

The Modern Slavery (Victim Support) Bill: an opportunity to strengthen access to justice for victims

About CORE

CORE is the UK civil society coalition on corporate accountability. We work with our partner organisations to advance the protection of human rights and the environment with regard to the global operations of UK companies, by promoting a stronger regulatory framework, higher standards of conduct, compliance with the law, and improved access to remedy for those harmed by the activities of UK companies.¹

During the passage of the Modern Slavery Bill, CORE successfully worked with parliamentarians, business and investors to persuade the Government to amend the proposed legislation to include the transparency in supply chains clause (s 54), which was subsequently enacted. Section 54 requires businesses to report on what steps they are taking to eliminate modern slavery in their supply chains.

Overview

- The Modern Slavery (Victim Support) bill sets out commendable proposals to better support victims of modern slavery. Yet victim-led justice requires a law that can **empower individuals and reinstate their rights** through their access to remedy for a harm inflicted.
- This is important in signalling a **formal acknowledgment** of unjust treatment; offering **financial compensation** to help rebuild a person's life; while simultaneously **detering perpetrators** from accruing profits from slavery induced commodities and services.
- At present, there is **no legislative right to civil compensation for victims** of slavery and trafficking under the Modern Slavery Act. Victims of modern slavery can only pursue a civil claim if they can **"fit" the crimes to torts** such as negligence or trespass to the person. These challenges are even greater in cases involving UK companies, where modern slavery has been identified in their supply chain.
- While the UK Government was the first country to publish a **National Action Plan on business and human rights**, its approach to remedy has been criticised for falling short of international expectations. The Joint Committee on Human Rights (JCHR) recently [reported](#) that the **"UK is weakest in the area of access to remedy"**.

This bill presents an important opportunity to address these deficiencies in the existing law.

Background

The Modern Slavery Act fails to assist victims of slavery and human trafficking to obtain access to remedy. This is the case despite provisions in the legislation for **slavery and trafficking reparation orders**. Such orders are only available in the **tiny proportion of cases** where a person has been criminally convicted of an offence under the Act and a confiscation order has been made. We know of no such orders made to date.

¹ Our partner organisations include Amnesty International UK, CAFOD, Christian Aid, Oxfam, Fairtrade Foundation and Unicef UK. For a full list, see <http://corporate-responsibility.org/about-core/ournetwork>

Although there is a high number of modern slavery instances, it is often not possible to secure a conviction due to a **high evidence threshold**. By way of example, there were only [31 convictions](#) of slavery and trafficking in 2015, however [3266 potential victims](#) of human trafficking were referred to the National Referral Mechanism during that year.

Reparation orders are also entirely reliant on the actions taken by police. They do not facilitate victims of modern slavery to take control of the process themselves by, for example, pursuing civil action.

Despite its merits, civil action against the full effects of modern slavery, including for the dehumanising effect it has on victims, is not possible as existing tort law does not specifically address abuses such as, trafficking, slavery, servitude and forced or compulsory labour. At present, there is **no legislative right to civil compensation for victims** of slavery and trafficking under the Modern Slavery Act. Victims of modern slavery are unable to bring a civil action based on the crimes detailed in the Modern Slavery Act unless they **are able to “fit” the crimes to torts** such as negligence or trespass to the person.

The current situation

To date there has been **only one successful civil claim arising from human trafficking and forced labour** brought against a UK company. This was the case of [Galdikas & others v DJ Houghton Catching Services & others](#). Kent gangmaster DJ Houghton Catching Services was sued by six Lithuanian migrants who were trafficked to work on farms supplying chicken and eggs to well-known brands. During their employment the men were **threatened and assaulted** by supervisors who **intimidated them with fighting dogs**, and were made to work **back-to-back shifts for days on end** without facilities for eating, drinking or resting. Often they were even denied the basic dignity of using a toilet.

The company lost its license after police raids in 2012 and was branded "**the worst UK gangmaster ever**" by the Gangmasters Licensing Authority (GLA). A High Court ruling in June 2016 found that the company failed to pay according to minimum wage requirements, charged prohibited fees, unlawfully withheld wages, and failed to ensure the workers had adequate facilities to wash, rest, eat and drink. The company **agreed an out-of-court settlement** in December 2016.

In part due to the lack of a specific actionable tort for human trafficking, the litigation in this case was **extremely complex and took two years to resolve**.

Access to remedy for victims in company supply chains: the US Trafficking Victims Protection Act (TVPA)

Victims of modern slavery in UK business supply chains are particularly disadvantaged by the current legal framework. Whereas victims of modern slavery in the supply chains of **US businesses are able to pursue civil claims** against those companies under legislative provisions, no equivalent law exists in the UK.

The US TVPA provides much greater access to justice than that currently available in the UK, authorising victims of human trafficking or forced labour to bring a civil action against whomever **“knowingly benefits, financially or by receiving anything of value, from participation in a venture which that person knew or should have known”** involved labour abuses. These include: forced

employment, involuntary servitude, unlawful conduct with respect to documents, and human trafficking.

Moreover, US courts have **jurisdiction to enforce the TVPA against a corporation** that has its headquarters or conducts business in the United States. As such, modern slavery victims of a US business supply chain have the **right to pursue legal action** in the US.

Under this law, seven Cambodian labourers, allegedly exploited while working in Thailand's seafood industry, were able to commence litigation in the United States against four seafood companies, two American importers and two Thai firms.

Another example includes the US company, Signal International. This company was found liable and forced to **pay compensation to trafficked workers it deceived, indebted and abused** on its construction sites after Hurricane Katrina. After losing a court case under the trafficking compensation laws the company later filed for bankruptcy. This proved to be a **forewarning to other firms operating in the US** that they could face similar sanctions for trafficking harms.

Recommendations

- **Specific civil wrongs** of trafficking, slavery, servitude and forced or compulsory labour should be introduced in UK legislation.
- The Modern Slavery Act should be amended so that it includes provisions akin to the US **Trafficked Victims Protection Act** to enable victims of modern slavery in the **supply chains of UK businesses to access remedy in the UK**.