

How to tackle modern slavery in the supply chain

With the government and businesses under pressure to do more to combat modern slavery, Will Winch, Nina O'Sullivan and Dana Kamranova look at how employers can take effective action to stamp out labour exploitation



Will Winch and Nina O'Sullivan (pictured) are legal directors and Dana Kamranova is a paralegal at Mishcon de Reya

'The government wants businesses of all sizes to be transparent about their recruitment practices, policies and procedures in relation to modern slavery, and to take proportionate steps to prevent exploitation.'

Modern slavery has been described by Theresa May as 'the great human rights issue of our time'. Home Office figures estimated that, in 2014, at least 13,000 people in the UK were victims of modern-day slavery. The latest report by the Gangmasters and Labour Abuse Authority (GLAA), *The Nature and Scale of Labour Exploitation Across All Sectors Within the United Kingdom* (May 2018), indicates that victims of labour exploitation are most commonly Vietnamese, Albanian and British – and there has been a 362% increase in the number of British nationals at risk of exploitation compared to 2015/16. Debt bondage (where victims are forced to pay off debts over which they have no control) is becoming an increasingly common form of modern slavery, and forced labour forms about 30% of all exploitation.

The Modern Slavery Act 2015 (the Act) consolidated and introduced new criminal offences for those involved in modern slavery and bolstered the GLAA's powers. As a result of these increased powers, the GLAA has arrested more than 100 people in the last 12 months and has inspected 245 businesses.

Another way in which the Act seeks to combat modern slavery is by requiring larger businesses to focus their attention on the issue. It introduced changes

to UK law focused on increasing transparency in supply chains. As a result, large businesses are required to disclose the steps they have taken to ensure their business and supply chains are free from modern slavery by way of a statement on their website.

Who has to produce a statement?

The Act requires commercial organisations supplying goods or services with a minimum annual turnover of £36m to publish a slavery and human trafficking statement each financial year on their website (if they have one). A 'commercial organisation' is defined as a body corporate (wherever incorporated) or partnership (wherever formed) which carries on a business or part of a business in any part of the UK.

Under the Act, there is no minimum level of 'business' required in the UK to trigger the reporting requirement and no requirement for an organisation to be physically located in the UK.

When calculating turnover, companies need to look both at their own turnover and the aggregate turnover of all of their subsidiaries.

However, regardless of the size of the business, in updated guidance to the Act (published in October 2017), the government encourages all organisations

voluntarily to produce a statement. The government wants businesses of all sizes to be transparent about their recruitment practices, policies and procedures in relation to modern slavery, and to take

eradicate modern slavery from that supply chain.

What needs to be disclosed?

The government has not been prescriptive about what to include

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proportionate steps to prevent exploitation.

Must the entire supply chain be slavery free?

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in the statement and how to set it out. However, the guidance (building upon the Act) sets out a non-exhaustive list of six categories of information that a statement should 'aim to include information about'. This is stronger wording than in the previous form of the guidance where these were merely types of information that 'may' be included:

- the organisation's structure, its business and its supply chains;
- its policies on slavery and human trafficking;
- its due diligence processes for slavery and human trafficking in its business and supply chains;
- the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and

Tips for combatting modern slavery

Businesses should consider carrying out the following actions to tackle modern slavery in their supply chains:

- create a map of the supply chains used by the business;
- conduct a risk assessment of those supply chains, paying particular attention to the industry and jurisdictions in which the business operates (for instance, a garment manufacturer with suppliers in the Far East will face a greater risk of modern slavery than an estate agent in London);
- ensure suppliers undergo appropriate due diligence and are audited;
- adopt a code of conduct for the business which sets out employees' and other associated persons' responsibilities in combatting modern slavery;
- clearly communicate any modern slavery policy or code of conduct to suppliers;
- require suppliers of goods and services to adopt a policy that broadly mirrors the business's own policy, so that the policy trickles down the supply chain;
- if practicable, reserve a contractual right to inspect suppliers' facilities, particularly if the risk assessment has highlighted a potential issue with modern slavery;
- ensure the business can summarily terminate contracts with suppliers if it discovers modern slavery which the supplier appears to have condoned or permitted;
- appoint a senior officer to take responsibility for overseeing implementation of policies and procedures and the annual preparation of the slavery and human trafficking statement;
- ensure that the business has a robust whistleblowing policy to protect anyone speaking up from reprisal and consider instituting a confidential helpline, if appropriate; and
- implement an appropriate training programme, with a particular emphasis on training those involved in procurement and with responsibility for supply chain management.

- the training available to its staff about slavery and human trafficking.

Who can approve the statement, and when and where must it be published?

An appropriate senior person in the organisation (a director, member or partner) must approve and sign the statement. The updated guidance states that it is best practice for this person to sit on the board that approved the statement, and for the statement to include the date on which the board or members approved it.

The organisation must publish the statement on its website, with a link in a prominent place on the homepage. Previously, the guidance indicated that the statement should be published ‘as soon as practicable’ after the financial year end. The updated guidance now provides that it should be published ‘as soon as possible’ after the financial year end. However, there remains no specific deadline except that the government expects statements to be published, at most, within six months of the year end.

Organisations should also look to keep statements from previous years available online even when new statements have been published. This will allow the public to monitor what progress has been made.

What are the consequences of failing to publish a statement?

There is no fine or penalty in the Act for failure to publish a statement, although the government can theoretically bring civil proceedings for an injunction requiring compliance. It would not appear that any such action has been brought to date, even though in September 2017, a Chartered Institute of Procurement & Supply survey indicated that 34% of organisations required to publish a statement had failed to do so.

Is the new law working?

Kevin Hyland, who recently resigned from his post as the UK’s first anti-slavery commissioner, describes the Act as a ‘game-changer

in many ways’. That said, the Public Accounts Committee has recently concluded that the current approach is ‘clearly not working’ because of the high number of businesses failing to comply with the new obligations.

The House of Lords has called for tougher measures to ensure

- making the categories of information to be disclosed mandatory.

A recent investigation by Sarah O’Connor published in the *Financial Times* on 17 May 2018 has highlighted the problems of modern slavery, uncovering a sub-economy in

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compliance with and the effectiveness of such statements. Two Private Members’ Bills which are currently making their way through Parliament seek to strengthen the regime. First, the Modern Slavery (Victim Support) Bill makes provision for identifying and supporting victims of modern slavery. MPs are particularly concerned that:

Victims of modern slavery can face unimaginable horrors but the government’s good intentions have yet to result in coherent action to help them.

The Modern Slavery (Transparency in Supply Chains) Bill, meanwhile, calls for enhanced obligations on transparency statements, including:

- extending the requirement to public bodies;
- requiring relevant organisations and public bodies to publish their statement in their annual report and accounts;
- requiring the government to publish a list of all those organisations that are required to issue a statement;
- requiring organisations or public bodies that have not taken any action to explain why in their statement; and

Leicester’s garment sector where ‘£5 an hour is considered the top wage’. Commenting on the unethical practices, Anders Kristiansen (former chief executive of New Look) states:

This is happening in front of your eyes and nobody’s doing anything.

Given the above measures, it is perhaps not entirely fair to say that nobody is doing anything. By its nature, modern slavery is difficult to detect, not least as it often exploits undocumented individuals, who may fear reprisals if they speak out. However, by creating a culture of awareness, the government is taking steps to highlight the fact that modern slavery is a reality that many of us would not have recognised.

Many would argue that a reporting system without effective penalties is doomed to fail and merely imposing a reporting obligation on big business does not go far enough. However, it seems unfair to lay all the responsibility for tackling modern slavery at the feet of big business. The problem is widespread and a joint initiative between private enterprise and government will be required to tackle it.

Businesses will, however, need to continue to monitor the legislative landscape for new measures in case the current framework falls short of achieving the aim of eradicating modern slavery. ■