three are answered in chapters seven and eight. In Chapter Eight, meanwhile, I attempt to answer the question of how conditions of forced labour may be furthered by institutional failures by trade unions and governments. In Chapter Nine, I conclude my thesis with providing a brief overview of drivers and institutional failures enabling forced labour, policy recommendations and limitation of my research.