

SUBMISSION TO THE HOME OFFICE'S INDEPENDENT REVIEW OF THE MODERN SLAVERY ACT

26th October 2018

Introduction

STOP THE TRAFFIK partners with businesses in order to provide advice and support relating to the identification and mitigation of modern slavery risks within their operations and supply chains. Businesses are offered a range of services including supply chain risk mapping, awareness training and eLearning for management, operations, procurement, and human resources teams, internal reporting mechanism design, and policy reviews. STOP THE TRAFFIK has worked with major UK businesses operating in various sectors, including hospitality, construction, fashion, retail, and education. Crucially, where possible, the support provided draws upon insights provided by STOP THE TRAFFIK's Centre for Intelligence-Led Prevention.

Since the Modern Slavery Act (2015) was introduced, STOP THE TRAFFIK has welcomed the increased awareness from businesses and their public commitments to address modern slavery and human trafficking. By primarily working with businesses who are corporate social responsibility leaders, STOP THE TRAFFIK has observed prevention best practice being operationalised due to the Modern Slavery Act. However, as we shall demonstrate below, not all businesses are meeting their legal responsibility to report and many are treating the requirement simply as a tick-box exercise.

This submission not only draws upon the experiences of STOP THE TRAFFIK but has been prepared in collaboration with Pete Talibart, who is a notable international employment lawyer and who has worked with and advised the organisation since 2006. Pete Talibart's separate evidence and notes complement our recommendations.

Modern Slavery Statements

The Modern Slavery Act (2015) requires that all commercial organisations that conduct business in the UK and have a turnover in excess of £36 million report annually on the steps they have taken to ensure that slavery and human trafficking are not taking place within their operations or in their supply chains. STOP THE TRAFFIK investigated the effectiveness of this clause by reviewing the Modern Slavery Statements of the businesses currently included in the FSTE 100 Index. This review used the parameters set out by the Modern Slavery Act to assess what a model modern slavery statement should include. These are as follows:

- Company policies put in place to prevent modern slavery;
- The organisation's structure in terms of its business and supply chain;
- Its due diligence processes in relation to slavery and human trafficking in its business and supply chain;

- The areas that are at high risk of slavery occurring within their business and their supply chain and what preventative measures have been put in place;
- Indicators of their effectiveness at preventing modern slavery within their supply lines as well as their business; including performance indicators if considered appropriate;
- A demonstration of training available to staff that will help in the prevention of modern slavery.

The Modern Slavery Statement must be published on the commercial organisation's website, with a link to the statement in a prominent place on the homepage.

When assessing the FTSE 100, STOP THE TRAFFIK found that 98% of FTSE 100 companies had a Modern Slavery Statement published on their website. However, only 60% had a link directly to the statement on their homepage. 17% of the assessed companies were also found to have statements that were lacking in content due to missing some or all of the key parameters set out above.

The companies that most commonly did not include a link to their Modern Slavery Statements on the homepage were businesses operating in sectors where customers regularly used their websites; for example, airlines. In these cases, the statement was commonly located in the sustainability or corporate responsibility section, thus making the Modern Slavery Statement more difficult to find. Another frequently identified issue was that some businesses only published their Modern Slavery Statement on one of their domains. There were numerous cases when the Modern Slavery Statement was missing from the '.co.uk' domain but was present on the '.com' domain. Although this might not be considered a serious issue, it still represents a failure to comply with the reporting requirement.

Despite the FTSE 100 companies being the biggest and most influential in the country, prominent publication of high-quality modern slavery statements is still not consistent.

Recommendations

STOP THE TRAFFIK submits two recommendations to the Review regarding how the Act could produce the desired impact for change within business supply chain transparency which Section 54 has failed to realise:

1. The requirement to publish an annual Modern Slavery Statement should be added to the Companies Act (2006)

It is clear that responses to the requirements of Section 54 have been inconsistent. It is crucial for effective mitigation that modern slavery prevention is not seen as a marketing ploy but as a statutory compliance issue. Businesses who are leaders in corporate social responsibility already treat modern slavery prevention as a compliance issue, often restructuring so that their sustainability teams report directly to the Company Secretary. However, too many businesses still locate responsibility for the modern slavery transparency policy within their marketing or public relations departments. Addressing modern slavery should not be left to the pioneers, but should become a consistently practised norm of business operations.

A business culture which treats modern slavery prevention as a marketing technique will only ever commit to the easiest and lightest action possible, reducing effective due diligence to simply ticking a box. Only once modern slavery prevention is established as statutory business compliance will the majority of businesses commit to substantive change.

This attitude shift can be easily prompted by transferring the requirement to publish an annual modern slavery statement to the Companies Act. Public companies know that the Act is the de facto 'rules of the game' and pay close attention to its contents. If the reporting requirement was added to the Act it would ensure that modern slavery was awarded the attention it deserves by these companies, especially from the Board of Directors who are ultimately responsible for the business' actions. Subsequently, shareholders, including pension funds, will be assured that their future investments are protected from the travesty of trafficking. The investor protection element of this analysis is very important.

Establishing the requirement to publish a modern slavery statement within the Companies Act was the original recommendation led by Pete Talibart in 2014 working alongside STOP THE TRAFFIK. This would require no real additional work from businesses already covered by Section 54, as the requirement has already been established within the Modern Slavery Act. However, it would allow businesses to consolidate their reporting responsibilities. STOP THE TRAFFIK notes the evidence provided by Pete Talibart, both in 2014 and for this review, that at the time of the parliamentary debates on the Modern Slavery Bill, the Home office appeared to be under the clear impression that the obligation on listed companies to report on human rights issues in their supply chains was already contained in the Companies Act 2006. It appears to be because of this that the Home Office justified the 'lighter touch' approach in the MSA along the lines of the California TISC law, despite the fact that law had been criticised in California as having no real consequence for breach. It makes sense at this stage to take that additional half-step, especially in light of some FTSE 100 companies clearly not taking the Section 54 obligations seriously.

Embedding the requirement within the Companies Act would symbolise a substantial step-up in global leadership for the UK, whilst other countries are still at the stage of establishing this issue within legislation and keep the UK at the cutting edge of this issue.

2. The requirement of businesses to report on modern slavery should (a) be understood within the framework of human rights and (b) encourage the adoption of modern slavery prevention strategies into wider human rights due diligence policies

Modern slavery and human trafficking is intrinsically a human rights issue. Freedom from slavery is established in Article 4 of the Universal Declaration of Human Rights (1948), Article 8 of the International Convention on Civil and Political Rights (1966), and Article 4 of the European Convention on Human Rights (1950). Furthermore, the Modern Slavery Act acknowledges this link by referring to the European Convention on Human Rights in defining 'slavery', 'servitude', and 'forced or compulsory labour'.

Although the field of business and human rights has been controversial in the past, since the United Nations Guiding Principles on Business and Human Rights (UNGPs, 2011) was welcomed by the international business community, there has been significant progress. Again, businesses which lead in

corporate social responsibility are already embracing this normative framework, conducting human rights impact assessments and publishing new policies which naturalise human rights into their operating practices.

Regrettably, the current Modern Slavery Act does not clearly establish modern slavery within the human rights framework and is therefore at risk of compartmentalising the issue. Separating modern slavery from human rights both undermines subsequent business mitigation and sends mixed messages to businesses.

If modern slavery is compartmentalised it will undermine mitigation in two ways. Firstly, it will not benefit from the current business support for human rights, leaving it out of the drive to operationalise the UNGP and potentially demote it to a non-priority. Secondly, as human rights are necessarily interdependent and inalienable, effective due diligence must be holistic. Instead of addressing modern slavery as a stand-alone issue, it must be understood as a rights violation which is commonly accompanied by other violations. Only through a holistic approach can victims be provided with true restitution.

Disconnecting human rights and modern slavery will confuse businesses by requiring them to report on them separately even though they exist within the same normative framework. This will increase the workload for business and waste resources on the procedural issues of reporting instead of focusing on the substantive content.

STOP THE TRAFFIK has worked with numerous businesses which began by addressing modern slavery as a standalone issue only to come to the realisation that they need to take a holistic approach to human rights across their business and along their supply chains if they are going to effectively address the underlying issues and risks associated with modern slavery. Furthermore, when providing training for key business managers, STOP THE TRAFFIK has observed confusion around how modern slavery and human rights are related and frustration with multiple ethical topics they must be aware of. Following on from the historic changes achieved by businesses in the areas of Health and Safety, Quality, Environment and Anti-Bribery, it is clear that leading businesses see human rights as the next area for transformational change. By including Modern Slavery within the Companies Act as part of a holistic approach to human rights, the UK will be positioned to lead the world in this next area of business improvement.

The Modern Slavery Act needs to be amended so that businesses appreciate that modern slavery belongs within the human rights framework. The Act must encourage businesses to absorb their modern slavery risk mapping and mitigation within the broader process of human rights due diligence and impact assessments.

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