



# SUPPLY CHAIN REPORTING

## COMPLYING WITH THE MODERN SLAVERY ACT 2015

Brett Hartley of Clyde & Co LLP discusses supply chain transparency compliance under the Modern Slavery Act 2015 for businesses in the UK.

Starting from 29 October 2015, organisations that meet certain criteria are required to publish a slavery and human trafficking statement (the statement) each financial year, that sets out the steps that they have taken, if any, to ensure that modern slavery is not taking place in their business or supply chains (section 54, *Modern Slavery Act 2015*) (2015 Act) (section 54).

At first glance, it may appear that little is required to comply with section 54. Indeed, for some organisations, a minimalist approach may be justifiable. However, for most organisations, there are clear expectations from the government, non-governmental organisations (NGOs), shareholders and customers on what compliance should look like over time (see *Briefing "Modern Slavery Act 2015 and beyond: putting the spotlight on human rights"*, [www.practicallaw.com/5-620-4611](http://www.practicallaw.com/5-620-4611)).

Organisations that fail to satisfy these expectations run the risk of damaging their

reputation, their competitive advantage and, ultimately, their bottom line. This is particularly the case for high-profile organisations and those operating in sectors where poor labour conditions continue to be in the spotlight.

This article examines the key aspects of the new reporting requirement under section 54, including:

- The key concepts used in the legislation.
- Preparing the first statement.
- Understanding and managing the risk (see *Focus "Modern Slavery Act 2015: new reporting obligations"*, [www.practicallaw.com/0-614-4097](http://www.practicallaw.com/0-614-4097)).

### THE EXTENT OF THE PROBLEM

Many organisations that operate in sectors traditionally known for labour exploitation, such as agriculture, manufacturing,

construction and mining, will be acutely aware of the issue of modern slavery and taking active steps to address it. However, many others that are subject to the reporting requirement, whether operating in high or low-risk sectors, are simply not aware of the multifaceted nature of modern slavery, its sometimes local reach, and how it does, or could, affect their particular business or supply chains.

Estimates of adults and children trapped globally in various forms of modern slavery vary conservatively from 21 million to upwards of 36 million ([www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf); [www.globalslaveryindex.org/](http://www.globalslaveryindex.org/)). Home Office figures indicate that there were up to 13,000 potential victims of modern slavery in the UK in 2013 ([www.gov.uk/government/publications/modern-slavery-strategy](http://www.gov.uk/government/publications/modern-slavery-strategy)). It occurs close to home, as illustrated by the reports in 2015 of workers from Ghana, Egypt, India and the Philippines being trafficked

through the UK to work as bonded labour in Ireland's fishing industry, and in January 2016, by the convictions of two Lithuanian men for trafficking fellow Lithuanians to work as forced labour in a vegetable processing plant and a poultry processing plant in Suffolk.

The concept of modern slavery is much broader than the word "slavery" may imply and there is no globally agreed definition of the concept. From a UK perspective, the various forms of modern slavery targeted under the 2015 Act are defined in the government's statutory guidance on transparency in supply chains (the statutory guidance) as:

- Slavery; that is, the assertion of ownership over a person that deprives that person of his freedom.
- Servitude; that is, an obligation to provide services imposed by coercion, including living in a person's property and the impossibility of the victim changing his condition.
- Forced and compulsory labour; that is, work or service exacted under the threat of penalty and for which the victim has not volunteered.
- Human trafficking; that is, arranging or facilitating the travel of another person with a view to that person being exploited, whether or not the victim consented to the travel ([www.practicallaw.com/4-620-3966](http://www.practicallaw.com/4-620-3966)).

## THE REPORTING OBLIGATION

Commercial organisations that supply goods or services, have a global turnover of £36 million or more, and carry on business in the UK must publish the statement on their website (see *News brief "Modern slavery: reporting threshold and statutory guidance"*, [www.practicallaw.com/0-618-3116](http://www.practicallaw.com/0-618-3116)). Organisations that do not have a website are required to provide a copy of their statement within 30 days to anyone that makes a written request for one (*section 54(8)*).

The statement does not require an organisation to guarantee that its supply chains are free of slavery, but rather to set out the steps that it has taken, if any, to ensure that modern slavery is not taking place in its own business operations and in its supply

## Preparing a statement

Slavery and human trafficking statements should be:

- Accurate and refer to actual steps undertaken or begun.
- Written in simple and easily understood language.
- Developed with input from relevant parts of the business, such as HR, procurement and compliance.
- Where applicable, supported by providing links to relevant publicly available documents or policies.
- Where the organisation has a website, published on the website with a link to the statement readily visible on the homepage or through an obvious dropdown menu.
- Where the organisation does not have a website, provided to anyone who requests a copy in writing within 30 days of receiving the request.
- Approved by the board and signed by a director or partner.

chains anywhere in the world, including the UK.

The obligation to publish a statement came into effect on 29 October 2015, but as a result of transitional provisions, the first tranche of organisations that are required to publish their statements are those with a financial year end of 31 March 2016. Organisations are encouraged to publish their statements as soon as possible, but ideally within six months of the applicable financial year end to satisfy government expectations.

Undoubtedly, the first statements to be published will be eagerly reviewed and benchmarked by other organisations that are required to report later in the year, and they may also provide an indication of how NGOs concerned with modern slavery, such as KnowTheChain, Anti-Slavery International and the Business and Human Rights Resources Centre, will respond to the content of statements and organisations' efforts underpinning them.

The 2015 Act sets out a high-level framework of what may be included in the statement, including:

- The organisation's structure, business and its supply chains.
- Information about the organisation's policies on modern slavery.

- The modern slavery due diligence undertaken by the organisation across its business and supply chains.

- The parts of its business and supply chains where there is a risk of modern slavery taking place, and what steps have been taken to assess and manage that risk.

- The organisation's effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains.

- The training on modern slavery available to staff (*section 54(5)*).

The statutory guidance provides substantially more detail around each of these elements, together with case examples (see *box "Preparing a statement"*).

## KEY CONCEPTS

Several key concepts are used in section 54 and in the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 (*SI 2015/1833*).

### Commercial organisations

A commercial organisation means a body corporate, wherever incorporated, or a partnership, wherever formed, that carries on business, or part of a business, in any

part of the UK. Partnerships are defined as partnerships formed under the Partnership Act 1890, a limited partnership registered under the Limited Partnership Act 1907, or a firm or entity of similar character formed under the law of a country outside of the UK.

### Business

Business includes a trade or profession, which in itself adds little to an understanding of the concept. There is no minimum level of UK business required to trigger the reporting obligation under the 2015 Act and no requirement for an organisation to be physically located in the UK. However, the statutory guidance states that the government's intention is for a commonsense approach to be applied so that organisations that do not have a demonstrable business presence in the UK will not be caught. Nevertheless, the statutory guidance notes that the courts will be the final arbiter of whether an organisation is doing business in the UK.

This commonsense approach to the notion of carrying on business is consistent with that taken by the Ministry of Justice in its statutory guidance on adequate procedures under the Bribery Act 2010 (2010 Act) (2010 Act guidance) ([www.practicallaw.com/6-505-7347](http://www.practicallaw.com/6-505-7347)). Much of the language is identical, except that the 2010 Act guidance provides some useful illustrative examples. For non-profit organisations, the statutory guidance clarifies that it will not matter if a body corporate or partnership pursues primarily charitable or educational aims or purely public functions; it will be caught if it engages in commercial activities and has a total annual turnover of £36 million or more, irrespective of the purpose for which profits are made.

Charities, universities and public authorities that satisfy the turnover threshold will need to consider how they are constituted and whether they carry on commercial activities to determine whether they are subject to the reporting requirement. An unincorporated association or trust, whether or not it has a corporate trustee, would fall outside the scope of the reporting requirement, but may still wish to report for reputational reasons.

### Turnover

Turnover is defined as the amount derived from the provision of goods and services falling within the ordinary activities of the commercial organisation or subsidiary

## Practical steps

There are several practical steps that an organisation should take to underpin its slavery and human trafficking statement, including:

- Setting the tone from the top through a board-level communication reinforcing the organisation's zero tolerance towards modern slavery.
- Adopting a modern slavery policy and supplier code of conduct, or modifying existing policies and codes.
- Undertaking a risk assessment of existing supplier relationships.
- Reviewing procurement policies and procedures to ensure that they are capable of responding to any issues identified in the risk assessment.
- Updating standard contracts to ensure that suppliers are required to comply with the policy or code of conduct and the Modern Slavery Act 2015.
- Ensuring that whistleblower policies cover modern slavery reporting.
- Implementing a targeted training programme to ensure that those responsible for procurement or managing supply chains are aware of the issues.

undertaking, after the deduction of trade discounts, value added tax and other taxes based on the amounts so derived.

### Subsidiary undertaking

A subsidiary undertaking has the same meaning given by section 1162 of the Companies Act 2006. Broadly speaking, this means that a parent's subsidiary undertaking is one that it:

- Holds a majority of the voting rights in.
- Is a member of and has the right to appoint or remove a majority of its board.
- Has the right to exercise dominant influence over by virtue of provisions contained in its articles of association or by virtue of a control contract.
- Is a member of and controls alone, under an agreement with other shareholders or members, a majority of its voting rights.
- Has the power to exercise or actually exercises a dominant influence or control over, or both of them are managed on a unified basis.

Where a parent and a subsidiary are both required to produce a statement, one statement may be produced and published on each website, as long as it covers the business

and supply chains of both entities. Where a subsidiary undertaking does not do business in the UK, it will not be required to report, although its parent may be required to report about the subsidiary if it forms part of the parent's supply chain. A parent company that does not do business in the UK does not need to report merely because a subsidiary does business in the UK, but this assumes that the subsidiary acts completely independently.

### Supply chains

The statutory guidance provides that the term "supply chain" has its everyday meaning. On this basis, an organisation's supply chain should be considered as constituted by all those direct and indirect suppliers to the business of whatever tier, including suppliers' suppliers that make up multiple tiers of the supply chain. A supplier is generally regarded as any individual or entity that provides a buyer with goods or services, including an organisation's subsidiaries or group companies if they supply goods or services to it. Companies need to bear in mind that contractors and joint venture partners may be caught even though they do not fall into traditional definitions of suppliers.

The 2015 Act applies to organisations supplying services as well as goods. The 2015 Act therefore applies to service sectors that may be less familiar with the type of supply chain management and due diligence

that more readily lends itself to addressing modern slavery. This could include, for example, insurance companies, banks and professional services firms, which may not think of themselves as having supply chains or being exposed in any way to the risk of modern slavery in their business. Yet all service organisations meeting the turnover threshold will inevitably have suppliers and supply chains, for example, contractors providing office cleaning services, stationary and IT providers, and recruitment agents. Any of these could expose a service provider's business to modern slavery.

## THE FIRST STATEMENT

An organisation's statement must set out the steps it has actually taken to prevent modern slavery taking place. These steps should be appropriate and proportionate to the assessed risk that the organisation faces (see "Assessing risks" below). The action taken should also be defensible and capable of withstanding scrutiny both internally and externally, for example, from trade union members, whistleblowers, activist shareholders, the Anti-Slavery Commissioner, the media and NGOs (see box "Practical steps").

For some organisations, fewer steps may be required if the assessed risk is low. For others, the risk may be substantial and high profile, requiring a significantly more sophisticated and comprehensive approach to risk management. Some organisations that have been grappling with labour exploitation issues in supply chains for many years may already be doing a great deal to address modern slavery, either directly or indirectly, through other corporate social responsibility (CSR) measures.

The process can appear overwhelming, particularly for those organisations that have not previously tackled the issue or service sectors that have not had cause to reflect on their supply chains. Worryingly, a survey in December 2015 of members of the Chartered Institute of Procurement & Supply (CIPS) found that 19% of supply chain managers were unaware of the new reporting requirement, 27% did not understand what their business needed to do, and 25% could not name a single step taken ([www.cips.org/en-GB/News/news/UK-businesses-are-woefully-unprepared-for-the-Modern-Slavery-Acts-reporting-requirement-ahead-of-key-date/](http://www.cips.org/en-GB/News/news/UK-businesses-are-woefully-unprepared-for-the-Modern-Slavery-Acts-reporting-requirement-ahead-of-key-date/)).

## Codes of conduct

There is a range of industry standards and codes of conduct that organisations and their suppliers can adhere to, and sector-specific guidance that organisations can draw on, to help reduce labour exploitation. Examples include:

- The Ethical Trading Initiative Base Code ([www.ethicaltrade.org/eti-base-code](http://www.ethicaltrade.org/eti-base-code)).
- The Human Rights Watch "Guidelines for a better construction industry in the Gulf Cooperation Council: a code of conduct for construction companies" ([www.hrw.org/sites/default/files/supporting\\_resources/2015.12.21.gcc\\_brochure\\_dec\\_2015.pdf](http://www.hrw.org/sites/default/files/supporting_resources/2015.12.21.gcc_brochure_dec_2015.pdf)).
- Stronger Together's "Transparency in the UK food supply chain: guidance on ensuring ethical labour standards" ([http://stronger2gether.org/wp-content/uploads/2013/10/Ensuring\\_Ethical\\_Labour\\_Standards\\_in\\_the\\_Food\\_Supply\\_Chain.pdf](http://stronger2gether.org/wp-content/uploads/2013/10/Ensuring_Ethical_Labour_Standards_in_the_Food_Supply_Chain.pdf)).
- Various Fairtrade standards, such as Fairtrade International's Standard for Hired Labour ([www.fairtrade.net/fileadmin/user\\_upload/content/2009/standards/documents/generic-standards/2014-07-16\\_HL\\_EN.pdf](http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/generic-standards/2014-07-16_HL_EN.pdf)).

## What to include

Although changes may be required and resources invested to achieve anything close to best practice, the statutory guidance recognises that an iterative approach to the issue will be required for most organisations. In particular, organisations will need to build on what they are doing year-on-year. Their first statements may show how they are starting to act on the issue and their planned actions. The statutory guidance also makes clear that it is not compulsory for an organisation to include the information set out in section 54(5), except to the extent that it reflects the actual steps taken by a organisation.

There is no prescribed layout or content for a statement, so it is not necessary, or necessarily recommended for some organisations, to work methodically through each of the six items listed in section 54(5). This is particularly so if the organisation has not taken any steps or has not committed to do so in respect of one or more of these items. The statutory guidance states that the information presented in a statement will be determined by the organisation's sector, the complexity of its structure and supply chains, and the particular sectors and countries that its suppliers are working in.

For organisations that have not yet taken any steps to tackle slavery in their supply chains, it would be better to accept this fact and report accordingly in their first year, if the alternative is a hastily developed and

poorly focused compliance programme implemented simply to meet the reporting deadline. It is much more constructive to move forward with a co-ordinated and considered approach, even if this means that there are fewer steps to report on in the first year. This would help to avoid, for example, unnecessarily alienating suppliers through the blanket imposition of draconian contractual terms without properly assessing their risk profiles or without investing the time to consult properly with them to define expectations and ensure a common understanding of what is required.

For those just starting to tackle the issue, the following steps can provide a starting point to underpin the first year's statement:

- Appoint a person with sufficient authority, resources and knowledge of the business to take responsibility for managing the compliance programme and overseeing the preparation of the statement, to be supported at board level by a nominated director, perhaps through an ethics committee.
- Gather together a multidisciplinary support team, which includes, for example, representatives from HR, procurement, compliance and the public relations function.
- Conduct an audit of what the organisation is already doing, formally and informally, to tackle labour exploitation.

- Benchmark what others are already doing, and identify what sector or region-specific information is already available on modern slavery and any industry codes of conduct relevant to the risk faced by the organisation or the sector more generally (see box “Codes of conduct”).
- Start a risk assessment of the organisation’s supply chains.

An audit of existing CSR policies, current employment and procurement policies and procedures, existing labour-related contractual terms, any industry codes of conduct subscribed to, and community investment schemes and local labour-related investments already made, can underpin the first year’s statement to the extent that they address, or can be readily adapted to address, modern slavery. The internal audit will also help to expose risks and weaknesses in the organisation’s approach and identify areas for improvement.

## ASSESSING RISKS

Whether an organisation provides goods or services, it is essential to understand the nature and extent of the risks that the organisation actually faces. This assessment, and any policies and procedures developed in response to it, can form an integral, but targeted, component of the organisation’s broader risk assessment and due diligence processes, such as those focused on bribery and corruption, money laundering, and other forms of human rights due diligence, for example, around conflict minerals. Given how important this process is, the statutory guidance recommends that the oversight of risk assessment or risk management frameworks should be led by directors or partners so that any issues found can be dealt with at the appropriate level.

### Risk factors

A logical starting point for most organisations will be an analysis of their supply chains focused on country, sector, transaction and business partnership risks, as identified in the statutory guidance. In particular, organisations should note that:

- Supply chains may include suppliers and suppliers’ suppliers that operate or source from high-risk jurisdictions where labour practices and protections are poor.

## Useful tools for risk profiling

Useful tools for risk profiling include:

- The Global Slavery Index ([www.global-slaveryindex.org/](http://www.global-slaveryindex.org/)).
- The US State Department’s “List of goods produced by child labor or forced labor”, which is broken down into goods and their source countries ([www.dol.gov/ilab/reports/child-labor/list-of-goods/](http://www.dol.gov/ilab/reports/child-labor/list-of-goods/)).
- The Home Office’s industry-by-industry fact sheets on modern slavery ([www.gov.uk/government/publications/modern-slavery-industry-factsheets](http://www.gov.uk/government/publications/modern-slavery-industry-factsheets)).

- The business or its supply chains may fall within high-risk sectors, including those reliant on seasonal or low-skilled workers and migrant labour, such as construction, primary industries (for example, extractives, agriculture and fishing), and food processing, garment and other manufacturing sectors, or because of the risk associated with the inputs further down the chain (as in the case of conflict minerals).
- A business may face transaction risks, for example, the inadvertent financing of modern slavery in supply chains through lines of credit for a bank.
- Businesses and their supply chains may be exposed to risk through business partnerships, including joint venture partners, agents and franchisees.

Perhaps unsurprisingly, the CIPS survey mentioned above found that just one-third of supply chain managers had claimed to have mapped their suppliers to understand the potential risks and exposure to modern slavery. Without some sort of mapping exercise, organisations will struggle to identify and allocate risk within their supply chains (see below and box “Useful tools for risk profiling”).

### Supply chain mapping

For those organisations that do not already have a comprehensive understanding of their supply chains, supply chain mapping is an effective high-level tool for visually identifying multiple tiers of the supply chain. The starting point is to identify first-tier suppliers as this is where organisations have the highest visibility. Organisations with low-risk profiles may not need to go much beyond their first-tier suppliers, but others will need to dig deeper.

One of the primary obstacles to accurate supply chain mapping is visibility and transparency, for example, because of the location of the supply chains or the opaque nature of inputs that make up the particular chain. Supply chains may be constantly changing, depending on the suppliers and sector, so any map or database of suppliers needs to be a living document. Depending on how complex the supply chains are, the exercise can be undertaken using proprietary supply chain mapping software, completed with the assistance of third-party consultants, or using little more than a whiteboard and marker as a starting point for very simple networks (see box “Example of a simplified supply chain map”).

### Risk allocation

Once the supply chain has been adequately mapped, priority areas can be identified. The Walk Free Foundation’s 2014 guide on tackling modern slavery in supply chains sets out a useful methodology for allocating risk once suppliers are identified ([www.cips.org/Documents/Knowledge/Procurement-Topics-and-Skills/4-Sustainability-CSR-Ethics/Sustainable-and-Ethical-Procurement/tackling-modern-slavery-in-modern-supply-chains.pdf](http://www.cips.org/Documents/Knowledge/Procurement-Topics-and-Skills/4-Sustainability-CSR-Ethics/Sustainable-and-Ethical-Procurement/tackling-modern-slavery-in-modern-supply-chains.pdf)). This includes:

- Identifying high-spend areas and relative market share to identify priority areas and the organisation’s potential leverage with suppliers on the basis of spend as compared to competitors.
- Differentiating between high, low and medium-risk suppliers using a scorecard process based on country or regional risk, sectoral risk, supplier relationship (including length of relationship), and existing risk information (for example, any history of labour exploitation or negative media reports).

- Undertaking deeper due diligence on high and medium-risk entities. High-risk suppliers should then proceed to audits and on-site assessments against relevant labour standards.

Organisations should investigate as far as possible subsequent tiers of the supply chain to obtain a more complete picture of their exposure. This will allow organisations to better customise their responses with their first-tier suppliers, over which they are likely to have the most influence. It will also help to identify the suppliers' suppliers that organisations should engage with more directly (see box "Case study").

## MANAGING RISK

There is no one-size-fits-all approach to managing supply chain risks and any steps taken should be customised to respond to the results of the organisation's risk assessment and profile. As the statutory guidance suggests, where issues are found, the organisation needs to decide on how they can best be remediated or mitigated. An organisation should also be realistic about what changes it can influence within its supply chains, which may vary from supply chain to supply chain, across different timeframes, and the resources needed to effect change.

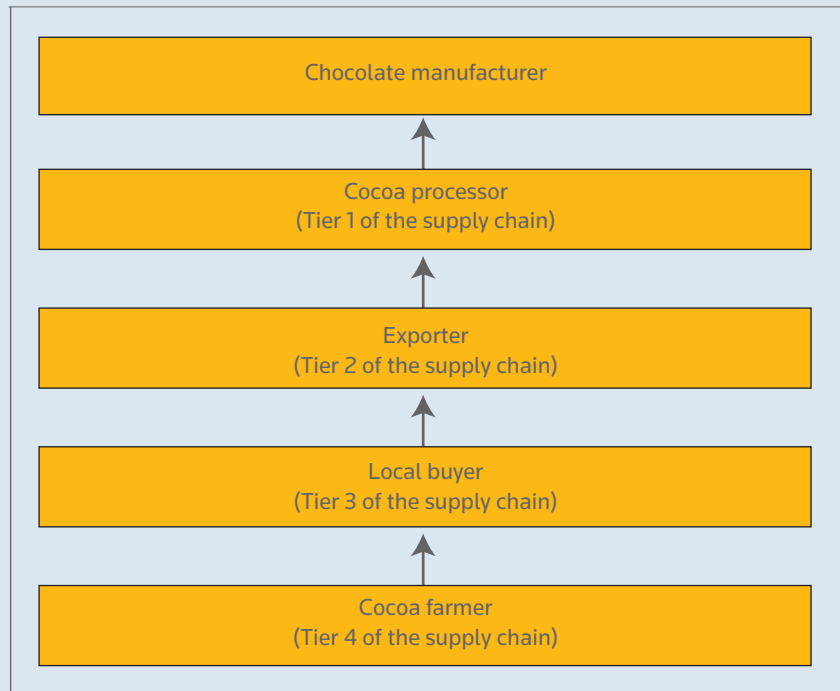
### Appropriate response

Organisations must reflect on how they will respond to identified cases of modern slavery that result from their initial risk assessment and on an ongoing basis. The statutory guidance addresses the distinction between UK-based incidents and those occurring outside the UK, which should be tailored to the local circumstances. From the UK perspective, identified cases of modern slavery must immediately be reported to the police. The response outside the UK may need to be more nuanced depending on the circumstances. For example, the statutory guidance notes that, in some cases, the most appropriate response will be to engage with local NGOs, industry bodies, trade unions or other support organisations to attempt to remedy the situation and, in other cases, it will be more appropriate to contact local government and law enforcement bodies.

The safety and welfare of potential victims is of paramount importance, and organisations will need to respond accordingly. Where victims of labour exploitation are not in immediate danger, organisations may want

## Example of a simplified supply chain map

As an example, a very simplified and linear supply chain map for a chocolate manufacturer could look something like the following:



A supply chain map is likely to be much more complicated than this and to have a range of non-linear inputs across each tier. For example, the exporter at tier 2 could be a global commodity trader with third-party inputs that include local packaging, warehousing services and shipping, each with their own human inputs, such as packers and crewing of vessels, and associated risks.

to consider what level of support, if any, they are willing to give to suppliers to remedy identified issues, for example, by paying workers' debts or providing training, and how, for example, they can adapt their incentive packages to mitigate against supplier reliance on forced labour.

### Key issues for suppliers

Suppliers will fall somewhere along a continuum of low, medium or high risk, based on the risk assessment. For medium and high-risk suppliers, it is particularly important to engage in an open and constructive dialogue about the labour-related issues that they face, their ability to influence their own supply chains, and the influence that the organisation's key performance indicators (KPIs) may have on this (see "Key performance indicators" below).

It is essential that the organisation understands the key issues from the supplier's perspective in order to mitigate the risk of

labour exploitation occurring and to ensure that the supplier is committed to positive change and to partnering in the fight against modern slavery, for example, by rewarding suppliers that can demonstrate certain labour standards with preferred supplier status.

### Contractual provisions

The inclusion of specific contractual language in supplier contracts can be an effective mechanism to ensure that suppliers adhere to the organisation's modern slavery policy, to any applicable codes of conduct, such as industry codes, and to other measures tailored to mitigate against modern slavery taking place in supply chains. However, it is important to tailor the various contractual measures to the particular supplier or class of suppliers, its risk profile, and capacity to respond to the obligations, taking into account the organisation's relationship with the supplier and the degree of influence over it. In other words, a risk-based and commonsense approach is required.

Contractual provisions can be drafted in various ways, either as standalone provisions or as part of other compliance provisions, such as those addressing anti-bribery and corruption. They could include all, or some, of the following, among others:

- An obligation on the supplier to comply with:
  - all applicable laws, including the 2015 Act, and international labour standards;
  - the organisation's modern slavery policy or supplier code of conduct; and
  - applicable third-party labour codes.
- Warranties that applicable laws and labour standards are being adhered to and that the supplier has not been investigated for, or convicted of, modern slavery-related offences.
- Audit rights and obligations to co-operate in the event of an investigation, for example, to inspect workplaces and interview employees.
- An obligation to provide annual reports setting out the steps taken to ensure that modern slavery is not taking place in its business and supply chains, any issues identified, and any remediation steps taken.
- Termination rights where labour exploitation issues are identified or there are breaches of the above provisions.
- Cascade requirements obliging the supplier to include in its contracts similar contractual provisions and to undertake appropriate due diligence on its suppliers.

While these various contractual provisions are undoubtedly familiar and, in many ways, analogous to adequate procedures under the 2010 Act, modern slavery presents a more nuanced challenge, given the potential for an organisation to cause further victimisation of vulnerable workers. It is worth reflecting on the fact that an instant termination of a supply contract where, for example, bonded labour is identified, may not always be in the best interests of victims and may aggravate the situation. It is equally important to ensure that suppliers are capable of delivering on any contractual obligations that are imposed on them.

## Case study

Nestlé identified significant supply chain issues in its Thai seafood supply chains. In response, Nestlé developed a comprehensive action plan designed to tackle the issue over the short and long term ([www.nestle.com/media/news/nestle-tackles-abuses-seafood-supply-chain](http://www.nestle.com/media/news/nestle-tackles-abuses-seafood-supply-chain)). Following the mapping of Nestlé's Thai seafood supply chains by a third-party consultant, Nestlé commissioned a non-governmental organisation, Verite, to undertake a focused supply chain risk assessment of six Thai production sites relevant to Nestlé ([www.verite.org/sites/default/files/images/NestleReport-ThaiShrimp\\_prepared-by-Verite.pdf](http://www.verite.org/sites/default/files/images/NestleReport-ThaiShrimp_prepared-by-Verite.pdf)). Verite found indicators of forced labour, trafficking and child labour present in land and sea-based workers at the sites assessed. Nestlé's response to identified issues has included commitments to establish:

- An emergency response team with various partners to remediate risks and take short-term action to protect individuals, for example, by buying debt.
- A grievance mechanism allowing anonymous reporting.
- A fishing vessel verification programme involving regular third-party verification of randomly selected boats to assess working conditions.
- A training programme for boat owners and captains based around best practice ([www.nestle.com/csv/rural-development-responsible-sourcing/responsible-sourcing/fish-seafood](http://www.nestle.com/csv/rural-development-responsible-sourcing/responsible-sourcing/fish-seafood)).

## Collaboration

A report published in October 2015 on forced labour, human trafficking and the FTSE 100 highlighted the need for greater collaboration between stakeholders ([www.weareus.org.uk/docstore/112.pdf](http://www.weareus.org.uk/docstore/112.pdf)). In particular, it notes that companies leading on the issue of modern slavery recognise that tackling issues such as forced labour requires the efforts of all parts of the company, as well as collaboration with external organisations and even their competitors. Similarly, the statutory guidance notes that organisations can benefit from working collaboratively with others, such as industry bodies and multi-stakeholder organisations.

Organisations can, for example, co-operate with other buyers to obtain leverage over suppliers, share local knowledge and the outputs of due diligence processes, and increase their influence over institutional change. Organisations can collaborate with NGOs to assist with risk assessments, verify supplier compliance with labour standards, and advocate for institutional change. NGOs can also be engaged to deliver training to suppliers on labour standards and best practice.

## Key performance indicators

A statement may include information about how effective the steps taken by

the organisation have been in ensuring that modern slavery is not taking place in its business or supply chains as measured against whatever performance indicators it considers appropriate (*section 54(5)(e)*). KPIs are framed as mechanisms for measuring the success of initiatives implemented by the organisation, either by the organisation itself or by third parties assessing the organisation's performance.

KPIs should be developed in response to the particular organisation's risk assessment and the measures to be introduced. For example, Nestlé has set a number of KPIs in response to the issues that it identified in its Thai seafood supply chain and the steps that it has committed to take (*see box "Case study"*). These include the percentage of boats audited and the percentage found compliant for its vessel verification programme and the number of individuals assisted by its migrant workforce emergency response team ([www.nestle.com/asset-library/documents/library/documents/corporate\\_social\\_responsibility/nestle-seafood-action-plan-thailand-2015-2016.pdf](http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-seafood-action-plan-thailand-2015-2016.pdf)).

The statutory guidance logically expands the focus on KPIs to include the effect that KPIs have on making supply chains vulnerable to modern slavery. For example, KPIs

## Related information

This article is at [practicallaw.com/6-622-9282](http://practicallaw.com/6-622-9282)

### Other links from [practicallaw.com/](http://practicallaw.com/)

#### Topics

Corporate governance	topic8-103-1148
Cross-border and immigration	topic6-382-8829
Financial and narrative reporting	topic3-103-1240
Human rights	topic6-103-1253
Legal risk and compliance	topic8-103-1332
Systems and controls	topic8-201-5208
Whistleblowing	topic8-200-0631

#### Practice notes

Corporate responsibility: overview	9-502-2097
Managing a corporate reputation in the 21st century	9-101-2026
Modern Slavery Act 2015: slavery and human trafficking statement	6-606-9165
Modern slavery toolkit	8-618-8657

#### Previous articles

Corporate criminal liability: looking across borders (2016)	1-621-9167
Corporate investigations: key issues for boards and in-house lawyers (2015)	0-619-0485
Developments in narrative reporting: keeping up and looking ahead (2015)	7-618-1227
Corporate governance: learning lessons from the past and looking to the future (2014)	8-583-5647
Bribery Act 2010: what does it mean for your company? (2011)	8-505-9543

For subscription enquiries to Practical Law web materials please call +44 207 202 1200

that drive rapid or unrealistic turnaround times for goods or services or continual cost reductions on the production line can create incentives for labour exploitation in supply chains. Conversely, KPIs could be used to drive improved labour conditions by, for example, rewarding suppliers that demonstrate certain standards with preferred tendering or supplier status.

### OTHER NON-FINANCIAL REPORTING

Many organisations are already required to report on human rights-related issues (see *Briefing "Human rights reporting: the tip of the iceberg"*, [www.practicallaw.com/8-589-4769](http://www.practicallaw.com/8-589-4769)). Others voluntarily do so as a matter of policy or as a requirement for membership of industry bodies. For example, the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (SI 2013/1970) require UK quoted companies

to include in their strategic report details of social, community and human rights issues, including information on policies and the effectiveness of those policies, to the extent necessary for an understanding of the development, performance and position of the company's business ([www.practicallaw.com/6-534-9327](http://www.practicallaw.com/6-534-9327)).

As a condition of membership, the UN Global Compact (UNGC) requires organisations to publish an annual Communication on Progress that details their work to embed the UNGC's ten principles in the organisation. Apart from addressing general human rights issues, the ten principles include the elimination of all forms of forced and compulsory labour, and the abolition of child labour. Failure to report or to make adequate progress to satisfy the ten principles can result in an organisation being expelled from the initiative.

Where organisations are required to report elsewhere on relevant matters, this information can be used in its statement. The statutory guidance makes it clear that the information does not need to be repeated and that a link to the relevant publicly available report can be provided instead. However, the fact that an organisation may be reporting on modern slavery-related issues elsewhere, for example, in a CSR report, does not replace the need to make a statement in accordance with the requirements of section 54.

### NON-COMPLIANCE

Legal sanctions for failing to comply with the obligation to publish a statement are limited to an injunction compelling the organisation to report. Subsequent failure to comply would result in being found in contempt of court, punishable by an unlimited fine. Instead, the primary compliance drivers are intended to be pressure from consumers, activist shareholders, trade unions, civil society and the press. A range of NGOs have a record of challenging companies on their human rights performance. An organisation's reputation is therefore most at risk from non-compliance or inaccurate reporting.

In a consumer poll conducted by the Walk Free Foundation in December 2014, 66% of UK consumers indicated that they would switch products if they learnt that their favourite product was made using modern slavery ([www.globalslaveryindex.org/category/publications/reports/](http://www.globalslaveryindex.org/category/publications/reports/)).

Major brands, such as Nike and Primark, have suffered when labour exploitation issues have been exposed in their supply chains, requiring significant effort and great cost to regain consumer trust and their brand equity. The impact of inaccuracies in statements can be significant for an organisation where issues are later identified, and for this reason it is imperative that statements are accurate and do not overstate the steps taken by an organisation or make indefensible claims that supply chains are slavery free.

*Brett Hartley is a senior associate at Clyde & Co LLP.*