



Written evidence submitted by CORE to the Public Accounts Committee inquiry into Reducing Modern Slavery. 16/02/2018

CORE is the UK civil society coalition on corporate accountability. We aim to advance the protection of human rights with regards to UK companies' global operations, by promoting a stronger regulatory framework, higher standards of conduct, compliance with the law and improved access to remedy for people harmed by UK-linked business activities.

Following the passage of the 2015 Modern Slavery Act (the Act), CORE has worked to provide guidance and research on the transparency in supply chains clause. In 2016 we published guidance for businesses required to report, and in 2017 we followed this up with short guides on best practice and information for investors on engaging with companies on modern slavery. Alongside this guidance, we have also conducted research into the levels and quality of corporate compliance with the reporting requirement. Our report on fifty companies' approaches to reporting on known sector and supply chain risks, 'Risk Averse', was published in October 2017.¹

CORE continues to research the effectiveness of modern slavery legislation including with partners Business & Human Rights Resource Centre and Repórter Brasil in a University of Nottingham and Fundação Getulio Vargas research project funded by the British Academy.

We welcome the opportunity to submit evidence to this inquiry.

Executive summary

- enable victims to pursue compensation claims
- publish a list of companies covered by TISC
- create & maintain registry of statements
- require companies to report on all six areas
- mandate a public authority to deal with reports of non-compliance and sanction non-reporters
- extend reporting requirement to public sector

¹ CORE Coalition, *Risk Averse: Company reporting on raw material and sector-specific risks under the Transparency in Supply Chains clause in the UK Modern Slavery Act 2015*, (September, 2017).

Government support to identified victims of modern slavery

1. Financial support is essential for victims of modern slavery to get their life back on track and mitigate against the risk of being re-trafficked. Current provisions for financial support are not sufficient. Indeed, it was recently reported that the Government is cutting the financial support it gives potential victims of modern slavery by almost half.²
2. Reparation orders under the Act can be issued only subsequent to both a conviction and confiscation order. To date, there have been no instances of this. Further, these orders are 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. The situation could be improved by providing for civil remedy in the Modern Slavery Act. This would assist victims of modern slavery to more readily pursue a claim for damages against perpetrators through the Courts. Such actions would provide a means for perpetrators to be held to account, give victims access to remedy and provide compensation to help rebuild their lives.
3. Victims of modern slavery are currently unable to bring civil claims based on breaches of the Modern Slavery Act. There are also no existing torts of modern slavery or human trafficking, per se. Instead, they must seek to 'fit' the abuses to existing torts, such as negligence or trespass to the person, or claim for breaches of contract. As the Supreme Court recently found in the case of *Taiwo v Olaiye and another* [2016] UKSC 31, which assessed the claims of exploited migrant domestic workers, "remedies under the law of contract or tort do not provide compensation for the humiliation, fear and severe distress which such mistreatment can cause". The Supreme Court has therefore urged Parliament to address these shortcomings and provide greater scope to courts and tribunals to grant appropriate recompense.
4. By requiring victims of slavery to use a multiplicity of causes of action, the resulting litigation is far more complex, costly and time-consuming than it ought to be. This has a practical impediment on victims, who may not be able to access lawyers willing or able to bring such complex litigation. To date, there has only been one successful civil claim arising from human trafficking and forced labour against a British company (*Galdikas & Others v DJ Houghton Catching Services & Others*).³ Creating a specific civil wrong for modern slavery would therefore create a means to hold perpetrators to account beyond the criminal justice system and would provide greater opportunities for victims to access justice. A specific tort of modern slavery would facilitate victims to take control of the process themselves, and seek the compensation they need and deserve.
5. An increase in legal action against perpetrators would also serve as a powerful deterrent. Civil cases could lead to significant pay-outs from the defendants, discouraging others who see modern slavery as commercially advantageous. When conviction rates under the Act are so low, enabling access to remedy through a specific tort of modern slavery could be an effective deterrent and serve as a useful alternative.

² Thomas Reuters Foundation, Feb 07, 2018. <http://news.trust.org/item/20180207130111-1yz6b/>

³ See Shanta Martin, <https://www.leighday.co.uk/Blog/December-2016/Slavery-and>

The transparency in supply chain reporting requirement

6. The transparency in supply chain reporting requirement is an innovative piece of legislation with potential to effect change. The provision has wide scope, covering many businesses headquartered both inside and outside the UK. This helps to create a level playing field for companies. The clause suggests companies' Slavery and Human Trafficking statements contain information on six key areas, including their supply chains, risks of modern slavery and due diligence in relation to slavery and human trafficking. Statements must be signed by a director on behalf of the board, creating senior level accountability. The Act also requires companies to publish their statement in a prominent place on the homepage of their website.

7. One of the strengths of the Act is that it recognises the high risks of modern slavery further down the supply chain, including outside of the UK. When modern slavery is so often the result of demand for lower prices by multinationals with huge market share, it is essential that companies are incentivised to take steps to identify and prevent slavery in their supply chains.⁴ The TISC clause is welcome in this respect, but its effectiveness in promoting genuine change is currently limited due to an absence of effective monitoring and enforcement mechanisms.

8. Levels of compliance with the Act are low, both in terms of numbers of statements published and the content of statements. Government estimates that between 9,000 and 11,000 companies are covered by the reporting requirement.⁵ All companies should have published their first statement by 30 September 2017, but at the time of writing there are only 4,009 statements on the Modern Slavery Registry, a website operated by NGOs with the aim of collating all published statements.⁶ The Chartered Institute of Procurement and Supply also surveyed foreign businesses who conduct business in the UK, finding that 60% of respondents had failed to complete a statement.⁷

9. Analysis of the statements published so far shows that compliance with the minimum requirements of the Act is also disappointing. For instance, a study of statements issued by all FTSE100 companies found that 42% failed to meet the minimum legal requirements (statement signed by a director, on behalf of the board and published on the company's website homepage).⁸ A further analysis of 150 statements issued in March 2017, found that 21% were not clearly signed by a director or equivalent, and that 25% were not directly available on the homepage.⁹ Our own research shows a similar lack of compliance with the minimum requirements of the Act.¹⁰

10. The Home Office has published comprehensive guidance for business on reporting under the Act, recommending that statements should 'aim to include' the six areas of information

⁴ G. LeBaron, N. Howard, C. Thibos, P. Kyritsis, *Confronting root causes: forced labour in global supply chains*, Sheffield Political Economy Research Institute, (University of Sheffield).

⁵ <https://www.gov.uk/government/news/pm-seeks-stronger-co-operation-with-vietnam-to-stop-modern-slavery-as-new-measures-come-into-force>

⁶ <http://www.modernslaveryregistry.org/>

⁷ <https://www.cips.org/en-gb/news/news/one-in-three-businesses-are-flouting-modern-slavery-legislation--and-getting-away-with-it/>

⁸ Business & Human Rights Resource Centre, *First Year of FTSE 100 Reports under the UK Modern Slavery Act: Towards Elimination?*, p.2 (October, 2017). Accessed at: <https://business-humanrights.org/sites/default/files/FTSE%20100%20Report%20FINAL%20%28002%291Dec2017.pdf>

⁹ Ergon Associates, *Modern Slavery Statements: One Year On*, p. 1, (April 2017).

¹⁰ CORE Coalition, *Risk Averse*.

listed under s. 54 (5).¹¹ However, most statements do not cover the six areas listed, with many not providing even the most basic information on the company's supply chains.

11. Whilst there is some indication that reporting on relevant policies and training provided to staff has improved in year two¹², reporting on the most important categories listed under s.54 (5) – due diligence processes in relation to slavery and human trafficking, sector and area specific risks and how they are being managed, and effectiveness in ensuring that slavery and human trafficking is not taking place – is usually vague or non-existent.¹³

12. From one sample, as many as 58% statements did not properly address risk assessment processes or priorities for action based on that assessment.¹⁴ Additionally, 50 FTSE100 companies provided no meaningful information in their statements on whether their actions are effective in addressing modern slavery risks.¹⁵

13. Our research has shown that companies operating in sectors, or sourcing raw materials known to be at high-risk of modern slavery make no reference to these risks in their slavery and human trafficking statement.¹⁶ In this respect, many companies have attempted to distance themselves from risk and liability, with some attempting to limit the scope of their statement by declaring that it only applies to their UK operations, or excluding franchisees and other operations in high-risk countries.¹⁷ Only if companies recognise risks and engage with their suppliers in high-risk sectors and regions will they successfully uncover and help prevent labour abuses that amount to slavery.

14. There is a risk that statements may become a box-ticking exercise for companies. Many statements are extremely short,¹⁸ frequently collate information from other company publications whilst adding little new, and some have even been found to duplicate whole paragraphs from other companies' statements, suggesting the use of templates or the same advisors, rather than a thorough assessment of the issues facing the business.¹⁹ Where there is innovation and a substantive effort to produce a detailed report (Marks & Spencer is one notable example²⁰), these statements are usually from the largest, customer-facing multinational companies who are most exposed to public scrutiny.²¹ These innovators make up the minority, however, and there are many companies with global supply chains in high-risk sectors that fall below the public radar. This indicates that there are problems with the model of the provision.

¹¹ p. 12

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf

¹² Ergon Associates, *Modern Slavery Statements*, pp. 5, 9.

¹³ Ergon Associates, *Modern Slavery Statements*, p. 1; BHRRC, *First Year of FTSE 100 Reports*, pp. 2-4; CORE, *Risk Averse*, pp. 6-7.

¹⁴ Ergon Associates, *Modern Slavery Statements*.

¹⁵ BHRRC, *First Year of FTSE 100 Reports*, pp. 2-4.

¹⁶ CORE, *Risk Averse*, pp. 14-5.

¹⁷ Ergon Associates, *Modern Slavery Statements*, p. 3.

¹⁸ See for example, Halfords' statement: <http://www.halfordscompany.com/investors/governance/modern-slavery-statement>.

¹⁹ Ergon Associates, *Modern Slavery Statements*, p. 3.

²⁰ <https://corporate.marksandspencer.com/documents/plan-a-our-approach/mns-modern-slavery-statement-june2017.pdf>

²¹ *Ibid.* p 2-4; BHRRC, *First Year of FTSE 100 Reports*, p. 1.

15. The Government has repeatedly stated that the reporting requirement is designed to encourage civil society and others to put pressure on business, and to create a ‘race to the top’. Home Office Parliamentary Under-Secretary Victoria Atkins MP has said that ‘the legislation was designed to harness pressure from civil society, consumers and investors rather than set up a burdensome system of Government monitoring’.²² However, this has proved ineffective in part because there is no publicly available list of companies required to report and there is no requirement for companies to upload their statement to a central registry, meaning that the only way to identify whether a company is within scope of the Act is to scrutinise its accounts to establish whether it has turnover greater than £36 million and then to check its website for a statement.

16. In addition, the penalty for failure to publish a statement is very weak. The Secretary of State has the power to seek an injunction against a company, but this is yet to happen and no public authority presently has a mandate to deal with reports of non-compliance. While there is a place for public scrutiny, it cannot be relied upon as the sole means to enforce legal requirements.

17. In a recent inquiry, the Joint Committee on Human Rights found that the lack of a central list was a significant shortcoming in the Act.²³ In response, the Government has stated that it is not easy to create a list because it is not possible to filter the databases of Companies House by turnover size.²⁴ The Government has purchased a list of companies required to comply, but the terms of licence mean it is not permitted to publish the data.²⁵

18. We submit that this is an insufficient response from Government. The impracticalities of constructing a list equally apply to those civil society organisations and members of the public interested in holding companies to account. There are many thousands of companies which are not household brands captured by the revenue threshold with comparatively small turnovers. In designing the Act, the Government surely did not intend members of the public to search through Companies House database to uncover who the Act does and does not apply to.

19. At present, web searches are the main way to find statements. As discussed, many companies that have published statements do not provide a link to their statement from the homepage of their website, or else place the link on a separate corporate website, rather than the customer-facing site. While this is compliant with the law, it can make it difficult for interested parties to locate statements.²⁶ To enable scrutiny of statements, the Government must create and maintain a publically accessible central registry to which companies would be required to submit their annual statements. From this, stakeholders would benefit by knowing where to access the statements, companies would benefit from knowing where to file their statement and Government would be able to effectively monitor and enforce compliance.

²² Parliamentary Written Question 2nd Feb, 2018. <https://www.theyworkforyou.com/wrans/?id=2018-01-30.125797.h&s=%22slavery%22+2018-02-02..2018-02-02>

²³ Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*, Sixth Report of Session 2016-17, p. 42, (March, 2017).

²⁴ Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability: Government Response to the Committee’s Sixth Report of Session 2016-17*, First Special Report of Session 2017-19, p. 7, (January, 2018).

²⁵ Home Office written question, 16th November 2017. <https://www.theyworkforyou.com/wrans/?id=2017-11-13.112637.h&s=alex+norris+slavery#g112637.q0>

²⁶ E.g. Tesco, compare <https://www.tescopl.com/> and <https://www.tesco.com/>.

20. An Inquiry led by an Australian Parliamentary Joint Standing Committee into establishing an Australian Modern Slavery Act based on the UK Act recommended that in regards to the efficacy of the reporting requirement, the Australian Government should legislate for and fund a central repository of reports to be managed by independent NGOs, and publish a list of entities required to report.²⁷ If the UK Act is truly to harness pressure from civil society and the public, the UK Government must also provide the resources necessary for that pressure to be effective.

21. As already stated, public pressure has so far only proved partially effective in encouraging reporting that complies with s. 54 (5) of the Act amongst some public-facing companies with a commercial interest in their reputation. In this respect the present model of the Act is flawed. The Act captures thousands of companies under its reporting requirement, but the mechanism it employs to promote pressure – public scrutiny – is only effective for a handful of those companies. Other pressures must therefore be brought to bear in combination with that scrutiny.

22. Other important steps to improve the quality of reporting would be to require companies to include information in their statements on all six topics listed in the Act (rather than merely suggesting areas for inclusion), and to remove s. 54 (4) (b), which permits an organisation to publish a statement that it has taken no steps to ensure that slavery and human trafficking is not taking place in its supply chains or business operations..

23. An essential lacuna in the Act is the absence of a specific requirement for public bodies, including central government departments to publish statements. Whilst some public authorities have voluntarily produced statements, most do not. An amendment to s.54 to extend ‘commercial organisation’ to include large public buyers would be an effective way to encourage engagement beyond tier 1 government suppliers.

24. The buying power of the public sector provides a significant opportunity for the State to use its economic leverage to improve standards in supply chains. In a welcome move, the Crown Commercial Service Standard Selection Questionnaire now asks bidders if they have published a modern slavery and human trafficking statement, with the possibility of excluding those bidders above the revenue threshold if they have not.²⁸ However, many public contractors, often awarded significantly sized contracts in high-risk sectors, are SMEs and are not required to report under the Act.²⁹ The Public Contracts Regulations 2015 contain scope to do more to use the procurement process to incentivise reporting and actions to improve standards in supply chains.

25. In its response to the Joint Committee on Human Rights inquiry into business and human rights, the Government explained that economic, employment, social and environmental considerations may be used as both award criteria and discretionary exclusion grounds, as long as they are linked to the subject matter of the contract. Associated contract conditions and contract management activities can also be used to monitor human rights compliance

²⁷ Joint Standing Committee on Foreign Affairs, Defence and Trade, ‘Hidden in Plain Sight’, *Inquiry into Establishing a Modern Slavery Act*, s. 5.134-7, 5.142-3, December 2017.

²⁸ p. 13,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/558531/PPN_8_16_StandardSQ_Template_v3.pdf

²⁹ CORE, ICAR, *UK Public Sector Apparel Procurement: Ensuring Transparency and Respect for Human rights*, Forthcoming.

throughout the contract term.³⁰ This scope within the Public Contracts Regulations should be fully utilised.

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³⁰ Pp. 3-6, <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/686/686.pdf>